

CONSERVATION COMMISSION MINUTES

Date: August 6, 2020

Time: 7:04pm - 9:32pm

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 7:04 with Susan Lunin presiding as Chair.

Members Present: Leigh Gilligan, Kathy Cade, Jeff Zabel, Ellen Katz, Judy Hepburn

Members Absent: Dan Green

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. Various Locations in Newton – RDA – herbicide spraying along commuter rail

- **Owner:** Massachusetts Bay Transportation Authority (MBTA) **Applicant:** Clary Coutu, Keolis Commuter Services **Representative:** Tim Dermody, Fair Dermody Consulting Engineers
- **Request:** Issue a DOA.
- **Documents Presented:** Plans, draft DOA
- **Jurisdiction:** Riverfront Area
- **Project Summary**
 - **Wetland boundary determination:** Keolis must get wetland/sensitive-area maps approved through this RDA.
 - **Work determination:** Applicant proposes to do mechanical weed control and spray herbicides, per best management practices, along the commuter rail tracks with key locations marked as limited or no-spray due to wetlands presence immediately adjacent to the tracks.: Under right-of-way (ROW) regulations, such work must be performed in compliance with an MDAR-approved 5-year vegetation management plan (VMP) and yearly operating plan (YOP). When that is the case, various exemptions apply.
- **Note:** Judy Hepburn recused herself as an abutter to the MBTA Green Line.
- **Staff comments**
 - This is a routine request, required by law for the use of herbicides on the rail right-of-way
 - The exemption under 10.02(2)(a)(2) listed by the applicant in the RDA doesn't apply to railways, but would apply to other utilities that run along the rail right-of-way.
 - The presumption of "no alteration" in 10.03(6)(b) stated in the RDA pertains only to buffer zone, not Riverfront Area.
 - The "limited spray" maps supplied by the applicant were augmented with the City's wetland maps which show only the Riverfront Area and Interim Wellhead Protection Areas at the western municipal boundary.
- **Vote:** to issue a determination as noted below and to sign electronically as provided in MGL Ch. 110G. [Motion: Gilligan; Second: Cade; Roll-call vote: Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 5:0:0]
 - Positive 2: Approving the City's wetland maps (as required by under 333 CMR 11.00).
 - Negative 5: Referencing the following exemptions for the application of herbicides:
 - **10.03(6)(b)** Any application of herbicides within the Buffer Zone, other than as provided in 310 CMR 10.03(6)(a), shall be presumed not to alter an Area Subject to Protection under M.G.L. c. 131, § 40, only if the work is performed in accordance with such plans as are required by the Department of Food and Agriculture pursuant to 333 CMR 11.00: Rights of Way Management, effective July 10, 1987. This presumption shall apply only if the person proposing such activity has requested and obtained a determination of the boundaries of the Buffer Zone and Areas Subject to Protection under M.G.L. c. 131, § 40 in accordance with 310 CMR 10.05(3)(a)1. and 2.; and has submitted that determination as part of the Vegetation Management Plan.
 - **10.03(6)(c)** for the work in Riverfront Area: "Any application of herbicides for management of rights of way within a riverfront area not subject to 310 CMR 10.03(6)(a) or (b), provided the area is outside any



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
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other resource area and qualifies under the provisions of 310 CMR 10.58(6)(a), shall be accorded an exemption of such work under M.G.L. c. 131, § 40, provided that the application of herbicides is performed in accordance with such plans as are required by the Department of Food and Agriculture pursuant to 333 CMR 11.00: Rights of Way Management.”

- 10.58(6)(a): maintenance of rail lines is allowed without an NOI.

