

CONSERVATION COMMISSION MINUTES

Date: July 15, 2021

Time: 7:00pm – 9:26pm

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

<https://us02web.zoom.us/j/82178801384>

With a quorum present, the meeting opened at 7:00pm with Dan Green presiding as Chair.

Members Present: Leigh Gilligan, Judy Hepburn, Ellen Katz, Kathy Cade, Jeff Zabel, and Susan Lunin.

Members Absent: none

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. (7:00) 160 Pine Street – NOI – retaining wall replacement – **DEP File #239-XXX**

- **Owner/Applicant:** David Altman, Advantage Property Management **Representative:** Eric Denardo, Environmental Strategies and Management, Inc.
- **Request:** Issue an OOC.
- **Documents Presented:** Colored plans, site photos, draft OOC
- **Jurisdiction:** Buffer Zone, City Flood Zone
- **Project Summary**
 - Replace an existing, failing wooden retaining wall with a Redi-Rock retaining wall (roughly 41 inches thick). The wall will be 4' high for roughly 24' feet and 7' high for roughly 57'.
 - Erosion controls are proposed between the wall and the stream, along with additional tree protection for the twin black locust.
- **Presentation (Eric Denardo) and Discussion**
 - At the time of this meeting, a DEP file number has not been received and so the hearing cannot be closed.
 - The applicant's representative provided a summary of the proposed work, explicitly stating that the proposed wall is shown no closer to the stream and that means and methods will need to be determined with the selected contractor.
 - Staff walked the Commission through a virtual site visit and Commissioners noted that the retaining wall along the rear of the driveway is buckling out at the bottom which is quite dangerous.
 - The applicant responded to staff concerns and stated that they are proposing for no work beyond the front face of the retaining wall, and that the erosion controls (entrenched silt fence) would be placed between the wall and the tree. The existing conditions plans can be altered to more accurately reflect the site conditions.
 - Commissioners brought up the need for a footing for the new retaining wall which would push disturbance out. The applicant's representative stated that this type of retaining wall (Redi-Rock) is designed to not need footings beyond a small crushed stone pad.
 - Commissioners reminded the project team that a wall this tall needs to be appropriately engineered.
 - Staff repeated concerns about how the excavation for the new wall would occur. The applicant's representative clarified that the excavation would go back at a 1:1 ratio so excavation for the backslope would begin 7' back from the proposed finished face of wall.
 - Staff repeated a number of concerns raised in staff comments multiple times but not yet addressed by the applicant team. These included a lack of topography on the plan, lack of understanding of how the methods and means will impact the surrounding area, and, based on the new information given in the previous bullet, location of the the stockpile of soil removed during that excavation.



Mayor
Ruthanne Fuller

**Director
Planning &
Development**
Barney Heath

**Chief
Environmental
Planner**
Jennifer Steel

**Assistant
Environmental
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Claire Rundelli

**Conservation
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- The applicant’s representative explained that they felt what had been provided was sufficient and that they are aware that they are within the buffer and that the project will be executed appropriately.
- Staff emphasized that the plans will be interpreted by the contractors as written, so additional notes and clearer instructions need to be on the plans. On the current plan set erosion controls are shown set up 3’ from the base of the wall, which in some places would end up in the stream.
- Commissioners stated that they agree with staff that project is not ready for closing.
- **Staff Recommendations:** To continue the hearing to 8/5/21 to allow for a file number to be issued and for the applicant to address the concerns of the staff and Commission, which are summarized below. [Motion: Leigh Gilligan; Second: Susan Lunin; Roll-call vote: Green (aye), Hepburn (aye), Cade (aye), Gilligan (aye), Katz (aye), Zabel (aye), Lunin (aye); Vote 7:0:0]
 - Provide clarification on construction methods.
 - Ensure that plans are show appropriate, engineered details; are stamped; are signed; and dated.
 - Catch-basins should be shown on the plans as to be protected.
 - Ensure plans accurately reflect topography and erosion control details (including stockpiling areas).

