

**Town of Newbury
Conservation Commission Meeting Minutes
February 16, 2021 at 7 pm - via Zoom**

Roll Call: Bill Holt, Mary Rimmer, Peter Paicos, Ben Gahagan, Dan Streeter, Brian Colleran, Bill Lord.
Absent: Kevin Stromski

Meeting began at 7:02 pm

Next Regularly Scheduled Meeting Date(s): March 9, 2021

Minutes for Review: None

Public Hearings:

Zendko, LLC (15 Coleman Rd) – an RDA for an (8) lot Open Space Residential Development project that includes a 400-ft roadway, six new single-family homes, and renovation of existing single-family home with associated stormwater management, utility, access paths and limited grading work within the 100-foot buffer. (Applicant has requested to withdraw his application without prejudice);

Motion to allow withdrawal without prejudice by Mr. Paicos, Ms. Rimmer seconded. Unanimous vote.

David Manty (0 Pine Island Road – Map R30, Lot 5) DEP# 050-1330 – a continued NOI to construct a dock/pier, ramp, and floating dock within salt marsh resource area and ACEC (applicant requested a continuance);

Motion to continue to March 9th, 2021 meeting by Ms. Rimmer, seconded by Mr. Holt. Unanimous vote.

Justin Leonard (3 Southern Blvd. Plum Island) DEP# 050-13## - a continued NOI to restore an existing small parking area;

Motion to continue to March 9th 2021 meeting by Ms. Rimmer, seconded by Mr. Paicos. Unanimous vote.

14th Street Emergency access- NOI to withdraw has been filed, want to cancel next week's meeting, new NOI will be submitted. Due to a conflict, Ms. Rimmer abstained from discussion on this project.

Public comment by Mr. James Stewart, abutter to property. He questioned whether the February 23rd meeting has been cancelled or not.

Motion to accept withdrawal but retain the February 23, 2021 meeting slot. Seconded by Mr. Paicos. Unanimous vote.

Vincent Godin, The Cottages Commercial, LLC (2 Old Point Rd) DEP# 050-1344 – a Notice of Intent to do redevelopment work at site to create a new restaurant, outdoor seating, a moveable kitchen, and 54 new parking spaces;

Stephen Sawyer, project engineer, represented Mr. Godin. Mr. Sawyer described the project features including existing catch basins to be retained and utilized/maintained, moveable kitchen which can be moved quickly in event of extreme event, a landscape plan and plan and plan for new entryway (see Sheet 3). Handicapped parking spaces will be paved with stone pavers per ADA guidelines, a gravel parking lot and rain garden are proposed. A river stone apron will be used to direct water to catch basins and a 2,500-gallon grease trap. There are 2 buildings on site to be removed as well as areas of pavement. The rain garden will be updated to DEP requirements. Bermed sand dunes with coir mats to be used to stabilize around the Plum Island Boulevard side of property. There is a wood deck with seating and a concrete apron, which will remain. Posts with cloth shade covering will be installed and fire pit area with seating planned. The existing “Sunset Club” sign will be renamed and saved.

Mr. Holt offered the following comments about the proposed site drainage: 1) the bioretention areas are a bit small and do not meet DEP stormwater regulations; 2) soil tests are needed to support the design; 3) pretreatment of runoff is needed before stormwater reaches the rain garden; and 4) the gravel area should have a higher permeability. The plan to recharge permeability should be shown on plan, the landscaping in right-of-way grading should not be done if not necessary and what are the plans for bathroom. Mr. Sawyer stated that there is an existing bathroom and shower, that the shower will be removed and 2 ADA-compliant bathrooms will be created. Porta-potties and hygiene sinks will be provided and removed during off-season times. Mr. Godin stated that the driveway will be where the pea stone is located, that he owns the other properties on MacLeod Avenue and that the new driveway will create a loop. Mr. Holt stated that ZBA may limit the project. Mr. Godin wants to have a year-round restaurant but off season (November to April) is possible, and that snow will not be pushed into marsh.

Mr. Holt commented that roof drains are missing and had questions about oversight and that ZBA approved plan, the Planning board is in process of approval. The moving kitchen is not intended to be a permanent structure and he was concerned about dune maintenance in case of washout. Mr. Sawyer stated that the dunes will be aggressively replanted and reseeded if needed.

Mr. Gahagan asked if all the abutters were notified and that the mobile kitchen may not be so mobile due to the clearances needed for the flatbed truck to put the kitchen on to remove from site and was concerned the clearance was too tight. Mr. Sawyer stated that he would run quick turning test to show kitchen can be moved with current clearance. Mr. Sawyer stated that abutters list was pulled from both lots for project. Mr. Gahagan stated that he didn't see 8 and 8R on abutter's list on our docs, Mr. Sawyer replied that requests for 8 and 8R were submitted to Stephanie Sergi, Assessor's office.

