

CONSERVATION COMMISSION MINUTES

Date: June 25, 2020

Time: 7:00pm

Place: This meeting was held as a virtual meeting via Zoom

<https://us02web.zoom.us/j/82576773625>

With a quorum present, the meeting opened at 7:02 with Dan Green presiding as Chair.

Members Present: Susan Lunin, Leigh Gilligan, Kathy Cade, Jeff Zabel, Ellen Katz

Members Absent: Judy Hepburn

Staff Present: Jennifer Steel and Claire Rundelli

Members of the Public: not recorded due to remote nature of the meeting

DECISIONS

I. WETLANDS DECISIONS

1. 330 Homer Street – NOI – parking lot solar canopy – DEP File #239-870

- **Owner/Applicant:** Bill Ferguson, City of Newton Co-Director of Sustainability
Representative: Stephen Herzog, Wood Massachusetts, Inc.

- **Request:** Issue OOC.

- **Documents Presented:** Colored plans, site photos, draft OOC

- **Jurisdiction:** Buffer Zone

- **Performance Standards:** 10.53(1): General Provisions

“For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”

- **Project Summary:**

- This project proposes the construction of solar canopies over the existing library parking lot. The work will be performed in the following general sequence:
 - Install temporary erosion/ sediment controls;
 - Establish staging and laydown area;
 - Remove landscaped islands and trees within islands and pave over the islands;
 - Install canopy foundation posts; and
 - Install canopies and electrical connection.
- This NOI is for the first part of a two-part library parking lot redevelopment. A second NOI will be submitted for the second part of the project to address parking lot renovation explicitly for the purposes of improving stormwater management, adding parking spaces, and improving traffic flow and safety. The Department of Public Works will consider options such as stormwater drainage infiltration systems, pervious pavement, and vegetative plantings for improved stormwater management.

- **Presentation (William Ferguson and Jason Sobel) and Discussion:**

- Applicant provided further details regarding the phasing of the project. The City anticipates phase two will begin next year and incorporate extensive tree planting and increases in pervious areas through, potentially, the installation of pervious pavement.
- The project has gone through several bodies for approval starting with the concept developed by Environmental Partners. It then went to DRT, the Public Facilities Committee, and the Library Trustees Board for review approval.
- This project will result in the removal of 4-5 trees and many shrubs and an increase in impervious area in the buffer zone. The trees are small and in poor health; the shrubs are Winged-euonymus.
- Ameresco will be paying into the City tree fund in order to mitigate for the tree removal and impervious area, so Marc Welch will be responsible for species chosen and locations of replanting.
- This project proposed to transplant 5 trees on the Library site. Commissioners did express some that current species are unlikely to survive the transplant.



Mayor

Ruthanne Fuller

Director

**Planning &
Development**
Barney Heath

Chief

**Environmental
Planner**
Jennifer Steel

Assistant

**Environmental
Planner**
Claire Rundelli

**Conservation
Commission
Members**

Kathy Cade
Dan Green
Judy Hepburn
Ellen Katz
Susan Lunin
Jeff Zabel
Leigh Gilligan

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- Commissioners requested that these 5 trees to be planted, as mitigation for the removed trees, near the City Hall ponds all be native species and must occur within three years of the project's completion.
- Commissioners wanted to ensure that a bond had been acquired for decommissioning. Applicant confirmed that yes, an escrow account has been established.
- Public Comment:
 - Julia Malakie, City Councilor, had concerns regarding the mature oaks to be affected by the project and wanted to be sure the Commission was aware that the cost of Phase 2 has not yet been presented to the Council.
- Vote: To close the hearing and issue an OOC with the following special conditions [Motion: Kathy Cade; Second: Ellen Katz; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].
 - There shall be 5 native trees planted near the south pond of the City Hall ponds to mitigate for the 4 trees that are being removed from the buffer zone (this is in addition to the 5 trees proposed to be transplanted along Walnut Street on the library lot.
 - Snow may not be pushed into or stockpiled in the wetland.
 - Infiltration. The applicant shall apply, through another Notice of Intent, for repaving the parking lot (Phase 2). As part of that proposal/application, on-site infiltration of stormwater equivalent to having roughly 3,500 sf of pervious area (i.e, the area of the parking lot islands paved over as part of this project (Phase 1) must be provided.