2. (7:20) 942-944 Watertown Street – Compliance Discussion – new duplex – DEP File #239-427

- **Owner/Applicant:** Janet Edsall Fields **Representative:** Stephen Fields and John Rockwood, EcoTec, Inc.
- **Request:** Approve the restoration plan.
- **Documents Presented:** none
- **Jurisdiction:** Buffer Zone, Riverfront Area, BLSF, City Floodplain
- **Project Summary:**
 - This application is an effort to bring the site into compliance with an old, expired OOC. Asphalt expansion, patio construction, and lack of mitigation plants all needed to be addressed in a new plan.
 - For Rear Enhancement Area project proposal
 - Install compost sock as shown on plans.
 - Remove fence panels and post and dispose of off-site.
 - Remove wooden retaining wall at fence; reuse wood for retaining wall repairs or dispose off-site.
 - Remove soil held by retaining wall, fill fence post holes, round off top of slope, remove excess soil from site
 - Remove patio blocks and underlying soils to match adjacent grades with loamy topsoil.
 - Mark out proposed lawn area, and seed/sod the area that was formerly patio.
 - Remove existing lawn/sod in areas to become enhancement plantings.
 - Remove and treat with herbicide a limited number of winged euonymus shrubs and Norway maples.
 - Plant native species according to plan. To include: 14 hedge shrubs, 4 understory saplings, and 22 shrubs.
 - Water and mulch enhancement areas. 4:1 mixture of leaf mulch and natural colored bark mulch.
 - Install bounds around enhancement planting area.
 - Water regularly and once area is stable remove erosion controls.
 - For Front Pollinator Gardens
 - Remove existing landscape plants and grub root masses. Remove lawn.
 - Turn over soil to a depth of 6”. Plant native species according to plan. To include (in each): 3 shrubs, and 12 perennials.
 - Water and mulch pollinator garden areas. 4:1 mixture of leaf mulch and natural colored bark mulch.
 - Install bounds.
 - Water regularly.
- **Presentation (John Rockwood) and Discussion:**
 - Prior to the meeting, the applicant’s representative did provide clarification that 5-6 euonymus shrubs, 1 Norway maple shrub (small suckers growing out of an old stump), and 1 very small Norway maple sapling are proposed to be removed. No mature trees are proposed to be removed at this time
 - The applicant’s representative provided a summary of the proposed restoration.
 - Commissioner’s asked about the height of the two retaining walls and noted that they are quite short. The applicant’s representative stated that the excess soil in the rear where the retaining walls will either be rounded off or removed. The goal is to not raise the grade as this is flood zone.

- Staff and Commissioner’s agreed that this is a complicated site to work with, that there isn’t much else that could be done and that the proposed plan does seem to meet all the previous concerns.
- Commissioner’s stated that they would like to see a mix of Arborvitae and Eastern Red Cedar to ensure that the entire hedge doesn’t die off if the conditions aren’t appropriate for one or the other species, even mixing a 3rd species (Spruce) to the mix. The species should be clustered in groups of 3-4 to ensure there aren’t just odd gaps. The applicant team agreed to a mix of the species.
- Vote: To approve the restoration plan, noting the invasive removal and a mix of evergreens along the back-property line, to allow the site to be brought into compliance. [Motion: Leigh Gilligan; Second: Kathy Cade; Roll-call vote: Green (aye), Hepburn (aye), Cade (aye), Gilligan (aye), Katz (aye), Zabel (aye), Lunin (aye); Vote 7:0:0]

3. (7:40) Charles River Lower Basin – NOI – vegetation management – DEP File #239-XXX