Mr. Streeter asked if the remodel of garage is within the by-law requirement for less than a 50% improvement. Mr. Godin stated that he did a site walk with Building Inspector and said that the only improvements are the walk-in cooler, bathroom redo, and the bar. Minimal renovation for the 50% improvement. Mr. Streeter asked if fence is solid, is it supposed to be a wire fence, was concerned that bioretention areas that may have too many organic materials and how does planting get affected by flood and are the plants salt tolerant. Mr. Sawyer stated that salt-tolerant plants had been chosen, there is a lot of paving being removed and the applicant is trying hard to meet DEP stormwater regulations.

Ms. Rimmer asked about flood zone, A-zone requirements again and requested documentation about by-law compliance. As the southern part of project is within ACEC, the stormwater basin needs to treat a full 1" of rainfall. Mr. Sawyer states that catch basins won't work, as they are too deep and wants to see planting/landscaping plan to review plants. Ms. Rimmer also inquired about old gas tanks. Mr. Godin stated that gas tanks were removed around 2000, and DEP certified the tank removal, tested soil underneath and found soil to be OK. Ms. Rimmer asked about 50% improvement compliance and % of change of impervious area. Mr. Sawyer stated that it's around 30-40% reduction, but will put actual reduction figure onto revised plan.

Meeting opened to public comments at this point. Mr. Steve Mangion of 14th St, Newbury read off his list of concerns and requests including 1 plan for all 3 boards, soil testing of underground tanks, dunes, mobile kitchen, perhaps mobile bathrooms, fire pit gas source, alcohol outside dining area, snow management, and traffic assessment plan.

Mr. Stevens requested a slot on the March 9th meeting and will provide updated plans for both Planning and Conservation. Mr. Gahagan asks where propane tanks would be located and how are they affixed to ground as project is in flood zone. Ms. Rimmer requested copy of environmental study from Mr. Sawyer. Motion to continue to March 9, 2021 meeting at 7 pm made by Mr. Gahagan, seconded by Ms. Rimmer and Mr. Paicos. Unanimous vote.

Edward and Jodi Leonard (61 Elm St.) DEP# 050-1342 - an NOI for clearing of trees, construction of a new residential structure a new driveway, and a new septic system. Clearing of trees and driveway are within the resource buffer zone.

Applicant's engineer is Matt Steinel, who presented updated plan and information on site walk concerns regarding crossing of culvert and driveway. He stated that the driveway was relocated to other side of property to address abutter concerns. The drainage ditch was looked at by Sergio from Mission Ecological who said the plan does not have to conform to stream standards, such as a 4-foot by 3-foot culvert open box. Sergio checked, but found no upgradient connection to other culverts under other drives, so no open box was determined to be needed. Mr. Holt stated that he noticed the ditch upstream, that both he and Ms. Rimmer walked the area and found no connection to other culverts. Mr. Steinel mentioned that the slope on driveway will have a pitch due to cut-in for culvert pipe would have long section of flat driveway, a 9-inch silt sock. Ms. Rimmer suggested that silt fence in addition to silt sock may be needed near the 50-foot area near entrance. Mr. Steinel said that applicant will gladly accept silt fence condition.

Motion to approve Order of Conditions with special condition of installation of a silt sock as shown on the plan in addition to siltation fencing within 50' of the wetland boundary made by Ms. Rimmer, seconded by Mr. Gahagan. Unanimous vote.

Mr. Steinel will explain timelines for OOC to applicants.

Craig and Robin Gould, (65 Plum Island Turnpike) DEP#050-1343 – a NOI to construct a new 8'10' shed and installation of native plantings and boulders for landscape improvements;

Matt Steinel of Millennium Engineering represented the Goulds. He described the requested changes from last meeting regarding landscaping around geozone, shed, plantings and right of way (boulders to be removed). Those changes were made to plan. Mr. Steinel stated that native plant species will be added to plan and native shrubs like N.J. Tea Bush or approved equal shrub. The shed will be attached to ground by 30" augur tie-downs. Mr. Holt commented that the DPW stated the boulders do not protect the public interest in the right-of-way. Mr. Lord asked if the Board should be concerned about future homeowners storing gasoline in the shed. Mr. Holt stated that a margin reference or deed or covenant could have statement about restricting shed storage. Mr. Steinel explained that other commissions suggest perpetual conditions, but that they may not show up as a straight CoC on a title search. Mr. Colleran asks if board can submit a separate perpetual condition page. Mr. Steinel replied that it has been done before but can Conservation Commission require it, that there is added cost to doing extra recording and that a lawyer would need to do a deed.

