

CONSERVATION COMMISSION MINUTES

Date: February 22, 2018
Time: 7:02 pm
Place: City Hall, Room 204

With a quorum present, the meeting opened with Ira Wallach, Chair, presiding
Members Present: Ellen Katz, Judy Hepburn, Jeff Zabel, Kathy Cade (Associate), Norm Richardson, Dan Green
Staff Present: Jennifer Steel
Members Absent: Susan Lunin
Members of the Public: See sign-in sheet

DECISIONS

I. WETLANDS

1. Ex post facto NOI – 4 Bryon Road – DEP File #239-798

- **Request:** An ex post facto filing for the expansion of the driveway.
- **Owner:** Dino Rossi **Applicant:** Dino Rossi **Rep.:** Jamie Walker (wetland scientist)
- **Documents Presented:** colored plans photos, aerials, original permitted plans
- **Jurisdiction:** Buffer Zone
- **Presentation (Jaime Walker) and Discussion:**
 - **Project history:** Duplex was constructed in 1980 with a smaller driveway(612 sf) under an Order of Conditions. At some point in the past, the driveway was expanded some without a wetland permit. In the fall of 2017, the driveway was expanded significantly (1183 sf) without a wetland permit. Inspectional Services discovered the expansion and alerted the Conservation Office.
 - **Impact summary:** Lawn in buffer zone has been replaced with driveway
 - **Options for rectification:** remove the extra asphalt, infiltrate additional stormwater runoff, add plantings along the stream.
 - **Proposed project:** Wetland and stream were flagged. 100' buffer zone was delineated. A trench drain, man-hole and shallow infiltration system is proposed to take the runoff. Groundwater is shallow, but more than 2.5 feet deep. Native soil (that does not perc) would be removed and stone would be installed to handle the runoff from a 100-year storm.
 - **Discussion points**
 - Have any “interests of the Act identified for the adjacent Resource Area” been affected? *Groundwater quality and quantity*
 - Would the Commission have considered the activity exempt under 10.02 as “conversion of lawn to uses accessory to residential structures”, were it to have been requested through proper review channels? *No, given the scale.*
 - Would the Commission have permitted this activity, were it to have been requested through proper permitting channels? *Not without mitigation.*
 - Test pit data wasn’t collected and groundwater is likely quite high. Engineering must agree to the proposal.
 - Should the Commission require an infiltration system or allow overland flow? Both may be required give the condition of the soils.
 - Should the Commission require mitigation plantings along stream side? Yes. Commissioners would like to see a vegetated swale between the driveway and the stream to provide water quality and infiltration improvements. If Engineering approves an infiltration system, a smaller vegetated swale will be



Mayor
Ruthanne Fuller

**Director
Planning &
Development**
Barney Heath

**Senior
Environmental
Planner**
Jennifer Steel

**Assistant
Environmental
Planner**
Claire Rundelli

**Conservation
Commission
Members**
Dan Green
Judy Hepburn
Susan Lunin
Norm Richardson
Ira Wallach
Jeff Zabel
Ellen Katz

**Conservation
Commission
Alternates**
Kathy Cade

1000 Comm. Ave.
Newton, MA 02459
T 617/796-1120
F 617/796-1142

www.newtonma.gov

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acceptable. If not, a larger vegetated swale will be required.

- Consensus: Continue the hearing until April 5 to allow time for a meeting with Engineering and a plan that satisfies Engineering and Conservation.