- Owner/Applicant: Mass. Department of Conservation and Recreation Representative: Kara Sliwoski, SOLitude
- Request: Issue an OOC.
- Documents Presented: Plans, site photos, draft OOC
- Jurisdiction: BVW, Bank, LUWW
- Project Summary
 - Management of invasive species within the Charles River through mechanical harvesting, hand-pulling, Sonar herbicide (active ingredient: fluridone), ProcellaCOR EC herbicide (florpyrauxifen-benzyl), Tribune herbicide (diquat), Clearcast herbicide (imazamox), and Red Eagle/Clipper herbicide (flumioxazin).
 - Conditional use of algaecides for the management of algae blooms, if necessary, in the event of a health hazard.
- Presentation (Keith Gazaille) and Discussion:
 - At the time of this meeting a DEP file number has not been received, so the hearing cannot be closed.
 - DCR is requesting a 5-year Order of Conditions for this project.
 - Three other communities (Cambridge, Boston, Watertown) in the Lower Basin are reviewing the same NOI (and one has required a 3rd party review).
 - The peer review report was received and was forwarded to the Commission two days prior to the meeting. The report concludes that the Lower Basin is in bad shape and treatment is definitely needed, but that there are a number of concerns with the proposal. Specifically, the peer reviewer notes the need for specificity and stated that an independent monitor be used.
 - Staff stated that they are hoping to issue concurrently with the other 3 communities to see DCR receiving essentially 1 Order of Conditions (4 OOCs with very similar conditions).
 - Staff walked the Commission through the responses received from the applicant team including the clearer map, calendar of treatments, and details on triggering thresholds.
 - Staff brought up the newer concerns brought up in the detailed agenda, and listed below.
 - Third-Party Environmental Monitor – staff raised up the concerns that staff in each individual community will likely not have time to appropriately monitor this project. The applicant’s response to this concern is that it is felt that a monitor may add unnecessary cost and complexity to the project. They did state that DCR will go out to monitor the work, and staff noted this could be conditioned, or the Commission could require a third-party monitor to be shared among the communities. The peer reviewer does note that he questions the claim of “improvement” made by the applicant in that the removal of these invasive species will improve the river from an ecological standpoint, in that the natives that will replace the invasives have the same ecological value in many cases. Staff noted that this is a lesser issue as it seems all parties agree that this project is necessary.
 - Map clarification – staff noted that clarification was received from the project team and that the map represents the maximum extent possible of treatment areas.
 - Tribune, Clearcast, or Flumioxazin – staff noted their concern that these chemicals are not noted in the calendar at all. While they may not be needed at all, and there isn’t a need for exact thresholds or areas to be treated, nevertheless we need to understand that what conditions would warrant treatment. There is a need to condition future communication and updates to ensure there is engagement with the Commission.
 - Thresholds – staff repeated concerns about use of herbicides without thresholds, though noted that it is indeed necessary to allow for flexibility. Staff stated that they need to understand how types of invasive species will be treated and with what, depending on specific densities.

- Water Chestnut Disposal Sites – staff noted that clarification was received that no “on-site” disposal is planned for water chestnut, but that it is to be removed and disposed of off-site, at an upload disposal facility.
- The applicant’s representative asked for more clarification from the Commission on what they are looking for in terms of specificity on thresholds. Staff asked if there were other variables in addition to size of infestation, type of species, concentration of specific herbicide? The applicant’s representative stated while the thought process is similar for each species/herbicide, that the overall outcome is dependent on too many variables to be able to provide a clear matrix of decisions.
- Commissioners noted that many of these projects involve “learning as we go” due the changing nature of these types of systems; and noted the Lakes District as an example, where DCR have been successful in removing 1 invasive, are now facing other invasives that have taken advantage of the “opening” made.
- The Commission understands that the experts in the field may need this kind of flexibility and may find it hard to predict conditions and requirements in 5 years’ time, especially because this is an open area versus contained lakes. Staff stated that they are not looking to permit treatment outcomes but that the Commission’s duty is to ensure that no damage is being done to these resources.
- Staff noted that a possible solution to the need for clarity would be to define “prohibitions” (i.e., don’t do ____ unless ____) and that they just want to ensure the Commission isn’t issuing a blank check for herbicide application.
- It was noted that by staff that in conversations with Dept. of Marine Fisheries (DMF), they stated their support of the project and will be ensuring that annual reporting will be given to them to ensure that timing requirements and treatment requirements are approved. Staff want to ensure that the Commission is engaged as the project moves forward that as conditions change and treatments are decided.
- Anne Carroll, DCR, who joined later in the meeting, repeated what was stated in the formal response submitted, that they feel that a third-party monitor is unnecessary, because their staff frequently reviews contractor activity and there are also involved community stakeholders on this project (CRWA and The Charles River Conservancy). They also stated that, because it is so easy for DCR staff to verify contractor statements, they have not really encountered any issues with this in the past.
- Staff asked what the regulatorily appropriate language could be committed to by DCR for use in the project conditions. DCR stated “DCR staff will verify the accuracy of the plant survey with a site visit.” They also stated that they would be willing to come back before the Commission in May after every initial, pre-management survey to review the findings, along with a post-management survey report back in Oct./Nov.
- Commissioners asked if a matrix like the one provided in the peer review report could be used for this type of project, and a column added to that matrix to allow for some simplistic thresholds. DCR responded that they do have some thresholds used in-house, but those mainly differentiate between mechanical versus chemical treatment and would not be relevant to this project scope.
- Commissioners again tried to clarify their need for specificity and asked how the “may be” in the process moves to an action. DCR responded that they will treat whatever they see either with spot treatment or broader treatment it will be treated using the techniques provided.
- Staff attempted to summarize that the goal of the project for this year is to treat with ProcellaCOR (per the calendar provided) to reduce biomass and open up recreational channels, and then in the following years pursue more treatments using ProcellaCOR or Sonar (per the provided calendar) based on a larger area plant survey (including more upstream areas). Staff asked if this approval language would satisfy DCR’s needs, with the allowance that contingency herbicides may be documented in a sort of “appendix” and could be used with approval from the Commission, either as a minor plan change or an amendment, if significant.
- The project’s representative asked how an amendment request could be avoided through the language above. Commissioner’s and staff stated that they feel if the scope of the project is managing invasives in the River, then no amendments would be necessary, only informal minor plan change discussions to use Tribune, Clearcast, or Flumioxazin if needed.
- Staff stated that they would want to ensure that the other communities involved in this project would also need to be on board with the solution proposed (tighter narrative, schedule, details of engagement with the Commission, appendix detailing alternate herbicides). DCR asked if the requested revised material submissions would need to be submitted by them or if it could be conditioned by staff in the OOC. Staff stated it would need to be submitted by them so that it can be referenced as the “plan of record” in the OOC.