2. 2345 Commonwealth Avenue – Notice of Intent – relocation of aboveground propane tank – DEP File #239-869

- Owner: CHSP Newton LLC Applicant: Andrew Shelby, Boston Gas Company Representative: Amanda Houle, Tighe & Bond, Inc.
- Request: Issue OOC.
- Documents Presented: Colored plans, site photos, draft OOC amendment
- Jurisdiction: Riverfront Area
- Performance Standards
 - **Riverfront Area: 10.58(4)**
 - (c) Practicable and Substantially Equivalent Economic Alternatives.
 - (d) No Significant Adverse Impact.
 1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
 - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible....
 - b. Stormwater is managed ...
 - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...
 - d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
- Project Summary
 - Relocation of a 1,000-gal propane tank and the associated pouring of a 16'x6' concrete pad in the new location; and construction of a 35' long and retaining wall around the proposed new location.
 - Proposed project will result in a 139 s.f. increase in impervious area.
 - Proposed 14" wide retaining wall will range in height from 1.5' to 3' and will require the excavation of a trench for the footings.
 - Existing concrete pad for the tank is proposed to remain, but the existing tank will be removed once the propane has been transferred to the new tank.
 - Existing non-native shrubs in the proposed tank location are proposed to be removed and an in-kind number of native plantings (~9) are proposed for replacement.
- Presentation (Amanda Houle) and Discussion:
 - The tank is being moved to accommodate a new gas line and meters.
 - All proposed work is to take place within an existing landscaped bed, planted with invasive barberry, within the outer riparian zone and will likely have minimal effect on the wetland resource area.

The location of this meeting is wheelchair accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA/Sec. 504 Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

- Installation of native shrubs will improve wildlife habitat value.
- Commissioners expressed an interest in seeing more habitat created through the inclusion of understory trees in the replanting plan. Applicant’s representative stated that this would be acceptable.
- Vote: To close the hearing and issue an Order of Conditions with the following special conditions. [Motion: Susan Lunin; Second: Jeff Zabel; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].
 - Concrete washout may not occur within Conservation Commission jurisdiction (i.e., within the 200-foot Riverfront Area).
 - The existing mature trees in the work area may not be removed.
 - Erosion controls (staked 9” compost sock) must be installed along the toe of the slope, inspected regularly, and properly maintained during construction until the site is stable.
 - Landscape plantings shall consist of 12 native shrubs and 3 native saplings within the general area of the work zone, in consultation with the Chief Environmental Planner, a majority to be installed in the barren mulch slope adjacent to the western edge of the adjacent parking lot.
 - Shrubs shall be at least 2-feet tall upon installation
 - Trees shall be at least 1.5 caliper inch upon installation
 - These plantings must stabilize all areas exposed during construction
 - These plantings must be installed on or before October 15, 2020
 - These plantings must survive 2 growing seasons for a Certificate of Compliance to be issued
 - If any trees within the project area die within 2 years of the start of construction or have been demonstrably harmed by construction activities, they shall be replaced at a ratio of 2:1 with native canopy saplings (of roughly 2 caliper inches).
 - The required mitigation planting areas shall be maintained in perpetuity in their predominantly natural condition.