2. NOI – 483 Dedham Street (Charles River Country Club) – DEP File #239-XXX

- Request: Pond dredging, outlet control structure replacement, grading, planting, and associated site work.
- Owner: Charles River Country Club Applicant: Paul Blanusa (CRCC) Rep.: Paul McManus (EcoTec, Inc.)
- Documents Presented: colored plans photos, aerials, plans
- Jurisdiction: Riverfront Area, Flood Zone, Bordering Vegetated Wetlands
- Presentation (Paul McManus) and Discussion:
 - **Project summary**: This project is essentially maintenance of golf course water features that go anoxic or completely dry in summer months.
 - Hole 4/5 is a pond hydraulic dredging operation, pond expansion, and minimal tee reshaping – a shallow water shelf will be left and vegetated.
 - Hole 1 is a pond hydraulic dredging operation -- a turbidity curtain will be employed to protect the back half of the pond that will remain untouched.
 - Hole 17 is reestablishing a pond (with an old “bank”) via mechanical dredging, where cattails took over in the shallows below the bank – wet meadow plantings and upland bank plantings will be installed
 - Hole 15 is reestablishing a pond (with an old “bank”) via mechanical dredging, where cattails and phragmites took over in the shallows below the bank and spread significantly – bypass pumping will be employed and wet meadow plantings will be installed.
 - Hole 15 and 17 were constructed as ponds with outlet structures, but outlet structures have been circumvented so ponds became shallow and so, filled with cattails – outlet structures will be reconstructed.
 - **Impact summary**
 - No trees or shrubs will be cut in BVW; shrub plantings will restore some BVW turf to natural wet meadow and shrub
 - In Land Under Wetlands and Waterways, functional values will shift from those of vegetated shallows to those of open water habitat. Since grading will be gentle (because of the soft sediments), there will be an ecological gradient from BVW, through shallow vegetation, to open water.
 - No net fill will occur in BLSE.
 - No functional alteration of Riverfront Area will occur.
 - Protections for bypass pumping, dewatering, and spoils treatment, and sediment control during dredging have been incorporated into the plans.
 - Macro-wildlife (e.g., frogs and turtles) shall be flushed, captured, and transported to safety prior to dredging. Consideration must be given to their breeding and hibernation periods. Amphibians slow down after about October 15, so should be moved before then.
 - The cuts for the floodplain compensatory storage are 1.5 feet to maybe 2 feet max. The sewer is deep in this area at about 9.5 feet and with the proposed cuts there is still ample cover.
 - Dredging will take about 3 days for each pond. Hydraulic dredging will occur first, mechanical dredging will occur later.
- Vote: to issue an OOC with the following special conditions. [Move: Dan Green, Second: Norm Richardson, Vote: 6:0:0]

Prior to the start of work

21. The sediment and water controls shall be installed as shown on the Plan of Record (e.g., turbidity curtains and dewatering setups at Holes 4/5 and 1; swamp mats, sandbags and bypass pumping setups at Holes 15 and 17.)
22. The applicant must schedule and attend a pre-construction site visit to review construction activities with the Conservation office with:
 - a. Agent(s) of the Commission
 - b. Applicant or Applicant's Representative(s)

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- c. Applicant's Construction Supervisor (person responsible for compliance with this Order and who may be held jointly responsible for any violations and the penalties under the law for said violations)
- d. Applicant's Environmental Monitor(s)

At the pre-construction site visit the following will be checked by an agent of the Conservation Commission:

- e. Sedimentation/erosion controls are properly installed in the correct locations
- f. DEP File number sign of minimum size 2'x2' shall be displayed clearly visible from the street
- g. Proof of Recording the Order has been supplied to the Conservation office
- h. Contact information for those responsible for construction, sediment controls, and landscaping has been supplied to the Conservation office
- i. Anticipated timeline has been supplied to the Conservation office

