

Town of Newbury
Conservation Commission Meeting Minutes
May 11, 2021 @ 7:00 pm – via Zoom

Roll Call: Chairman Brian Colleran, Ben Gahagan, Bill Lord, Mary Rimmer, Peter Paicos, Dan Streeter.

Meeting started at 7:03 PM

Steve DeSalvo (16 & 20 Northern Blvd) DEP# 050-1364 - an NOI to nourish the dune in low areas with compatible sand estimated to fill an area 130 ft by 50 ft and 1.5 feet deep to ensure existing dune grass will grow, to plant additional dune grass, and to install sand fencing to encourage dune growth and stability;

Mr. DeSalvo and Mr. Jody Latimer of 16 and 20 Northern Blvd., with Mr. DeSalvo presented their proposal to fill in sand and dune grass between their properties. Sand to be sourced from Ipswich. Mr. Streeter stated property is in Priority Habitat, asked if was necessary to apply to MESA re: piping plovers. Mr. DeSalvo stated that he received approval and the proper timeline in which to plant grass and place sand as after August in a letter from MESA and would allow 5 years for project to take place. Mr. DeSalvo stated that it makes no sense to plant dune grass in summer when hot, and that a perimeter fence would be placed around the piping plover nesting, as past Conservation Agents have recommended it. More discussion regarding area which will not be nourished, avoiding intertidal area and work area. Ms. Rimmer wanted to do a site visit in May or June prior to work, a copy of Natural Heritage correspondence, and that project plans may not be sufficient to allow DEP to issue a file number.

At this point, Mr. Colleran opened meeting to public comments. Mr. Steve Mangion stated that public access is not compromised and agrees with Mr. Streeter's comments about work being done. Mr. DeSalvo stated that 5th and 7th Street access are boundaries that will not be used. Mr. Colleran suggested scheduling a site walk. Committee agreed to Thursday, May 20th, 2021 at 6:00 pm. Ms. Rimmer made a Motion to do site walk on Thursday, May 20th, 2021 at 6 pm and to continue hearing to June 1, 2021 meeting. Seconded by Mr. Gahagan. Unanimous vote.

Jim Stewart (26 12th St.) – an RDA to confirm that an Isolated Vegetated Wetlands located at 26 12th Street does not meet the criteria as an Isolated Wetland under the Town of Newbury Wetlands Bylaw and associated Regulations. Also seeking confirmation that IVW does not meet criteria as a wetland resource area as defined by Mass WPA and its associated regulations (310 CMR 10.00);

Ms. Rimmer abstained from discussion. Representatives from ECR Cameron Larson and Attorney Glenn Wood of Rubin & Rubin were present for applicant. Mr. Larson presented the plan and stated that Isolated Vegetated Wetland is delineated at 1,200 sq/ft and based on that figure, the IVW is not jurisdictional by state nor is it jurisdictional by Newbury bylaws. Mr. Colleran asked what the purpose for the RDA was for, as it did not seem like it was fit for an

RDA. Mr. Larson showed file on page, stated that no work would be done, not seeking flags, and wants the Conservation Commission to render a Negative 1 or Negative 6 determination, as he wants to confirm that the wetland area is not jurisdictional. Discussion continued on whether or not IVW was or was not jurisdictional. Tom Hughes asked to speak at the Town of Newbury's behest, and stated that the RDA was a broad brush to paint with, a positive determination was appropriate, and that the Committee should consult Town Counsel. Attorney Wood stated that he would be happy with a positive Determination, but could accept a negative one as Town does not have IVW bylaws yet and asked for a Finding to show that it is not jurisdictional under the local bylaws. Mr. Colleran stated that this was not a good use of an RDA was not appropriate, but a positive one will be a determination flat out and that the structure of the language used here would be good for future bylaws. Mr. Hughes suggested issuing a Positive Determination and when a Notice of Intent is filed, should the Town proceed with its plan for the access road, that issue can be addressed.

