

Town of Newbury

Conservation Commission Meeting Minutes

Location: Newbury Town Hall, 12 Kent Way, Byfield, MA – 2nd Floor Conference Room

July 13, 2021

Next Regularly Scheduled Meeting Dates: 8/3/21; 9/7/21

Roll Call:

Present: Brian Colleran, Chair; Ben Gahagan, Co-Chair; Dan Streeter, Frank Wetenkamp,
Brad Duffin, Mary Rimmer.

Absent: Peter Paicos

Meeting opened by Chairman Colleran at 7:02 pm.

Public Hearings:

Cricket Lane, LLC (55 Pearson Dr.) DEP# 050-1355 – a continued NOI to construct 24 single-family homes with 800 feet of roadway, common septic system, water lines, sewer lines, and stormwater management system. Roadway includes limited crossing wetland filling and replacement with work in the buffer zone. Continued from July 13th meeting; NO quorum.

Chairman Colleran: The Commission has to reschedule the Hearing – there is no quorum, one member is out, and Mary Rimmer is recused. The other two new members were not sworn in when the project was first heard. The clients for Cricket Lane left the hearing.

Formal Continuance - Member Gahagan made a motion to continue the hearing to August 3rd; Member Duffin seconded. All in favor.

Cathy Goodwin (182 High Road) DEP # 050-1362 - an NOI to replace an existing sanitary disposal system;

Bob Grasso, Grasso Land Services, representing the applicant stated this is an NOI for an existing failed septic system located at 182 High Road. The wetland delineation was conducted by Norse Environmental. It will be an elevated system out of the groundwater, complying with Title V and the Board of Health has approved all the variances requested, such as the tank setback, septic system set back to the wetlands, it's a repair vs. replacement.

Meeting opened to public for comment; no comments;

Member Duffin made motion to approve. Member Streeter seconded, all in favor.

Andrew Boger (16 Old Point Road) – an RDA for removal of existing rotting deck and disposal; replace with new deck;

The Applicant Andrew Boger was present to discuss the project. The RDA is for a rotting deck on the front of the existing house, to be replaced. The new design has been engineered with John Collin, a Structural Engineer. It will be knee-braced. Proposed expansion is 5.5' to 7'. Applicant used formula to figure out the percentage of lot and square footage, and passed a formula by Peter Binette the Building Commissioner, and they came up with just under 400 square feet of availability of expansion. Applicant is only doing about 198 square feet in this proposal.

Member Streeter: No disturbance? Dumpster? Dumpster to be parked on gravel in front; driveway in front (crushed gravel); around the back of his property line, nothing to disturb. Basically sand behind his house. Just need 3'-4' to walk. Foot traffic, very minor, just sand, any vegetation disturbed needs to be planted.

Member Rimmer: Mary brought up disturbance of vegetation concerns, applicant to just show post construction photos to prove no vegetation disturbance. Asked what flood zone the project is in – AE-13.

Member Duffin: Conduct pre-construction meeting with Agent and take photos. Before you get started, someone from Town (Agent) needs to go out and view and make sure nothing has been disturbed. Take photographs for the record.

Applicant then asked about an additional deck for a sitting area on the front or back of house, and acknowledged the 20' setback for the front of the house, and stated for a deck on the back of the house with the remaining square footage approved but not used, would he have to go through the RDA process again?

Chairman Colleran mentioned it would be a completely new RDA submittal. Applicant acknowledged the reply.

Meeting opened to the public for comments: no comments.

Member Gahagan made motion to approve the plans as presented; Member Streeter seconded, all in favor.

Member Rimmer: You will be issued a Negative Determination.

William Stack (65 Northern Blvd.) – an RDA to replace existing deck keeping the same footprint, with plastic deck and rail system with two steps to ground;

William Stack is present representing himself with his Contractor; existing deck is there now – plan is to rip off the old deck, and add 4' out to 12'x22', and put three manufactured footings in, to put the pre-made footings in the ground. Putting in deck, changing the configuration of it. Peter Binette, Building Commissioner and Conservation Agent Kara Campbell came out, told him what to do, and he did it.

Member Streeter asked if the Contractor had any other description or information on the footings – Contractor replied it's actually called a Bigfoot, they have a form they make, instead of putting a sonotube in, you lift them up with a backhoe and put them in. Discussion continued on Bigfoot vs. Diamond Pier impacts and feasibility. Concerned about the impact using Bigfoot vs. Diamond Pier, how putting the manufactured Bigfoot in, it will cause excavation, which is major, and more of an impact that would require a Notice of Intent. If they kept it to hand digging and sonotubes, then it wouldn't be major, then it could be an RDA. Need to allow for sand migration, new deck steps will be higher not lower. Two steps up, to deck.

Member Rimmer: So that footing is right up against the house?

Contractor: No, this will be out about 10' from the house and cantilevered out 2'.

Meeting opened to the public for comments: no comments.

Member Rimmer made motion to approve and issue a Negative Determination – Condition it that the structure be supported by Diamond Piers. Member Gahagan seconded, all in favor.