23. An Environmental Monitor, paid for by the Applicant, shall be report to the Commission, to assist the Commission in its overall oversight of the activities approved by this Order. The name, e-mail address and cell phone number of the Environmental Monitor will be provided to the Applicant upon such designation. The Environmental Monitor will:
- a. *Advise on sediment and erosion control practices* and make recommendations for proposed changes if necessary to protect the interests of the WPA.
 - b. *Ensure adherence to the Order of Conditions* and report any non-compliance to the Commission;
 - c. *Be present on site* during:
 - i. Preconstruction meeting and approval of access road footprint
 - ii. Initial bypass pumping
 - iii. Initial dewatering
 - iv. Initial dredging
 - v. Initial inspection when small ponded areas remain to ensure wildlife preservation activities are in compliance
 - vi. Planting of the Restoration Areas
 - vii. Periodically to inspect dewatering and dredging as the Environmental Monitor feels necessary
 - d. *Have the authority and responsibility to stop work* at any time and/or to implement additional impact mitigation measures on site whenever necessary to prevent or halt existing or imminent violations of this Order;
 - e. *Provide weekly reports* during the time work is being conducted for items i-vii above. Said memos shall summarize work completed, any problems that arise in the Commission's jurisdiction, corrective measure(s) made in the field, and any additional corrective measures needed. The Applicant will be supplied with all reports submitted by the Environmental Monitor. The Applicant will be expected to make said changes immediately as identified and requested by the Environmental Monitor.
24. Applicant must submit proof of receipt of Water Quality Certification to the Conservation Office.
25. Applicant must submit proof of receipt of the Secretary's Certificate under the MEPA ENF Process to the Conservation Office.

During work

- 26. To accommodate the removal and protection of reptiles and amphibians prior to dredging activities, dredging preparation and execution shall occur prior to November 1st.
- 27. Prior to November 1, macro-wildlife shall be flushed out of the subject ponds immediately prior to dewatering and mechanical dredging operations and transported to an appropriate, protected location/habitat.
- 28. Intake water into the pumps must be filtered to control sediment intake and turbidity using stone filters and filter screens.
- 29. Dewatering drawdown must be slow and to the greatest extent possible, any wildlife (i.e. amphibians, reptiles, etc.) within the ponds shall be saved from being destroyed and relocated as described in the approved plans. Any turtles or other vertebrates will be assisted in leaving the ponds during dredging.
- 30. The dewatering pumps shall be monitored daily to ensure that sediment-laden water is appropriately settled prior to discharge back into wetland resource areas. Should sediment-laden water be visible beyond the limit of work within wetland resource areas, steps shall be taken to modify the dewatering protocol.
- 31. Dredging access will occur only where shown on the approved plans.

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32. If unforeseen problems occur during pond dredging, which may affect the statutory interests of the Wetlands Protection Act, the Commission shall immediately be notified, and an immediate meeting shall be held between the Commission or its Agent, the Applicant, and other concerned parties to determine the correct measures to be employed. The Applicant shall then act to correct the problems using the corrective measures agreed upon. Subsequent to resolution, the activity and resulting actions shall be documented in writing.
33. Compensatory flood storage shall be provided as per the approved plans and shall be shown on the as-built plans.
34. At the end of each workday, the applicant shall mechanically or manually sweep sediments from the adjacent streets, unless tracking and sediment is not evident on the streets.
35. The Applicant must restore the land under water, pond & river banks, and embankments as shown on the approved plans and documents. A Wetland Specialist shall be retained by the Applicant to supervise construction and monitor progress of the pond bank restoration and mitigation planting areas until it meets the requirements of the approved plans and a 75% survival for 2 growing seasons. Said individual shall be a professional with experience in wetland replication, wetland hydrology and a working knowledge of botany. The name, e-mail address and cell phone number of the Wetland Specialist shall be provided to the Conservation Administrator upon such retention.
36. Restoration activities shall commence within 10 days of completion of dredging activities unless seasonal conditions are not appropriate. In the latter case, the Applicant shall notify the Commission that certain restoration activities (e.g., seeding and planting) will not be conducted until the normal New England planting seasons.
37. Following completion of the restored banks and embankments, the Wetland Specialist shall certify to the Commission that the area has been restored in compliance with approved plans and this Order of Conditions.
38. Seasonal monitoring reports shall be prepared for the ponds by a qualified wetland scientist for a period of 2 years following completion of the project. This monitoring program will consist of spring and fall inspections which will include photographs and documentation that details the vitality of the restored ponds. Monitoring reports shall be submitted by November 15th of each year. Monitoring reports shall describe--using narratives, plans, and color photographs--the physical characteristics of the pond banks and land under water bodies with respect to stability, soil characteristics, survival of vegetation, and plant mortality.
39. A weeding program shall be implemented to maintain the restoration areas as part of the inspection, monitoring, and maintenance program. The goal of this program is keep these areas free of weedy and invasive species. Species to be removed by hand shall include all species identified on the Invasive Species List distributed by the Massachusetts Division of Fisheries and Wildlife. The weeding program shall begin within one month of restoration and continue at a minimum of twice per growing season until a Certificate of Compliance is issued for the project.
40. Construction materials, vehicles, and earth shall be stored outside of the 100-foot buffer zone of wetland resource areas, floodplain or 200-foot Riverfront Areas, unless otherwise demarcated and authorized on the approved plans. All stockpiles shall have appropriate erosion controls.
41. Refueling of vehicles shall not take place within wetland resource areas, the 100-foot buffer zone of wetland resource areas &/or 200-foot Riverfront Areas.