2. 55 Bernard Street – NOI – ex post facto – vegetation removal and stockpiling in flood zone – DEP File #239-871

- Owner/Applicant: Jim Corsi, Corsi Realty LLC Representative: John Rockwood, EcoTec, Inc.
- Request: Issue OOC.
- Documents Presented: Colored plans, site photos, draft OOC
- Jurisdiction: Buffer Zone, Riverfront Area, BLSF, City Floodplain
- Project Summary
 - The owner of this parcel did a tear-down/re-build of a SFH. The requested work was administratively approved as being entirely outside ConCom jurisdiction. Without permission, the owner exceeded the limit of work line and cut “dead” trees and scrub growth within ConCom jurisdiction. One large healthy oak was also removed from the property. An Enforcement Order was issued requiring the filing of a NOI and restoration plantings.
 - Total restoration plantings include 10 canopy trees, 20 understory trees, 104 shrubs.
- Presentation (John Rockwood) and Discussion
 - There are two aspects of the plan, plantings and flood storage capacity.
 - Plantings
 - Photos from 2006 indicate that the site used to be fully lawned to the rivers’ edge. The proposal indicates a reduction in turf grass through the installation of:
 - 8 “habitat islands” within the originally shown wood chip planting beds, that will each have 10 shrubs clustered around 1 understory tree, where originally only shrubs were proposed.
 - 6 “free-standing” canopy trees have been added to the 2 River birches previously proposed. These additional trees are outside of or just along the edge of the proposed woodchipped beds.
 - River bank restoration plantings including 4 trees and 16 shrubs.
 - The applicant has already planted 10 spruce trees along the southern property line and 8 rhododendrons on the north and south property lines.
 - Flood storage capacity
 - Applicant indicates that 160 cubic yards of soil and material were removed and that 60 yards of loam is on site to be spread to protect tree roots and facilitate planting.
 - As-built survey will confirm that the same or more flood storage capacity exists on site at the end of the project.
- Vote to close the hearing and issue an Order of Conditions with the following special conditions, and to sign electronically as provided in MGL Ch. 110G. [Motion: Cade; Second: Hepburn; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]
 - Landscape plantings within Commission jurisdiction must:
 - Stabilize all exposed areas
 - Be installed in compliance with the approved plans (desired changes must be approved by the Conservation office in advance)
 - Be installed on or before October 15, 2020
 - Have a survival rate of 100 % of total number of trees (after 2 growing seasons)
 - Have a survival rate of 75 % of total number of shrubs (after 2 growing seasons)
 - Flood storage capacity on the site must be provided to at least the volumes (at every foot of elevation) in existence prior to the unpermitted cutting of trees and grading of soil. The As-Built plan must so demonstrate.
 - The lawn may be seeded or sodded, but no net loam/fill may be brought into the flood zone.

3. 24 Village Road – NOI (cont’d) – construction of new detached garage and new driveway – DEP File #239-866

- Owner/Applicant: Hisham Salem Representative: Anthony Stella, Site Engineering Consultants, Inc.
- Request: Continue to 8/27/20.
- Documents Presented: none
- Jurisdiction: Riverfront Area
- Project Summary
 - Construction of a 24’x26’ detached, 2-car garage. Existing garage will be converted to storage.