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- Staff asked for one final clarification on the commitment from DCR to verify SOLitude’s work, and stated that DCR should propose something that is workable (e.g., DCR commits to follow up on 25% of SOLitude’s work/ or 1 out of 4 site visits/ etc.).
- Staff noted that revised materials must be submitted no later than 7/27/21 to allow for staff review prior to the release of the 8/5/21 detailed agenda.
- Staff Recommendations: Vote to continue to the hearing to 8/5/21 to allow for a file number to be issued and a “slimmer” narrative to be submitted to clarify areas of Commission concern. [Motion: Ellen Katz; Second: Susan Lunin; Roll-call vote: Green (aye), Hepburn (aye), Cade (aye), Gilligan (aye), Katz (aye), Zabel (aye), Lunin (aye); Vote 7:0:0]

4. (8:20) 1897 Washington Street (Woodland Golf Club) – informal discussion

- Owner/Applicant: Steve Kohr, Woodland Golf Club Representative: Jon Randall, Member
- Request: Determine if proposed “low-mow” area plan is appropriate.
- Documents Presented: Sketch plan, seed mix details
- Jurisdiction: Buffer Zone, City flood zone (but note, there are no changes to land cover or grade involved with this project).
- Presentation (Jon Randall and Steve Kohr) and Discussion
 - Staff walked through the reason this item is before the Commission (restoration area required under irrigation DOA) and what the applicant is proposing.
 - The applicant’s representative stated that they have actually been leaving this stream course unmowed since the DOA issuance and it has grown up. They have also considered further improvements to the 9th hold pond and have hired Beals & Thomas to develop a plan. The Club expects to bring that plan back before the Commission when it is ready.
 - The seed has been acquired and is ready to go down as soon as this plan is approved, and that work is anticipated to start on the irrigation in August.
 - Commissioner’s asked if the low-mow strip off turf grass could go wider than 2’, as on a recent visit it was noted that this area is a “no-man” land. The applicant’s representative stated that they are trying to balance the course architect’s vision and the Commission’s desires. Commissioner’s understand the need for balance and just noted that if there are areas where things can go wider it would be appreciated.
 - Commissioner’s asked if the stream had been placed accurately, and the applicant’s representative stated that the stream shown was located down to the foot by the irrigation engineer.
 - Commissioner’s asked if there would be any markings in the field to demarcate these areas. The applicant’s representative stated that red hazard stakes will be placed in the field.
- Consensus: The proposed plan is appropriate, and making the low-mow area wider would be appreciated.