After Work

42. The Commission requires that at least 75% of the surface area of any disturbed vegetated areas outside of the dredging footprint be re-established with plant species consistent with existing conditions within three growing seasons. If the restoration areas do not meet the 75% re-vegetation requirement by the end of the second growing season after installation, the Applicant shall submit a remediation plan to the Commission for approval that will achieve, under the supervision of a Wetland Specialist, restoration goals. This plan must include an analysis of why the areas have not successfully re-vegetated and how the Applicant intends to resolve the problem.

Perpetual Conditions Specific to this Project that shall not expire upon completion of the project or the issuance of a Certificate of Compliance

43. The mitigation planting areas shall be maintained in perpetuity in their predominantly natural condition.

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3. NOI – 50 Farwell Street – DEP File #239-797

- Request: Conversion of single family home and “commercial” garage into a residential duplex
- Owner: KMKC (Ken Cunningham, present) Applicant: Kenneth Murphy Rep.: Joe Porter (VTP Associates) and Nicole Hayes (Goddard Consulting)
- Documents Presented: colored plans photos and aerials
- Jurisdiction: Riverfront Area
- Presentation (Joe Porter, Charles Navitral, Architect) and Discussion:
 - **Project summary**: This project will remove a commercial garage and parking lot and create unit #2 of a duplex
 - **Impact summary**
 - Impervious area will be reduced and pulled back away from the river
 - Commercial operations will be removed from the Riverfront Area
 - Stormwater runoff will be treated
 - River embankment will be improved through trash removal, invasive vine treatment.
 - **A list of concerns, sent to applicant in advance of the meeting, served as the basis of discussion.**
 - The project was advertised as an addition to a single-family home. A new abutter notification was sent out.
 - Work is being proposed on DCR land; DCR must be a signator on the application – Jennifer Steel will send a suggested contact to Joe Porter.
 - The datum must be shown on the plans – it is NAVD 88, and will be shown as such.
 - The sewer easement must be shown on the plans – it will be shown.
 - Test pits must be conducted and observed by Jennifer Steel, and test pit data must be submitted for the infiltration systems.
 - The Alternatives Analysis is very weak. “No build” is rarely the “only other” possible alternative.
 - The 5-6’ walkways seem very wide for single family residences. The architect argued to keep them, but Jennifer reminded the applicant that all work in Riverfront area is discretionary
 - The landscaping plans have been revised recently to incorporate more native species in the inner riparian landscaping.
 - Bark mulch was removed as a bank stabilizer.
 - Details of invasive removal and bank stabilization are required.
 - The rest of the green cards are still due to be submitted.
- Consensus: Continue the hearing until April 5 to allow time for outstanding issues to be appropriately addressed.