- Pouring of a new asphalt driveway that begins at 12' in width at the curb cut and expands gradually to be 22' wide where it meets the proposed garage.
 - The project will result in a ~1200 s.f. increase in impervious area, all within the outer riparian zone.
 - Installation of underground infiltration chambers and trench drain will collect runoff from driveway and new roof.
 - Installation of 3 mitigation planting areas will total 1211 s.f.
 - Staff Comments
 - Applicant is conducting a title search to determine the legality of construction in the 25-foot set back.
 - Vote to continue the hearing to 8/27/20. [Motion: Katz; Second: Zabel; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]
- 4. 39 Norwood Avenue – NOI – demolition of greenhouse and shed/construction of SFH addition – DEP File #239-873**
- Owner/Applicant: John Shields Representative: self
 - Request: Preliminary concept presentation
 - Documents Presented: Colored plans, site photos, draft OOC
 - Jurisdiction: Buffer Zone
 - Project Summary
 - Demolish existing greenhouse and shed.
 - Construct detached “garden pavilion” (accessory apartment) where existing greenhouse and shed are located.
 - Relocate some existing shrubs to accommodate the construction.
 - Install rain garden to take roof and walkway runoff.
 - Regrade lawn
 - Presentation (John Shield) and Discussion
 - The engineering plans provided are missing many details and must be made to comport with the landscape plans.
 - The Commission noted that greater mitigation plantings (trees and shrubs) primarily near the lake shore would be required to compensate for the increase in impervious area and hardscape within buffer zone.
 - All mitigation plantings must be native.
 - Vote to continue the hearing to 8/27/20 to allow for modifications to the application as noted below. [Motion: Katz; Second: Zabel; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]
 - One comprehensive plan set that shows:
 - All structures (defined by their roof lines and walls)
 - All hardscape
 - All grading changes
 - The 100' Buffer Zone line
 - Erosion controls and erosion control details
 - Proposed mitigation plantings (with species, numbers, and sizes to be planted) and the proposed plant relocations.
- 5. 35 Spiers Road – NOI – teardown/rebuild single-family home with associated site features – DEP File #239-872**
- Owner/Applicant: Andrey Agamov Representative: Karon Skinner Catrone and Mikhail Deychman
 - Request: Issue OOC.
 - Documents Presented: Colored plans, site photos
 - Jurisdiction: Buffer Zone
 - Project Summary
 - Demolish existing single-family home.
 - Construct new single-family home with associated patio within the outer 50' of the buffer zone. Install 2 infiltration systems to collect roof and driveway runoff.
 - Increase in impervious area within the buffer zone
 - Plant 3 sugar maple saplings, 3 common bearberry shrubs, and 5 sweet ferns as mitigation.
 - Presentation (Karon Skinner Catrone and Mikhail Deychman) and Discussion
 - To the staff, the limit of work line seems unrealistically close to the edge of grading, excavation, and construction. The representative claims that it is workable.
 - The representative noted that the existing wooden fence was due to be removed and replaced, and that the new fence would be elevated 6 inches from the ground. This should be shown on revised plans
 - The representative stated that the Arborvitae near the existing house would remain.

- The representative stated that revised plans would show the 10" Norway maple just outside the limit of work better protected.
 - In response to staff/commissioner concerns, the representative stated that the mitigation planting plan would be expanded and revised to better fit site conditions (e.g., the location of existing trees), to ensure that all plantings are within the subject lot, and to expand/enhance mitigation (i.e., as the representative stated: "beef it up").
 - The representative stated that the dumping/littering that appears to have been taking place over the years by previous owners including trash, old fence pieces, and a large pile of grass clippings would be cleaned up assuming there was permission from the property owner (Champion Broadcasting).
 - The representative noted that the proposed increase in impervious area was 610 sf (1425 sf -> 2035 sf within buffer zone). But there was a great deal of discussion and lack of clarity about how that change in impervious area was calculated. Through site photos and input from the neighbors, it was determined that the original patio was brick and pervious, and had been removed recently. It was not clear whether the original patio was considered pervious or impervious in the calculations presented. The Commission asked for a clear presentation of prior existing and proposed areas of impervious cover and pervious cover.
 - Matthew Hoffman of Champion Broadcasting noted his concern that underground antennae ("radials") not be impacted by construction equipment. He will address that issue with the applicant team, if/as necessary.
 - Joyce McCaffrey, on behalf of Susan Ostroff (neighbor) noted that the brick patio has been removed recently.
 - The Commission noted that, although outside its regulatory purview, it would prefer to see a reduction in the expanse of the driveway and it suggested clarifying whether there could be more than 22 feet of driveway opening.
- Vote to continue the hearing to 8/27/20 to allow for modifications to the application as noted above. [Motion: Katz; Second: Gilligan; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]