Mr. Wood stated that it is appropriate to use an RDA for any property, and would accept a positive Determination which included reference to all applicable jurisdictional resource areas. Mr. Colleran stated a positive Determination on the RDA form states an NOI is needed and that there is not a way to do what is requested. Mr. Colleran asked for a motion. Motion by Mr. Streeter for a positive Determination of Applicability was made, Mr. Gahagan seconded the motion. Vote was 5 yes votes, with Ms. Rimmer abstaining from voting, no dissenting vote.

Matt Bailey (2 Low St.) DEP# 050-1354 – an NOI to perform landscaping and grade changes within the 100-foot buffers zone of a Bordering Vegetated Wetland in an area currently maintained as a lawn;

Mr. Mike Seekamp of Seekamp Environmental Consulting represented Mr. Bailey and owner Mr. Casey. He gave details of plan. Ms. Rimmer stated there is no DEP number as yet and wants to do a site walk with applicant's representative as plan involves work within 25-ft of wetland boundary and that a planting plan needs to be submitted. Abutters to property, Tim and Judy McCaffrey stated previous owner planted trees and flooded their property, and expressed concern about drainage. Ms. Rimmer made a Motion to continue to the next meeting on June 1, 2021 to provide an opportunity for a site visit. Seconded by Mr. Gahagan. Unanimous vote.

Justin Leonard (3 Southern Blvd. Plum Island) DEP# 050-13## - a continued NOI to restore an existing small parking area – Continued from March 9th and March 30th meetings- still no DEP #. Continued from April 20th Meeting;

There is still no DEP number for this file. Agent Bill Holt had previously informed Mr. Leonard that the parking area was noncompliant. Mr. Leonard doesn't have the money to continue and just wants to fill in the area. Mr. Streeter asked if Enforcement Order is quickest way to resolve issue, Ms. Rimmer stated that either Enforcement or waiting for DEP comments and suggested

Mr. Leonard call DEP directly. Ms. Rimmer mentioned that the plan is ok, easier to do Enforcement but you paid for the NOI. Mr. Paicos suggested ending the project and hearing, Mr. Colleran agreed. Mr. Streeter stated that the plan is not complete. Mr. Colleran stated that Committee will wait for DEP comments and get issue resolved then. Ms. Rimmer made a Motion to continue to June 1st, 2021 meeting, seconded by Mr. Streeter. Vote unanimous.

Sharon Goodwin (9 Plummer's Ln.) DEP# 050-1353- an NOI to replace a failing septic system in the 100-foot buffer zone;

Greg Bernard represented Ms. Goodwin for the NOI to replace septic system. He stated that all previous septic plans were not available from Building or Board of Health any more. System is broken, needs to be fixed. New system going in same place as old system. Access would be on right side of septic tank site to avoid impacts to vegetation and trees. Ms. Rimmer asked if plan was approved by Board of Health, Mr. Bernard stated yes and Mr. Colleran asked for a motion.

Motion to approve NOI as submitted was made by Ms. Rimmer, seconded by Mr. Streeter. 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);

Tom Hughes of Hughes Environmental Consulting represented Mr. Manty. He detailed the plans for the dock and gangway, shared photos of area, and asked that a continuance would be needed due to need to submit updated plans to Marine Fisheries and Natural Heritage as Natural Heritage requires 30 days for review after receiving updated plans. Ms. Rimmer asked if the project triggers MEPA. Mr. Hughes stated no because no state permit is needed. Ms. Rimmer asked if a Chapter 91 license is required, Mr. Hughes stated no, not when the permanent seasonal structure is above high water. Ms. Rimmer asked about impacts from the marsh on people using the dock when not occupied, that people will trample marsh while vacant. Mr. Gahagan stated project can be done, is interested in Coastal Zone Management has comments, comments on what happens in the ACEC. Mr. Colleran asked if this file came in before or after the dock policy came into being. Mr. Hughes said after.

Mr. Hughes requested a continuance, but Nancy Pau of U.S. Fisheries and Wildlife commented, wanted to give some background on the area and future climate change on future effects of dock on erosion of the marsh. Mr. Hughes stated he would get together and share plans with Ms. Pau. Ms. Julie Siemasko, of 104 Pine Island Rd. commented that a deserted property is an invitation party and will encourage people to walk all over the area, but not just on that property but her own, and that it infringes on her privacy rights. She and her husband will do anything to prevent this project. Ms. Rimmer made a Motion to continue to the June 1st meeting, seconded by Mr. Lord. Unanimous vote.