4. RE-SIGN Certificate of Compliance – 69 Kingswood Rd – DEP File #239-652

- Request: Resign Certificate of Compliance (originally issued years ago) due to incorrect book and page numbers on the original COC.
- Owner: Janet Freeman
- Vote: to issue a resigned COC. [Move: Ellen Katz, Second: Jeff Zabel, Vote: 6:0:0]

5. Administrative Approval – MBTA D-Line Wetland Tree Cutting – DEP File #239-785

- Staff Notes/Request: Jennifer Steel requests permission to be granted administrative authority to accept changes to the bond language present in OOC 239-785 regulating cutting of trees in wetland jurisdiction. Newton’s Legal Department and the MBTA’s attorneys have determined that a bond is not feasible for the MBTA, and that the City would accept language such as:
 - Any work not in accordance with the “Upland Tree Cutting on Conservation Commission Land – Modified Plans 6 -15-17 shall be remedied within 30 days of the deficient work being identified.
 - If MBTA fails to remedy deficient work within 30 days of notification, or fails to replace any failed mitigation plantings as outlined above, the Conservation Commission may pursue all available legal remedies.
- Vote: to grant Jennifer Steel such administrative authority. [Move: Norm Richardson, Second: Dan Green, Vote: 6:0:0]

II. CONSERVATION AREAS

6. Administrative Approval – MBTA D-Line Upland Tree Cutting

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- Staff Notes/Request: Jennifer Steel requests permission to be granted administrative authority to accepting changes to the bond language in the current MOU. Newton’s Legal Department and the MBTA’s attorneys have determined that a bond (as called for in currently un-signed MOU) is not feasible for the MBTA, and that the City would accept language such as:

3. Responsibilities of the MBTA. The MBTA (and any and all of its contractors) shall:

- Notify the Conservation Commission Office 1 week prior to cutting any trees on Conservation land.
- Remove only trees identified in the chart (attached) and on the plan (attached).
- Undertake only the actions noted for each tree listed in the chart “Upland Tree Cutting on Conservation Commission Land – Modified Plans 6-15-17” (attached) and on the cut and plant plan (attached).
- Limit damage to surrounding vegetation.
- Remove all cut tree material (and any chips generated) from the site.
- Submit a mitigation planting plan to the Conservation Commission for their review and approval. Said plan should include two native shrubs or small trees for each tree cut, topped, or heavily pruned.
- Undertake all cutting before April 15, 2018 (to avoid most breeding seasons).
- Execute the planting plan on or before June 15, 2018 (to maximize chances of survival).
- Ensure the survival of 75% of the mitigation plantings for at least 2 growing seasons.
- Any work not in accordance with the “Upland Tree Cutting on Conservation Commission Land – Modified Plans 6 -15-17 shall be remedied within 30 days of the deficient work being identified.
- If MBTA fails to remedy deficient work within 30 days of notification, or fails to replace any failed mitigation plantings as outlined above, the Conservation Commission may pursue all available legal remedies.

- Vote: to grant Jennifer Steel such administrative authority. [Move: Norm Richardson, Second: Dan Green, Vote: 6:0:0]

III. ADMINISTRATIVE

7. Training Budget. Jennifer Steel asked if she should look into using Wetland Protection Filing Fees to pay for (and reimburse) costs of commissioner training and e-handbook subscription and whether she should develop a proposed budget for the coming fiscal year? Commissioners agreed it was a good idea: every commissioner should be able to attend MACC’s annual conference and one workshop.