6. 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 8/27/20 due to the special permit process required for retaining walls over 4' in height within setbacks.
- Documents Presented: none
- Jurisdiction: Buffer Zone, Riverfront Area
- Vote to continue the hearing to 8/27/20 to allow for modifications to the application as noted above. [Motion: Cade; Second: Zabel; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]

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

III. ADMINISTRATIVE DECISIONS

7. Tree Replacement Policy

- Staff Comments
 - The ConCom's tree replacement policy sets guidelines for replacement based on size (mitigated by hazard and invasiveness). Often, large trees cannot be fully replaced, but there should be some standard. Ellen Katz suggested adapting (and adopting guidance for?) legacy trees: any live native tree ≥21 inches DBH and (or?) ≥150 years old.
 - Staff heard that a Councilor Norton of CRWA has an intern reviewing the existing Tree Ordinance and researching peer community policies in order to propose amendments to the existing policy.
- Discussion: Commissioners suggested adding considerations for small lots, site-appropriate density, and legacy tree species replacement requirements.
- Consensus: Staff will refine tree replacement guidelines for the Commission's consideration.

8. Defining "Unrestricted Hydraulic Connection"

- Staff Comments
 - The goal: guidance that can be reflected in proposed plans, OOC conditions, and administrative approvals.
 - DEP supplied the following guidance.
 - **To provide "unrestricted hydraulic connection" how big should apertures in foundations be?**
Apertures, orifices, or penetrations of any size in a solid foundation act as hydraulic restrictions, when constructed in Bordering Lands Subject to Flooding. To act as an unrestricted hydraulic connection in Bordering Lands Subject to Flooding, there would have to be an open pile foundation with the lowest

floor or lowest horizontal structural member elevated at or above the 100-year flood elevation, so river flow during a flood can flow unimpeded. ...

- **Can a homeowner cover the apertures to keep critters out? And if so what thresholds should govern?**
The apertures or orifices in a solid foundation act as hydraulic restrictions when constructed in Bordering Lands Subject to Flooding, so do not meet the 310 CMR 10.57 criteria to provide compensatory flood storage. Compensatory flood storage is required to compensate for the full volume enclosed by the solid foundation. ... The volume enclosed by the solid foundation cannot be credited to serve as compensatory flood storage, regardless of the numbers and size of apertures and orifices.
- **What about solid panel fences?**
I don't recall any hearing decisions about fences in BLSF. In addition to the storm damage prevention and flood control interests in Bordering Land Subject to Flooding, there is also the wildlife Habitat Interest. Installing a fence in BLSF is an alteration, so requires the filing of a NOI. If the BLSF performance standards for storm damage prevention and flood control can be demonstrated to be met, to protect the wildlife habitat interest, presumably the bottom of the fence would need to be elevated, similar to fences constructed in the Riverfront Area, to provide for wildlife passage. For the storm damage prevention and flood control interests, the most significant standard for a solid fence would be to demonstrate compliance with 310 CMR 10.57(4)(a)2., work "shall not restrict flows so as to to cause an increase in flood stage or velocity." The burden is on the Applicant to make this demonstration, not the issuing authority.
- Commissioners asked staff to ask DEP whether skirting could be installed around pilings (as illustrated with a photo of #116 Upland Ave.).

9. Earthmoving in the context of Zoning Redesign and Stormwater Ordinance

- Staff Notes: The City's Environmental Engineer, Maria Rose, has expressed a willingness to consider including the issues of fill, retaining walls, and earthmoving into the new Stormwater Ordinance. Jennifer Steel will try to ensure Commission concerns are addressed in the Stormwater Ordinance and the Zoning Redesign efforts.

10. Minutes of 7/16/20 to be approved

- Documents Presented: draft minutes
- Vote: to accept the 7/16/20 minutes (as edited by Ellen Katz). [Motion: Gilligan; Second: Hepburn; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]
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IV. ISSUES AROUND TOWN DECISIONS – None at this point in time.