5. (8:40) 1 Malvern Terrace – OOC Extension Request – new single-family home – DEP File #239-808

- Owner: Mandayam Srinivasan Representative: none
- Request: Issue OOC extension for 3 years.
- Documents Presented: summary plan, site photos
- Staff Notes: The owner, upon learning about the tolling extension applied to his permit which extends the expiration to November 15, 2022, has requested to withdraw his extension request.
- Consensus: Accept the withdrawal of the extension request for OOC #239-808.

6. (8:50) 116 Upland Avenue – COC Request – teardown/rebuild SFH – DEP #239-824

- Owner: Ilya Zvenigorodskiy Representative: none
- Request: Issue COC.
- Documents Presented: photos
- Discussion: All required COC materials have been received and a site visit on 5/21/21 confirmed compliance, including compliance with the required removal of the deck/crawlspace lath enclosing the flood storage area.
- Vote: To issue a Certificate of Compliance. [Motion: Leigh Gilligan; Second: Jeff Zabel; Roll-call vote: Green (aye), Hepburn (abstain), Cade (aye), Gilligan (aye), Katz (abstain), Zabel (aye), Lunin (aye); Vote 7:0:0]

II. CONSERVATION AREA DECISIONS

III. ADMINISTRATIVE DECISIONS

7. (9:00) Ban on Nip (alcohol) Sales – discussion regarding support letter for council docket

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- Documents Presented: Draft letter of support from entire Commission
- Staff Notes:
 - Commissioner Ellen Katz drafted a letter to the City Council supporting the ban of nip alcohol bottles in the City of Newton for signing by the Commission. Jennifer suggested some edits.
 - Commissioner's requested that the word unnecessary be removed to avoid allowing the liquor store owners from making the argument that the sales are necessary.
- Vote: To sign the edited version of the letter supporting Councilor Norton's docketed item regarding the ban on selling nip alcohol bottles in Newton. [Motion: Susan Lunin; Second: Kathy Cade; Roll-call vote: Green (aye), Hepburn (aye), Cade (aye), Gilligan (aye), Katz (aye), Zabel (abstain), Lunin (aye); Vote 7:0:0]

8. (9:10) Minutes of 6/24/21 to be approved

- Documents Presented: Draft 6/24/21 minutes
- Vote: To accept the 6/24/21 minutes. [Motion: Kathy Cade; Second: Leigh Gilligan; Roll-call vote: Green (aye), Hepburn (aye), Cade (aye), Gilligan (aye), Katz (aye), Zabel (aye), Lunin (aye); Vote 7:0:0]

IV. ISSUES AROUND TOWN DECISIONS

UPDATES

V. WETLANDS UPDATES

VI. CONSERVATION AREA UPDATES

- Stairs from the Greenway to the Riverwalk: The estimate from another contractor was \$174,000. We will need to find another solution. A member of the public, representing the Upper Falls Area Council, asked why box stairs were the chosen design. Staff clarified that box stairs allow for more flexibility in the field, and that stringer stairs require too much specificity in footing placement. Footings which may be difficult to secure because of the embankment material.
- Riverwalk bike rack: An Eagle Scout may be interested in installing the rack on a platform and in doing other improvements to the site.

VII. ISSUES AROUND TOWN UPDATES

- Christina Street Bridge Feasibility Study: The report has been completed and is available at: <https://www.newtonma.gov/government/planning/transportation-planning/projects/christina-street-bridge>. The preferred option is a new pre-fab, single-span, truss bridge in the bridge's current location. We await word on federal funding.
- OSRP: Final has been submitted to the state for approval. Requests have been entered for ARPA funds.
- Stormwater Ordinance: in final review by DPW and Law.

VIII. ADMINISTRATIVE UPDATES

- Budget increase received.

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

ADJOURN at 9:26pm. [Motion: Jeff Zabel; Second: Leigh Gilligan; Roll-call vote: Green (aye), Hepburn (aye), Cade (aye), Gilligan (aye), Katz (aye), Zabel (aye), Lunin (aye); Vote 7:0:0]