Nathan Gray (21 Cottage Road) DEP# 050-13## - a continued NOI to remove wood shed, fabric-covered steel frame structure, and located within the wetland resource and restore wetland. In addition, construct a new shed and greenhouse in 100-foot buffer and remodel existing shed located partially within wetlands. Continued from April 20th Meeting;

Mr. Gray explained he removed the old wooden structure, used the wetland mix for replanting and wetland water for planting. He is waiting on plan from engineer for septic plan, soil samples from engineer and flags for Dig Save, then he will schedule with Board of Health. He still has temporary tent still on land in front, seed is coming up well, looks like a wetland. Ms. Rimmer asked if he was planning to amend the NOI for the septic system and piggyback the septic and the shed, and if so, that filing fees may apply. Mr. Gray stated that engineer is drawing up new plans and new NOI. She also asked if restoration planting was done, Mr. Gray stated 10 ft by 12 ft area near shed overseeded and done and temp tent will find a new location. Ms. Rimmer asked if there was still a structure on the wetlands, as an Enforcement Order was in place until the other shed was built. Mr. Gray said yes, but he was trying to remove septic system from the wetland area and buffer zone and meet other requirements. She was not clear if that was the intention of the Order. Mr. Hughes did not have copy of Order, Ms. Rimmer suggested continuing to next meeting. Mr. Lord made a Motion to continue to the June 1st, 2021 meeting, seconded by Mr. Streeter. Unanimous vote.

Town of Newbury – Municipal Bathhouse (31 Plum Island Tpk.) DEP# 050-1368 - an NOI to perform interior work and to install a handicapped-accessible ramp. Continued from April 20th Meeting;

A continuance to the June 1st, 2021 Meeting was requested. Mr. Gahagan made a Motion to continue to June 1st meeting, seconded by Mr. Lord. Unanimous vote. Mr. Steve Mangion will send additional comments via email to office for transfer to Committee.

Christopher and Amy Christuk (22 Temple Blvd W.) DEP# 050-1352- an NOI to replace an existing single-family home with a solid foundation with a new home elevated on piles and install a gravel or clamshell driveways and walkways and associated work. Continued from April 20th Meeting;

Tom Hughes of Hughes Environmental Consulting represented the Christuks and presented results of discussion with them regarding decision not to do a foot path for construction workers, provide the dumpster location and parking for construction workers on the gravel lot next door, proposed driveway narrowed and shaped, and added lamp posts at either side of driveway. He inquired about having a “plant person” provide a list of native plants like beach plum and other plants instead of dune grass and added that to the proposed plan. There were no comments from the Committee.

Public comments were requested, and only one neighbor, Ginny Eramo of 18 Temple Boulevard West commented. She stated she approved of project 100%. Motion to close public hearing and issue a positive Order of Conditions by Ms. Rimmer, seconded by Mr. Paicos. Unanimous vote.

The Governor's Academy (1 Elm St) DEP# 050-1248 – a request for a Modification of an OOC recorded on 4/24/18 in Book 36697, Pg. 462 at Southern Essex Registry of Deeds. Continued to April 20th, 2021 at 7 pm Meeting. Continued from April 20th Meeting;

Wendy Reed represented GDA for this matter. She asked for questions regarding the fungicide for proposed use outside of the wetland buffer area. Mr. Gahagan stated that potential mobility beyond application area is too close to wetlands, too much risk, and that area may not need to be treated. Mr. Colleran looked into fungicide and found information on chemical used in fungicide, stated the half-life of it is not the best. Mr. Colleran asked for public comments, none were given. Ms. Reed stated that plan was for a 1-time application for one year. Treated area is inside track field and softball field, so no migration should happen. Ms. Rimmer made a Motion for the purpose of Discussion to approve the OOC as a motion, seconded by Mr. Paicos.