UPDATES

V. WETLANDS UPDATES

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 another round of mowing on 7/24/20.
 - CRP stairs – AAB variance application has been submitted!
 - Kessler boardwalk and bridge – a bid was released 6/18 but no bids were received. Staff have reached out and are anticipating an estimate from another firm with which we have worked before.
 - Webster stairs – we received a draft permit from DCR; it is under review by the Law Department.
 - Dolan crusher-run – we have received a material estimate and are hoping for a more thorough estimate for the entire levelling project, as the materials cost was well under what was anticipated.
 - Houghton Garden hydroraking and trail work – work due to begin as soon as the team can assemble and the water level is appropriate.

VII. ISSUES AROUND TOWN UPDATES

- OSRP: We received our conditional approval from the state; staff are working to address state-requested edits.

VIII. ADMINISTRATIVE MATTER UPDATES

- EnviSci Summer Program: is happening virtually.
- Interns: Our 2 high school interns through the Mayor's internship program are doing well.

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

- 11. 156 & 170 Otis Street – Certificate of Compliance – drainage system repairs – DEP File #239-814

- Owner/Applicant: Andrey Agamov Representative: Karon Skinner Catrone and Mikhail Deychman
- Request: Issue OOC.
- Documents Presented: Colored plans, site photos
- Jurisdiction: Buffer Zone
- Project Summary: repair old stormdrain main and beehive inlet.
- Staff notes: All requisite paperwork was received and a site visit confirmed complete compliance and good function.
- Vote: to issue a complete COC. [Motion: Gilligan; Second: Cade; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]

12. Martin Conservation Area – Proposal for Poetry Path

- Staff notes: Thanks to Ellen Katz, we have a new Steward, Julie Leavitt, who would like to solicit and install laminated poems along the trail. Jennifer Steel noted three conditions:
 1. Avoid damage to vegetation: Make sure that poems are tied to limbs or trunks or temporary posts.
 2. Avoid creating litter: Make sure that the poems are very nicely presented and accessible and that the lamination is robust and designed for an outdoor application, and make sure there is a date set for their removal.
 3. Avoid creating the impression that anyone can install art or text on Conservation land without permission: Make sure that it is clear that the whole exhibit is "sponsored by" (or whatever the appropriate wording is) by Newton Conservation Commission.
- Discussion: To avoid the posting of inappropriate language or references, ensure that poems are vetted by Jennifer Steel prior to installation.
- Consensus: Have Jennifer Steel coordinate with Julie Leavitt.

13. Trail Proliferation in Webster Conservation Area

- Staff notes: New steward Richard Primack has mapped newly created trails and identified many that have been formed during the uptick in use due to people being at home due to COVID-19.
- Discussion:
 - Some of the trails noted may be only very "lightly used".
 - The fragmentation of habitat by foot paths was not seen as particularly problematic by the Commission.
 - The difficulty of removing trails was noted.
- Consensus: Have staff confirm the nature of the new trails noted on Richard Primack's maps.

UPDATES

- **Christina Street Bridge Multi-Use Pathway Feasibility Study and 25% Design Grant Award Received**: \$56,700 was received from the MassTrails Program (DCR/MassDOT). The City will be providing matching funds of roughly \$14,000. The project is due to take one year.
- **Three new volunteer stewards**: Thanks to Ellen Katz for finding Julie Leavitt to be the Steward of Martin Conservation Area and Tanya Karpiak to be the Steward of Frank Barney Conservation Area. Richard Primack has agreed to assist with the stewardship of Webster Conservation Area.
- **Dogs off-leash on Conservation land**: Ticketing authority is being discussed by Parks and Rec and the Police Union. Jennifer Steel has asked Jonathan Yeo to broaden the discussion to include Conservation land (and other Park land).

ADJOURN

- Vote: to adjourn at 9:32 [Motion: Katz; Second: Zabel; Roll-call vote: Hepburn (aye), Katz (aye), Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye); Vote 6:0:0]