Ms. Rimmer began a motion in favor of condition of perpetuity in COC that no hazardous substances be in shed, ever, that blue spruce be substituted with NJ Tea bush or red cedar. Mr. Gahagan stated threshold on gas powered storage and that blue spruce is out of plan. There were no public comments for this matter.

Motion to approve COC with perpetual condition of no hazardous substances and plantings are from approved Coastal Zone Management by Mr. Gahagan, seconded by Mr. Paicos. Unanimous vote.

Kevin Whitney of K & R Construction Company LLC (84 Boston Rd) DEP# 050-1337 – a continued NOI to construct a 7,400 square foot building with two paved access driveways, paved parking and access on three sides of the building, and a gravel storage area to the rear and side of building;

Chris York of Millennium Engineering represented the applicant. He stated that requested changes to plans from last meeting were made regarding increasing the minimum distance to wetland to 16 feet, revising the retaining wall to contain a 2-foot lip with 4-foot chain link fence on top, that a plan showing loam and seed repairs to disturbed section had been added, and proposed gravel area. Mr. Holt suggested that a 6-foot fence would be better, that grading isn't shown on plan in the right-of-way and should be. Mr. Holt stated that DPW will allow curb cut for work grade down the 30-foot section. Mr. Streeter was concerned about the proximity of work to the retaining wall and the location of snow storage area, which should be where contaminated runoff goes into storm basins. Ms. Rimmer shared concerns about too much work in the buffer zone. Steep slopes and soil conditions aren't shown on plan and that temporary work will be needed within 10 feet of the wetland to build the wall. Ms. Rimmer is also in favor of a solid, taller fence due to dust accumulation from vehicles driving in yard, yard and gravel dust being blown into wetland, and stated that aside from those issues, nothing specific is keeping project from being built and project complies with the WPA right now.

Mr. Paicos agreed with concerns from other committee members and that CONSERVATION should consider a peer review, as that would be helpful. Mr. Colleran felt that he didn't have enough information to judge project impacts based on the use proposed and suggested more information would be helpful. Mr. Holt stated that he could come up with a list of names to submit to applicant to choose from for peer review regarding wetland impact on site and that applicant would cover cost of review, that peer reviewer would give report to applicant, with the hope that decision could be made from information on review. Mr. York asked what a peer review was as he's never heard of one and stated that would be more cost to applicant, and that we are at a standstill on this project.

Mr. Whitney expressed frustration at the potential delay. Mr. Colleran explained that while the Conservation Commission Board is used to single-family homes, trucking depot/parking is not in their collective knowledge base, that the wetland now does not have a buffer and that is our problem to figure out, so that is why we need peer review. Ms. Rimmer stated that applicant may not have lessened the impact on the wetland enough, that it hasn't been demonstrated that they have minimized the impacts to wetlands and that the proposed intensity of use could affect it and that warrants a larger buffer. She suggested that an Order of Conditions may be needed due to intensity of use and high potential of pollution which could adversely impact the wetland edge. She stated that she would support a peer review. She informed the applicant of the choice to either close out NOI or proceed with peer review. Mr. Colleran asked if there was a contractor's storage yard around, if there were examples of a site with pollution and dust control, such as a DPW lot, that an OOC would be needed. Ms. Rimmer stated that Commission would have to craft a very specific OOC. Mr. Colleran informs applicant that if he gets 3rd party opinion, he could use that to get a response from the State. The peer review would look at the construction and use impact to determine whether the project is in compliance with WPA regulations.

Mr. Gahagan stated that he wants a hard edge farther out. Ms. Rimmer concurred. He asked if applicant wanted peer review. Ms. Rimmer asked if Committee was ready for motion for peer review when abutter Harmony Wilson of the Merrowhawk Nature School requested to speak.

Ms. Wilson's school abuts the property on Essex County Greenbelt property. Merrowhawk is a non-profit 100% outdoor school for children. She understands the site is in commercial zone but would like more of a buffer between the 2 properties, as blasting ledge would potentially impact teaching classes on site. She is also in favor of a peer review.

Ms. Rimmer made the motion to allow Mr. Holt to provide names for peer review to applicant, obtain a peer review, and continue meeting to March 9, 2021 at 7 pm to review proposal, seconded by Mr. Gahagan. Unanimous vote.

Certificates of Compliance

18 Temple Blvd. West **DEP# 050-514** - Request for a Certificate of Compliance - Recorded in Essex County Registry of Deeds on 6/1/1999 in Book 15712, Page 100. Attorney for real estate closing requesting COC for a gazebo that was never built.