Discussion of matter continued with Ms. Rimmer stating she is not in favor of using the fungicide. Mr. Paicos asked about impervious areas and sand areas and if it creates a comfort zone. Mr. Colleran stated that fungicide may have unknown future consequences and was not in favor of its use. Ms. Reed stated snow blankets could not be used and that would impact spring sports season and asked if there was any way to get this approved. Mr. Colleran stated he doesn't know of another function of that chemical, but if infestation did occur, we could have photographic evidence of non-drift of chemical from other areas. Roll Call commenced at this point. Mr. Gahagan, Mr. Lord, and Mr. Streeter voted no; Ms. Rimmer voted no, but is open to reconsider if new information is submitted. Mr. Paicos voted no and seconded Ms. Rimmer's comment on resubmittal, Mr. Colleran voted no. He also stated that if snow mold occurred, the Committee could look at treatment plan again to get a better idea of how to proceed.

U.S. Fish & Wildlife Service-DEP# 050-1349 – an NOI for Salt Marsh restoration between 3rd parking lot and maintenance building, west of Refuge Road, Newbury. Continued to April 20th 2021 Meeting. Continued to May 11th Meeting. Continued from April 20th Meeting;

Nancy Pau of the Parker River Refuge, spoke about revised plans, asking for comments from CPZ, back and forth from MA DEP, and what they, as Federal agency need to do to get approvals. She asked for a continuance to the June 22nd, 2021 meeting as she is waiting for more information. Mr. Paicos made a Motion to continue to June 22nd, 2021 meeting, seconded by Mr. Lord. Vote was unanimous.

Zendko, LLC (15 Coleman Rd) DEP# 050-1348 – an NOI to construct 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 for the proposed roadway. Continued from April 20th Meeting;

Zendko, LLC (15 Coleman Rd) DEP# 050- 1347– an NOI to construct for a single-family home on Lot 4 which includes utilities, driveway, limited grading work within the 100-foot buffer. Continued from April 20th Meeting;

Zendko, LLC (15 Coleman Rd) DEP# 050-1346 – an NOI to construct for a single-family home on Lot 5 which includes utilities, driveway, limited grading work within the 100-foot buffer. Continued from April 20th Meeting;

Mr. Zahoriuko spoke as well as his representative, Mr. Phil Henry, engineer from Civil Design Group. He stated that revisions to plans based on community comments and Planning Board will be made and submitted when Planning approves plans. He stated Lot 5 has a stone wall at 50-ft buffer, has a landscaping plan for that lot and trails and included extensive planting plan on revised plans. Mr. Gahagan stated that a Green Ash tree was on list of proposed plantings and suggested a tree that wouldn't get killed by the Emerald Ash Borer insect. Mr. Lord and Mr. Streeter had no comments. Ms. Rimmer stated that Colorado Spruce is not part of mitigation plan, suggested using straight native trees instead of cultivars, Mr. Colleran concurred. Public comments were requested. Mr. Ben Armstrong, abutter and his parents at Coleman Rd. stated that Mr. Zahoriuko did a great job with plan, but would prefer a sugar maple instead of Red maple and would like an inventory of trees being cut and replanting of some of those cut trees. Mr. Zahoriuko said he can adapt plantings as needed. Mr. Colleran stated that revised plans showing planting list and to close out meeting after Planning Board is done. Motion to continue to June 1st, 2021 Meeting made by Ms. Rimmer, seconded by Mr. Streeter. Vote was unanimous.

Doug and Shay DeAngelis (110 Hay St.) DEP# 050-1350 – an NOI to construct a seasonal gangway and floating dock from their property. Continued from April 20th Meeting.

Ms. Rimmer recused herself from discussion as the applicants were former clients. Mr. Dave Smith of GZA and attorney Jeff Roelofs represented the DeAngelis's. Mr. Smith stated items revised on plans and providing a supplemental report. Mr. Roelofs suggested a condition for monitoring 1 year after construction and perpetual conditions for monitoring restated in the Certificate of Compliance for future owners of the home regarding float and gangway removal. Mr. Paicos stated he appreciated the suggestion of an installation plan, but it requires monitoring, and questioned who will be responsible for monitoring conditions, and that the Committee does not want to do enforcement. Mr. Colleran did not want to have to have conditions like that to cause more requests for floats and gangways. Mr. Gahagan suggested applicant should have access to river but still had concerns about float and gangway, no other

adjustments to plan, and that the physics of gangway an issue. Mr. Smith stated yes, to the physics issue and applicant wants that size float. There was additional debate over the location of the float and gangway, effects on the ACEC area, and what is better way to get into water. He stated he agreed with the summary from the applicant but wanted a different way and size of float/gangway and never got to see one.