3. Dunstan St/Washington St/Kempton Pl. – NOI (cont) – Dunstan East Mixed-Use 40B Development – DEP File #239-867

- Owner/Applicant: Robert Korff, Mark Development, LLC Representative: Christopher Wagner, VHB, Inc.
- Request: Issue OOC.
- Documents Presented: Colored plans, site photos, draft OOC
- Jurisdiction: Buffer Zone, Riverfront Area, BLSF, Land Under Waterways, City Floodplain, Bank
- Performance Standards
 - **Buffer Zone. 10.53(1): General Provisions** “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
 - **10.58(5) RFA: Redevelopment within Previously Developed Riverfront Areas; Restoration & Mitigation**
 - ... work improves existing conditions.
 - Redevelopment means ... reuse of degraded or previously developed areas.
 - A previously developed riverfront area contains areas degraded prior to August 7, 1996....
 - Work to redevelop previously developed riverfront areas shall ...:
 - (a) At a minimum, work shall result in an improvement over existing conditions ...
 - (b) Stormwater management is provided according to standards
 - (c) Proposed work shall not be closer to the river than existing conditions or 100’, whichever is less
 - (d) Proposed work...shall be located... away from the river, except in accordance with 10.58(5)(f) or (g).
 - (e) ... proposed work shall not exceed the degraded area ...except in accordance with 10.58(5)(f) or (g).
 - (f) despite what it says in 310 CMR 10.58(5)(c), (d), and (e), more alteration at the RFA outer boundary may be allowed if an applicant proposes restoration ... of at least 1:1 ...
 - (g) despite what it says in 310 CMR 10.58(5)(c), (d), or (e), more alteration at the RFA outer boundary may be allowed if an applicant proposes mitigation ... of at least 2:1
 - (h) The issuing authority shall include a continuing condition in the COC ...under 10.58(5)(f) or (g) prohibiting further alteration within the restoration or mitigation area....
 - **Bordering Land Subject to Flooding: 10.57**
 - Compensatory storage shall be provided for all flood storage volume that will be lost ... Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body.
 - Work shall not restrict flows so as to cause an increase in flood stage or velocity.

- Work in those portions of bordering land subject to flooding found to be significant to the protection of wildlife habitat shall not impair its capacity to provide important wildlife habitat functions.
- **City Floodplain. Sec. 22-22. Floodplain/Watershed Protection Provisions.**
 - (b)(1) Except as provided in subsections (b)(2) and (e) of this section, no building or other structure shall be erected, constructed, altered, enlarged or otherwise created for any residence or other purpose ... which will restrict floodwater flow or reduce floodwater storage capacity shall be permitted.
 - (b)(2) ... the conservation commission may issue an order of conditions for the following uses in the Floodplain/Watershed Protection District:
 - a) Any building or structure for which compensatory storage is provided ...
- **Bank: 310 CMR 10.54**
 - (a) Work on a Bank shall not impair the following:
 1. The physical stability of the Bank;
 2. The water carrying capacity of the existing channel within the Bank;
 3. Ground water and surface water quality;
 4. The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
 5. The capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions....Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures in 310CMR 10.60.
 6. Work on a stream crossing ...
 - (b) Structures may be permitted in or on a Bank when required to prevent flood damage, including the renovation or reconstruction (but not substantial enlargement) of such facilities, buildings and roads, ...
 - (c) No project may be permitted which will have any adverse effect on specified habitat sites of Rare Species.
- **Land Under Waterways and Waterbodies: 10.56**
 - (a) Work shall not impair the following:
 1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
 2. Ground and surface water quality;
 3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
 4. The capacity of said land to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in this resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures established under 310 CMR 10.60.
 5. Work on a stream crossing
 - (b) The issuing authority may issue an Order to maintain or improve boat channels
 - (c) No project may be permitted which will have any adverse effect on rare species.
- Project Summary
 - Demolish existing large commercial buildings and remove existing pavement.
 - Remove the majority of the southern stream wall, regrade the bank, and plant the slope to create a more natural stream channel. Culvert headwalls will also be reconstructed
 - Construct 3 mixed use buildings (with parking under buildings) totaling roughly 426,000 s.f. and one central roadway, resulting in a proposed reduction of 13,691 s.f. of impervious area.
 - Stormwater management changes include a new sand filter and changes to the existing outfall.
 - Create flood storage area/green space/public space resulting in an increase in flood storage capacity of 1320.8 cubic yards.
 - Construct a boardwalk along the newly naturalized Cheesecake Brook.
- Presentation:

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- Staff alerted the Commission that the applicant had requested a continuation to the 7/16/20 meeting in order to develop a final set of plans to present to the Zoning Board of Appeals on 7/8/20 that addresses both ZBA concerns and Conservation staff concerns presented in the agenda for this meeting.
- Vote: To accept applicant's request to continue the hearing to 7/16/20. [Motion: Susan Lunin; Second: Ellen Katz; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].