Mr. Holt went to property and confirmed that there was never a gazebo built on site, no evidence it was ever started and requested that board close out the COC. Motion to close out COC made by Ms. Rimmer, seconded by Mr. Gahagan. Unanimous vote.

137 Main St, **DEP# 050-1007** Request for sign-off on OOC, which was recorded on 8/21/2009 at Essex County Registry of Deeds in Book 28877, Page 135.

Mr. Holt went to site and looked at constructed detached garage. He noted that everything around garage was stabilized and recommends closing out OOC. Motion to close out OOC made by Mr. Gahagan, seconded by Mr. Streeter. Unanimous vote.

Extension Permits: None.

Emergency Certificates: Coast Guard request for an Emergency Certificate to remove a buoy from Plum Island Beach.

Mr. Holt stated that a Coast Guard buoy broke loose and washed up on Plum Island. The buoy has become an attractive nuisance, and Coast Guard wants to remove it from the beach ASAP, so that the buoy doesn't wash back out to sea untethered. He also stated that T.W. Excavating and Coast Guard want to load buoy onto flatbed truck near the 37th street access, 1000 feet off Center. Both 41st and 51st Street accesses have issues with potential dune damage. Access from the island center was suggested as the best option. He mentioned that there is a 4-hour window for low tide to high mean tide, that trucks had to avoid the dunes, and the buoy could be loaded onto flatbed in 1.5 hours. He also stated that the trucking company would wash off the flatbed to avoid grease and gas, make sure no hoses leak, etc. Trucking company agreed. Mr. Collieran requested that Mr. Holt be on site and record video of removal. Motion to approve granted.

Re-Issuance: None.

Other Business:

- Great Meadow Farm Lease discussion
- Bylaw amendment discussion

Great Meadow Farm lease is due for renewal with the Colby family. Mr. Holt and Lisa Mead, Town Counsel have questions, but believe that both Conservation Commission and Town Administrator have right to execute lease. There was discussion regarding change in hay cutting to push it out to last week of July to benefit ground-nesting birds. Mr. Holt would like to discuss hay cutting date change with Lisa Colby and if she would opt in for that change or not. Mr. Gahagan read an email received Jack Rybicki in which he states there is no conflict of interest, and that an email from the Karahalys family states that it is happy with the way the farm is managed. He also suggested that Mr. Holt should look at the site to see if parking lot is addressed in the next 5 years. Mr. Streeter spoke to neighbors who told him that they help out with maintenance on paths and no encroachment has been seen.

Public Comments were allowed at this time. Mr. Mark Gleckman of Riverview Dr. Newbury stated that there were some highly charged statements floating around regarding lack of transparency and record keeping regarding successive leases. Some folks stated Conservation Commission is sole oversight including lease negotiation for the last 35 years and he questioned the authority the Commission had in this matter. Mr. Holt addressed Mr. Gleckman, stating that there was once a "committee" but that it was a body that was appointed, that it was an informal "subcommittee" of sorts. The Town Clerk has no record of any real committee, that it was only an ad hoc committee, confirmed by Mr. Streeter. Mr. Gleckman stated that there was a subcommittee before, and questioned whether the Select Board had ever been involved in lease signing. He also asked if anyone on the Conservation Commission or Select Board withheld, kept secret, or manipulated the information on the lease to the people of Newbury, and that there should be a member act as a liaison.

Mr. Holt stated that the lease will show date of hay cutting change from July 15th to July 31st and that he will look at property regarding maintenance and report conditions to Ms. Colby and the Committee. Mr. Streeter suggested that delaying of cutting date should be requested of Ms. Colby, not written into lease yet. Committee members asked if a subcommittee should be formed, but question of term expiration dates may not allow that. Mr. Collieran suggested adding the line to lease that "subcommittee will be

disbanded when they expire term” and Conservation Agent should get responsibility after that. Mr. Gleckman mentioned that wouldn’t be a problem because people can be rotated in and out of subcommittees. Motion to insert language into lease to move hay cutting time to July 31st and perform a yearly autumn maintenance walk by Mr. Paicos, seconded by Mr. Gahagan. Unanimous vote.

Bylaw amendment discussion

Mr. Holt began discussion, stated that copies of a draft be sent to Committee members. Mr. Paicos suggested due to the late hour to table the discussion until the next meeting. Mr. Holt suggested February 23rd was available for bylaw discussion as it is on Town Warrant in April. A public hearing would happen after a draft for approval was sent to Lisa Mead. Mr. Holt made motion to adjourn for the evening, and continuing discussion on the February 23rd, 2021 Special Conservation Commission meeting, seconded by Mr. Colleran. Unanimous vote.

Meeting closed at 10:19 pm.

Respectfully Submitted,
Catherine Brown