8. Discussion of Commission Roles.

- Jennifer presented the results of discussions at the prior two meetings and suggested adoption of the following procedures for adoption into Rules and Regulations of the Conservation Commission (revised Oct 22, 2009).
 - The positions of Chair and Vice-Chair roles are critical and should rotate regularly. The term for each position shall be three years. After a position has been held by one member for a three-year term, that member shall step down from that position for at least one three-year term. The Chair and Vice-Chair shall consult with Staff and interested members to determine the next Vice-Chair (and Chair if necessary). Under normal circumstances, the Vice-Chair shall become the Chair. Terms shall be initiated on (or about) July 1.
 - The position of Clerk is required by the Rules and Regulations and shall be elected annually.
 - Liaisons to other Commissions (NCGC, Farm, CPC) are required. These positions represent obligations over and above those of membership on the Conservation Commission. Commission members should volunteer based on personal interest and availability. The minimum commitment should be 2 years, but engagement could be indefinite. Annually, all members should be asked to help fill these positions as interest or need dictate.
- Discussion ensued.
 - Ira Wallach suggested changes to the draft to eliminate the “rotations” and maintain elections.
 - Dan Green suggested looking into how other Newton Commission’s address roles and succession within roles. Jennifer Steel will research other commission practices and report back to the Commission.

9. Minutes of 2/1/18 to be approved.

- Documents Presented: draft minutes draft minutes
- Vote: Vote to approve 2/1/18 minutes. [Motion: Dan Green; Second: Ellen Katz; Vote: 6:0:0.]

IV. ISSUES AROUND TOWN –

10. Invasive Pulls. Newton Serves is fast approaching on 4/29/18. Jennifer Steel noted that the Conservation Office began coordinating invasive pulls (and disposal) three years ago with a master calendar. This year she is seeking information on precise location of pulls. Some are in wetland jurisdiction. She sought permission to grant administrative approval for

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the pulls to facilitate the pulls but gather more information on them. Commissioners were supportive, but suggested providing information on how to be careful of sensitive wetland environments and rare species. Jennifer will develop material to provide to the pull leaders.

- Vote: to allow Jennifer to grant administrative approval for pulls in wetland areas. [Motion: Dan Green; Second: Judy Hepburn; Vote: 4:0:2.]

UPDATES

V. WETLANDS

- 188-210 Needham St, Anthony's Coal Fired Pizza, is looking for permission to expand their parking lot within jurisdiction. Jennifer met with the team from Anthony's on 2/9/18.

VI. CONSERVATION AREAS

- It has been brought to the attention of the Conservation Office that select residents of the Auburndale area have been seen and documented riding dirt bikes in the Dolan Pond Conservation Area.
- Newton Conservation Area Volunteer Stewards meeting was 2/13/18. Jennifer and Claire received several ideas, and expect more to come in, about special projects and working areas for the Stewards during the growing season.
- Dog Park Project at Norumbega is ready to be bid out to designers.

VII. ISSUES AROUND TOWN

- Recreational Trails Grant Application –submitted on 2/15/18!
- The Conservation Office received an update from our DPW department on road salt usage in Newton, information included in this week's packets.
- Needham St Area Visioning Group – 2/12/18 meeting on Land Use went well and the next meeting is 3/12/18 on Urban Design and Built Environment.
- Applications for the Webster Woods Advisory Committee are now closed.
- MACC AEC Annual Conference is 3/3/18 and registration is open through 2/28/18.
- Mass. Land Conservation Conference is 3/24/18 in Worcester.
- Charles River Watershed Association is having their annual Charles River Earth Day clean-up on 4/28/18 from 9am-12pm.

VIII. ADMINISTRATIVE MATTERS

- Jennifer and Claire are creating a the ConCom 101 presentation and handout for the Commission.
- Attendance on 3/15/18: Known absences: Judy, Kathy, Dan. Anticipated presence: Ira, Ellen, Norm, Jeff, Susan(?).

OTHER TOPICS NOT REASONABLY ANTICIPATED BY THE CHAIR 48 HOURS BEFORE THE MEETING

ADJOURN

- Vote: to adjourn at 10:40. [Motion: Dan Green; Second: Jeff Zabel; Vote: 6:0:0.]

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