4. 791 Walnut Street – NOI (continued) – ecological restoration – DEP File #239-864

- Owner: Newton Cemetery Corporation (NCC) Applicant: Mary Ann Buras, NCC Representative: Michael DeRosa, DeRosa Environmental Consulting, Inc.
- Request: Issue OOC.
- Documents Presented: Plans, site photos, draft OOC
- Jurisdiction: This project was filed as a Limited Project, essentially seeking waivers from the standard performance standards because of the project's anticipated overall ecological improvement. [Bank, Bordering Vegetative Wetlands (BVW), City Floodplain, Land Under Wetlands and Waterways (LUWW), Riverfront Area, Buffer Zone]
- Performance Standards "Limited projects are categories of activities within the existing wetlands regulations which can proceed at the discretion of the issuing authority without fully meeting the resource area performance standards." (RFA preamble) "the types of projects covered are, by nature, important to the protection of public health, safety and/or the environment." (Jan 1, 1994 preamble) Under the "Limited Project" type, the applicant must show that a project improves the natural capacity of a specific resource area. This includes projects proposed primarily to enhance fisheries habitat, address eutrophication, or increase dissolved oxygen or improve overall water quality in a water body. As an Ecological Restoration Limited Project, the environmental impacts are reviewed at two levels: the local Conservation Commission, which has jurisdiction under the Wetlands Protection Act and any local wetland bylaw/ordinance, and the Massachusetts Environmental Policy Act (MEPA) Unit, which has jurisdiction over state-funded or state-authorized projects of a certain size or scope.
- **Limited Project**: 10.53(4)(e)(5) Other Ecological Restoration project
 (4) Ecological Restoration Limited Projects.
 - (a) Notwithstanding the requirements of any other provision of 310 CMR 10.25 through 10.35, 10.54 through 10.58, and 10.60, the Issuing Authority may issue an Order of Conditions permitting an Ecological Restoration Project listed in 310 CMR 10.53(4)(e) as an Ecological Restoration Limited Project and impose such conditions as will contribute to the interests identified in M.G.L. c. 131, § 40, provided that:
 1. the Issuing Authority determines that the project is an Ecological Restoration Project as defined in 310 CMR 10.04;
 2. the project will [not] impact ... State-listed Rare Wetlands Wildlife ...
 3. the project will be carried out in accordance with any time of year restrictions or other conditions ...
 4. the project [doesn't] involves the dredging of 100 cubic yards ...
 - (b) ... may result in the temporary or permanent loss of Resource Areas and/or the conversion of one Resource Area to another when such loss is necessary to the achievement of the project's ecological restoration goals.
 - (c) ... exempt from the requirement to perform a wildlife habitat evaluation ...
 - (d) ... the issuing authority shall consider the following:
 1. the condition of existing and historic coastal Resource Areas ...
 2. the magnitude and significance of the benefits of the Ecological Restoration Project in improving the capacity of the affected Resource Areas to protect and sustain the other interests identified in M.G.L. c. 131, § 40; and
 3. the magnitude and significance of the impacts of the Ecological Restoration Project on existing Resource Areas ... and the extent to which the applicant will: avoid ... minimize and utilize best management practices.
 - (e) Types of Ecological Restoration Limited Projects.
 5. Other Restoration Projects ... that will improve the natural capacity of a Resource Area(s) to protect the interests identified in M.G.L. c. 131, § 40
- Project Summary
 - NOTE: This applicant is requesting a 5-year Order of Conditions to implement an ecological restoration plan.
 - The proposed ecological restoration focuses on the management of Ponds 1-4 and the Irrigation Pond to reduce organic accumulation, reduce nutrient loading, increase water holding capacity, manage invasive aquatic plant species, improve overall water quality, and improve wildlife habitat.
 - Proposed activities are:
 - Regular site monitoring of water quality and weed growth. 2 times per month from April 15 to October 30 over the 5-year approval period, with the following thresholds:

- If algae blooms develop during the warm season, treatment of copper-based algaecides will be applied immediately.
- If water chestnut growth is observed, hand removal will be initiated immediately.
- Should any of the water quality thresholds detailed in the SOLitudes memo be met, chemical treatment will be applied the same day to proactively mitigate water quality decline.
- Year-end report on annual management efforts, observed conditions, observed efficiency, and future recommendations will be developed for each year of the approval period. Interim updates may also be requested by the Commission.
- Hydro-raking of the 4 ponds (2.7 acres). “The objective of the hydro-raking portion of the project will be to remove the roots and tubers of nuisance vegetation within the ponds.” Applicant has proposed that during hydro-raking operations members of the cemetery staff and hydro-raking crew will separate out any turtles, fish, and macro-invertebrates that can be easily collected from the harvested material and place them back in a previously selected refuge pond. The raked material will be temporarily deposited on accessible shoreline to dewater, then trucked by the Applicant or third party to a designated permanent, upland, on-site composting/disposal location. Increases in turbidity typically settle-out to background levels within 24 hours of the completion of hydro-raking. The anticipated hydro-rake launch areas are as follows:
 - Pond 1 – the northeast corner of the pond
 - Pond 2 – the easternmost point of the pond
 - Pond 3 – craned in from a point on the road likely along the northern shoreline where feasible
 - Pond 4 – craned in from a point on the road likely along the northern shoreline where feasible
- PAC and copper-based algaecide applications. To be applied at a threshold of 30% cover or “noticeably reduced water clarity”
- Hand-pulling of and/or chemical treatments for water chestnut.
- Unpermitted tree removals, unpermitted stream bank restoration, and desired tree removals and plantings will be addressed in a subsequent filing.
- Presentation (Michael DeRosa) and Discussion:
 - The applicant’s representation confirmed that revised plans show all requested details asked for by the Commission and Conservation Staff.
 - The applicant was given administrative approval to start hand removal of water chestnut before the plant starts to drop seed. No other vegetation removal or chemical treatment was approved.
 - Staff confirmed that revised Clearcast application will pose no harm to general aquatic health.
 - Applicant acknowledged that they are required to file a follow up Notice of Intent regarding unpermitted stream bank restoration plantings and tree cutting within jurisdictional areas, along with plans for future landscaping and pond restoration work.
- Vote: To close the hearing and issue an Order of Conditions with the following special conditions [Motion: Leigh Gilligan; Second: Kathy Cade; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].
 - Prohibitions include:
 - Removal of any mature vegetation not approved under this Order of Conditions.
 - Any work in the Irrigation Pond. Any work proposed for the Irrigation Pond (outlined in blue on the approved plan) must be brought before the Commission for approval through a new Notice of Intent.
 - The applicant is required to perform monitoring, or hire a professional third party to perform monitoring, twice per month throughout the growing season for the approved work. Annual monitoring reports must be provided to the Conservation Commission prior to December 1st, each year for the life of this Order of Conditions. Monitoring reports must include at a minimum:
 - details of all activities undertaken in the previous year including legitimate water quality data and photos to supplement;
 - any problems that arose in the Commission’s jurisdiction during the year;
 - any scheduled activities to be undertaken in the following year; and
 - any minor plan change requests.

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- Erosion controls shall be installed at each off-load location as per the approved plans. Erosion controls must be inspected and properly maintained during construction until the site is stable.
- Hydro-raking activities (access, raking, and off-loading)
 - Must be conducted per the approved plans.
 - Hydro-raked materials temporarily stockpiled on shorelines for dewatering shall be surrounded by a 12" compost sock to protect the ponds from returning sediment.
 - Dewatered, hydro-raked materials must be disposed of properly at an upland disposal site.
 - At no time shall the hydrorake disturb the bottom mineral substrate, bank, or bordering vegetated wetland. All work shall be conducted in such a manner as to pass raked organic material to the waiting bin without damage to the bottom, bank, or bordering vegetated wetland.
 - Access and off-loading areas shall be seeded (or planted with native herbaceous or woody vegetation) and stabilized immediately following the conclusion of the hydroraking operation.
 - All hydroraking operations must be detailed in the annual report.
- PAC Treatments
 - PAC treatments shall only occur if phosphorus levels in the ponds are greater than 0.03 mg/L after hydro-raking has occurred.
 - The Conservation Office shall be notified 3 days in advance of any scheduled PAC treatments.
 - All PAC treatments must be detailed in the annual report.
- Algaecide Treatments
 - Algaecide treatments shall only occur if algae blooms cover more than 30% of the pond surface.
 - The Conservation Office shall be notified 3 days in advance of any scheduled algaecide treatments.
 - All algaecide treatments must be detailed in the annual report.
- Water Chestnut Removal
 - Water chestnut removal shall occur by hand in areas shown on the approved plans.
 - Chemical treatments (e.g., Imazamox/Clearcast) for water chestnut removal will be approved if hand-pulling is unable to keep abreast of the proliferation of water chestnuts. Should the applicant feel chemical treatments for water chestnut removal are necessary, they must request permission to proceed with chemical treatments. Following a site visit, permission may be granted by the Conservation staff.
- All launch and disposal areas for the hydro-raking activities must be fully stabilized and revegetated to their pre-hydro-raking condition.