Attorney Roelofs asked if the interpretation of dock policy is no docks in the ACEC area. Mr. Colleran stated that dock plan in response to past poor dock work and are looking for the least impactful way do put in a dock. There was more discussion as ACEC is in Town jurisdiction and trying to stick to state regs. Mr. Gahagan stated that Coastal Zone Management would typically review the application as Chapter 91 License or Army Corps of Engineers Permit but would not ever see it as a Section 10A permit, and that Commission was trying to close that loophole. More discussion on float removal plan continued, especially for removal process and timing/height of tides. At the end of this discussion, Mr. Paicos made a Motion to support applicant and approve all conditions listed in the supplemental report. Mr. Lord seconded. Vote was taken, Ms. Rimmer abstained, Mr Colleran voted no, Mr. Lord, Mr. Streeter, Mr. Paicos, and Mr. Gahagan voted yes. Mr. Colleran asked if a script was needed for appeal, Mr. Smith asked who was writing approval. Mr. Colleran thought he was and will provide the legal window for appeal.

Commission Discussion:

Certificates of Compliance:

Gary Litchfield – 31 Annapolis Way – a request for a CoC in order to close mortgage loan and clear title to property.

Mr. Litchfield stated that he had requested a Cert of Compliance as he is trying to close on a mortgage loan. He stated that he had done the plantings in October and had supplied invoices to prove he did the plantings. He stated that 2/3 of plants will come back but 1/3 was lost when water came over sea wall and back yard. Mr. Holt had recommended issuance of CoC prior to the meeting, as he could not attend. Ms. Rimmer asked about the lattice/vertical slats original to home and openness is not at 50% open and they should be to allow water flow-through. Mr. Colleran asked if any more discussion was needed, no one answered yes, so he asked for a motion. Motion to issue Cert of Compliance made by Mr. Gahagan, seconded by Mr. Paicos. Unanimous vote.

Joshua Kneeland- 78 Main St- a request for issuance of Certificate.

Mr. Kneeland stated that he was told of this issue during title search and he wants to close out this issue before sale. He stated that he had replaced a septic tank, erosion controls were used. Mr. Gahagan asked if this was inside the fenced perimeter, which it was, and he agreed with closing out matter. Motion to close out the Cert of Compliance was made by Mr. Gahagan,

seconded by Mr. Lord. Ms. Rimmer stated that she would go and look at site as well. Vote was unanimous.

Julie Siemasko- 104 Pine Island Rd – Certificates of Compliance for 3 Orders of Conditions.

The property contains three Orders of Conditions, none of which have received Certificates of Compliance. One Order is valid through 2023. Ms. Siemasko requested that Mr. Holt assist her in this matter. However, the actual Requests for Certificates of Compliance were not filed. The original request came from buyer's real estate agent as the open CoCs were preventing the sale from being completed. Ms. Siemasko stated that Mr. Holt was incorrect about the Order of Conditions regarding filling in a foundation with sand. She stated that blocks were put there by Pearson, not sand, and stated she has no hurry to close these COCs. Representatives of the buyers, Katie and Laura Pelletier stated their realtor has been trying to close on property since April 23rd, 2021, and requested that the title be cleared. Ms. Rimmer stated that she needed more information to do anything. Mr. Colleran stated that the Committee does not have enough information to make a decision. Mr. Colleran asked for a motion. Motion to continue to June 1st, 2021 meeting made by Mr. Paicos, seconded by Mr. Lord. Vote was unanimous.

Motion to adjourn made by Mr. Gahagan, seconded by Mr. Streeter.

Meeting ended at 11:15 pm.

Respectfully submitted,
Catherine Brown