5. 62 Carlton Road – OOC Amendment Request – lawn extension with associated grading, retaining walls, and plantings – DEP File #239-836

- Owner/Applicant: Hillcrest Development Representative: John Rockwood, EcoTec, Inc.
- Request: Issue amended OOC.
- Documents Presented: Colored plans, site photos, draft OOC amendment
- Jurisdiction: Buffer Zone, City Floodplain (proposed work outside floodplain)
- Performance Standards
 - **Buffer Zone. 10.53(1): General Provisions** "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."
- Summary of Requested Changes
 - No changes are proposed to the house location and size, driveway location and size, wildlife corridors along the side yards, or stormwater systems.
 - The requested changes are to:
 - Lower the basement floor elevation from 142.4' to 141.6' (~1.5 feet), and patio elev. from 142' to 140'.
 - Extend lawn and construct two retaining walls to accommodate the grade change and fill needed for lawn. Lower retaining wall will be 43' from the edge of BVW.
 - The upper retaining wall is maximum of 3.5' tall at its highest point and tapers down to 1' at each end. The upper retaining wall is proposed to have a 4' tall safety fence installed along it. The lower retaining wall is a maximum of 7' tall at its highest point and tapers down to 1' at each end.
 - Revise grading, retaining walls (outside 100' BZ), and landscape stairs associated with lawn expansion.

- Expanded invasive species removal on the lot.
- Increase number of mitigation plantings by 4 saplings and 29 shrubs, bringing the project totals to 8 saplings and 96 shrubs. (Previously approved: 67 shrubs and 4 saplings).
- The area between the two retaining walls and the disturbed areas down gradient of the lower retaining wall are proposed to be seeded with a mix of New England Wetland Plants Conservation/Wildlife Mix and Showy Wildflower Mix
- Presentation (John Rockwood) and Discussion:
 - Applicant’s representative provided a brief summary of the proposed changes from the original, approved plans.
 - It appears the basement floor and patio have already been constructed at the “newly proposed” elevations.
 - Applicant’s representative explained that they are keeping the proposed saplings in one area in order to encourage and facilitate meadow growth on the other side.
 - Multi-year invasive species removal is still proposed along with follow-up monitoring, but staff expressed concerns that that 3 years may not be enough to successfully transition the mitigation planting area into a native ecosystem.
 - New England seed mixes are proposed for between the two walls and below the retaining wall closer to the Kettle Pond, which could be considered an improvement as it was not specified how the area below the currently approved wall was to be seeded and it could be lawn.
 - Commissioners and staff continued to express concern with the planting plan and stated they would like to see some of the saplings moved into the northern portion of the mitigation area and that some of the shrub plantings should be swapped for understory trees.
 - Commissioners also recommended that the applicant prune the existing Norway Maples to remain in order to create canopy gaps to encourage sapling growth and success.
- Public Comment:
 - Jim Miller (60 Carlton Rd) provided some background on the efforts that him and other neighbors took to get the pond dredged several years ago. He expressed concerns that this change is coming after the house is already built and that they have not presented an argument as to why they should be allowed increased lawn further into the buffer zone. He also expressed frustration that this amendment filing occurred during the COVID-19 situation, which he believes prevented abutters from being properly notified of the amendment request.
 - The Commission responded that they cannot turn away applications just because of the current COVID-19 situation.
 - James and Diane Hirshberg (108 Nehoiden) believed that the developer was only looking for profit from this amendment request and expressed concern about the impact of increased lawn care would have on the Kettle Pond. They asked the Commission if this was a precedent they wished to set.
 - David Sherman (38 Homewood Road) stated that he was also one of the neighbors to assist in the dredging project. He opposes the idea of additional retaining walls within the buffer zone, which would result in more disturbance, without justification beyond profit.
 - Lori Van Dam and Charles Klee (5 Kelveden Rd) pointed out that they believe Mikhail is still involved with Hillcrest Development and asked the Commission to do due diligence. They stated the construction site is a mess and poor work shouldn’t be rewarded. They questioned why the requests were piecemealed and the developer didn’t just ask for this originally.
 - Jack Fabiano (31 Homewood Road) stated that he was also one of the neighbors who worked to dredge the pond. He requested that the Commission not relax the conditions they placed on the project originally.
 - Jay Roxe (102 Nehoiden) agreed that every ruling by the Commission sets a precedent and he doesn’t want to see this type of work being approved in such proximity to the Kettle Pond.
 - Erol Yudelman (70 Carlton Road) questioned the impact of the fertilizers used for lawn care would have on the Kettle Pond and why the applicant was being allowed, for lack of a better phrase, two bites of the apple.
 - At this point Conservation staff read directly the language regarding work in Buffer Zone from the WPA. The applicant’s representative also stated that buffer zone is not a directly protected area under the WPA.
 - Andrew O’Connor (21 Moskow Road) expressed concerns that the contractors had not properly compacted the fill on which the house was constructed and whether a lower elevation for the basement was a result of settling. He also questioned if any sediment would wash into the Kettle Pond after construction.

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- Commissioners explained that they also were not fans of the proposal overall, but that their jurisdiction is truly limited in this matter. A key requirement of any approval would be a stable site with no exposed soil.
- Lori Van Dam and Charles Klee (5 Kelveden Rd) reaffirmed that they believe more work in the buffer zone will negatively impact the Kettle Pond.
- Erol Yudelman (70 Carlton Road) agreed with the above point.
- Commissioners asked if this modification was small enough to be considered an amendment or if a new NOI should be filed. It was clarified that as the “project goal” is the same in each proposal, this would likely not qualify for a new NOI. Commissioners asked the applicant’s representative if they would be willing to request a continuation.
- Conservation staff provided counsel that an appeal to DEP of an amendment approval would likely result in the same end result, but with less benefit overall for the Kettle Pond ecosystem. Commissioners also clarified that only the amendment can be appealed at this point, not the original approval for the home.
- The applicant’s representative agreed to request a continuation to the 7/16/20 Conservation Commission meeting to consider and address the following Commission requests.
 - Move work out of 50’ buffer zone.
 - Reduce lawn.
 - Adjust grading to be more appropriate with intended uses.
 - Adjust planting plan to incorporate more diverse plantings (e.g., understory trees) and to move proposed plantings around to better fit the available space and existing canopy conditions.
- Vote: To accept applicant’s request to continue the hearing to 7/16/20 in order to present new plans to the Commission, considering the interest in diversifying the proposed planting and seeing no work (other than planting and invasive removal) within the 50’ buffer zone. [Motion: Jeff Zabel; Second: Susan Lunin; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0]

6. 31 Harwich Road – Informal Discussion – proposed bound lowering

- Owner: Hisham Kader
- Request: Allow bound to be lowered
- Documents Presented: Site photos
- Jurisdiction: Buffer Zone, BVW, City Floodplain
- Presentation (Hisham Kader) and Discussion
 - Homeowner wishes reduce height of bound to 2” because he believes the current height poses a safety concern for his children. Commissioners debated the height of the bound and, with advice from Conservation staff, determined that this was acceptable, as long as a metal rebar is added to the bound (via a drilled hole in the center of the bound) to ensure it is findable in the future.
 - The applicant may cover the bound with some soil to prevent further injury once the metal rebar has been added.
 - Commissioners felt that this was best dealt with administratively.
- Consensus: Conservation staff will provide the homeowner with a memo detailing what they are approved to do based on the discussion.

7. 78 Fessenden Street – Informal Discussion – Site Compliance Issues

- Owner: Jessica and Karl Roche recently sold the property
- Request: Issue another COC
- Documents Presented: Approved plans, site photos
- Jurisdiction: Riverfront Area
- Presentation (Jessica Roche and Terry Morris) and Discussion
 - Applicant provided a timeline of work on the property.
 - On June 28, 2012, the Conservation Commission approved a plan that included the creation of 865 square feet of new impervious area (addition and patio) and a 690 square foot mitigation area comprised of 18 plants
 - On October 10, 2014 the Con Com issued a CO (site photos show that mitigation plants were installed, the mitigation bed was edged with metal, and the mature trees were still there)
 - In May, a COC-resign was requested, but a site visit noted a lack of mitigation plants, loss of 2 mature trees without a permit, and significant expansion of patio.
 - Applicant stated that she knows she is obligated to plant the bed and edge it, both of which are complete. Edging provided is plastic and the Commission determined that this is sufficient.
 - Applicant stated that one of the trees was removed as it was declared a hazard tree, and another was removed for more lawn space. The Commission felt that only the non-hazard tree removed would need to be mitigated for.

- Applicant’s representative discussed the size constraints of the lot.
 - Commissioners stated that this is not an area of high habitat value considering current conditions and distance from the resource area.
 - Commissioners debated on what the appropriate mitigation would be for the removed non-hazard tree and settled on 1 native canopy sapling and 1 native understory, with placement being determined with assistance from the Chief Environmental Planner and at least 1 in the Riverfront Area.
 - Once saplings are and bed is confirmed to be in compliance, Conservation staff can provide a “Certificate of Compliance” expected letter to the new owners detailing when the site will be eligible for a COC.
- Vote: To require 1 native canopy sapling and 1 native understory sapling, location and species to be determined with assistance of the Chief Environmental Planner, to mitigate for unpermitted tree removal prior to the issuance of a COC expected letter. [Motion: Kathy Cade; Second: Susan Lunin; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].

8. 210 Upland Avenue – Notice of Intent – proposed retaining wall – DEP File #239-XXX

- Owner/Applicant: Matthew Border Representative: Karon Skinner Catrone
- Request: Continue hearing to 8/6/20.
- Documents Presented: none
- Jurisdiction: Buffer Zone, Riverfront Area
- Discussion: Applicant’s representatives have requested a continuation as they start the Special Permit process, as retaining walls over 4’ in height within setbacks require a special permit.
- Vote: To continue hearing to 8/6/20. [Motion: Susan Lunin; Second: Jeff Zabel; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].

9. 35 Wayne Road (fka 33 Wayne Rd) – COC – teardown/rebuild single-family home – DEP File #239-811

- Owner/Applicant: Carmine Pretruziello Representative: none
- Request: Issue COC.
- Jurisdiction: Buffer Zone, Riverfront Area
- Discussion: Staff site visit on 6/11/20 confirmed compliance. This address was formerly 33 Wayne Road.
- Vote: To issue a complete Certificate of Compliance. [Motion: Leigh Gilligan; Second: Jeff Zabel; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].

II. CONSERVATION AREA DECISIONS -- None at this point in time.

III. ADMINISTRATIVE DECISIONS

10. Minutes of 6/4/20 and 6/11/20 to be approved

- Documents Presented: draft minutes
- Vote: To accept the 6/4/20 and 6/11/20 minutes as edited. [Motion: Susan Lunin; Second: Jeff Zabel; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0].

IV. ISSUES AROUND TOWN DECISIONS – None at this point in time.

UPDATES

V. WETLANDS UPDATES

- Unrestricted hydraulic flow: Staff have been reaching out to colleagues and agencies for guidance and will provide a full update when more information is available.

VI. CONSERVATION AREA UPDATES

- COVID-19 heavy use: Trail repairs will be needed after use returns to more normal levels
- Pending projects:
 - Old Deer Park -- Maintenance contractors did their first mowing of the season two weeks ago; wood chips will be needed to keep down poison ivy etc. on the trail. Late summer opening anticipated.
 - CRP stairs – AAB variance application in the works
 - Kessler boardwalk and bridge – bid released 6/18/20
 - Webster stairs – temporary construction access permit application submitted 6/19/20
 - Dolan crusher-run – waiting on materials estimate

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- Houghton Garden hydroraking and trail work – to begin as soon as DEP approval is received, and water levels are high enough

VII. ISSUES AROUND TOWN UPDATES

- OSRP: A draft incorporating all public comment was submitted to the Department of Conservation Services and posted online.

VIII. ADMINISTRATIVE MATTER UPDATES

- EnviSci Summer Program: happening virtually!
- Intern being considered to assist with land stewardship and office obligations

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

ADJOURN

Vote: To adjourn (11:10pm). [Motion: Susan Lunin; Second: Kathy Cade; Roll-Call Vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye), Cade (aye), Gilligan (aye); Vote: 6:0:0]