Coughlin Shea Builders (7 Larkin Rd.) DEP #050-1360 – a continued ANRAD - to determine if areas within a resource area can be classified as Isolated Land Subject to Flooding; Continued from July 13th meeting;

TJ Melvin with Millennium Engineering present representing client:

Member Rimmer: Site walk – we tried to schedule a site walk - never one scheduled, was always raining, it never happened. Haven't had a chance to review the wetland boundary, confused about the ANRAD and what is being requested because the plan shows a lot of wetlands, but the description states you are looking for a determination about whether or not an area can be Isolated Land Subject to Flooding, are you looking for approval for all the wetlands shown on that plan?

TJ Melvin: Yes.

Chairman Colleran: Typical ANRAD, wetland boundaries; may be an area which isn't isolated when it's flooded, additional information may be needed to document that, all we received was a letter from Millennium stating they didn't think the area flooded to a depth – just to fill you in, for an Isolated Wetland Area that doesn't border on another waterway or waterbody, it's

completely isolated hydrologically, but in order to be protected, it needs to have a minimum flood storage volume of one quarter acre foot to an average depth of 6". This plan doesn't have any topography, and there isn't any way of determining that based on review of the plan, all we've received from Millennium is just a statement saying we don't think it floods to a depth of 6". This would be a good time to go out and take pictures. We would need more information, we need either a volumetric calculation of the basin or hydrologic calculations contributing to it, there's two different ways of doing it.

TJ Melvin: I can send you just the blow-up areas that I have with the topography in there, there were a couple of little pockets that got to 6" but they were a few hundred square feet and ultimately these pockets just drain through so it really doesn't have a defined berm that keeps it in. I can send you a photo.

Member Rimmer: So probably the easiest thing is if you schedule a time to go out, walk the boundary, see if there are any changes to the flag boundary then they can survey them as well and if they have to go back to locate any changes, they can get more shots in that ISF and make a determination what's the actual elevation part because I don't think we can make a determination based on what we have compiled.

Chairman Colleran: Do you know when the math, visit, photos were taken?

TJ Melvin: Right before the submittal was done. We do have topo for the whole site. There's just so many flags it would be impossible to read, I can give you a clean sheet.

Member Rimmer: we don't need it for the whole site, just the two isolated areas. The smaller one, if you give us square footage of the two areas we can figure out how deep it would have to be to hold a quarter acre foot and if the smaller one needs to be 4' deep then you can easily eliminate that.

Chairman Colleran: What area are we talking about, is there an ephemeral question on the table or we are just presuming that they are not, the larger of the two connections, because that's not part of the ask as far as I can read it.

Member Rimmer: I think there is Riverfront Area as well.

TJ Melvin: Not in the actual buffer.

Chairman Colleran: So it's a high water riverfront line that's down the river not down the riverfront area.

TJ Melvin: Yes; we didn't show any of the buffers.

Member Rimmer: I believe there is also flood plain on the site.

TJ Melvin: Yes, shown here – it comes up pretty steep, there are a couple up and downs throughout the site.

Member Duffin: What is it you are doing with the site?

TJ Melvin: right now we are just trying to get the line locked in to see what we can do, that's really it, these isolated wetlands are kind of a big thing to get locked in to.

Member Rimmer: So there is a process called Abbreviated Notice of Resource Area Delineation so there is a voluntary process where an applicant can come in and ask us to confirm the wetland boundaries and all the resources on the property which locks it in for three years and if we agree to it, they can go ahead and do future planning based upon the known wetland line instead of having a change after they come in with their fully designed project.

Member Duffin: If I recall correctly, it still allows us if during that three year period there is a change to the amount of flooding in the area that it needs to be redetermined, right?

Member Rimmer: No, no, this is three years, unless there is evidence of fraud, it can't be changed. We don't have to approve every resource on the site, it's possible that they only want to have a determination in a small area if they don't show the floodplain boundary on here and I request some approval of the floodplain boundary, you don't have to make any determination on that, and that can remain open so if there are resources on here you know we can only approve what's shown on the plan. I also would suggest you show the 200' Riverfront Area and the 100' Buffer Zones because everybody has a different way of marking those out. If we can get this reviewed and any comments to you in the next week or so then you can hopefully have time to make any revisions and be back before us to the next meeting?

TJ Melvin: Yes.

Member Rimmer: Normally we like to have everything to us a week prior to the hearing if possible but given that we didn't get the site walk done I think maybe we can give you some time till the 3rd and get a site walk done. What is the process to get the information of a date and time for a site walk to those listening so that if anybody wants to participate on the site walk they can.

Member Gahagan: I think with all the resource areas on the site, and what will come after this, then we definitely should schedule a site walk date and time.

(discussion on how new members can't vote on this one as Ben alluded to, usually an ANRAD comes before something bigger - do the site walk even though you can't vote as this one may still be with you, and now that you don't have to allow abutters or interested parties to come to the site except for the applicant and/or the owner, and to check if they are okay having the public attend the site visit but all the members of the Commission are allowed. It's going to take awhile to walk the site – pick a date – one isn't familiar with the site).

How about Tuesday July 20th at 3:00 pm?

Member Rimmer: I can also meet Mark at the site a little earlier and walk the site. Mary to coordinate with client directly on time.

Meeting opened to the public for comment; no comments.

Member Rimmer made the Motion to continue hearing to August 3rd, Member Gahagan seconded, all in favor - project continued to August 3rd.

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. Continued from July 13th meeting;

No representative at the hearing to discuss project.

Member Gahagan made a motion to continue Hearing to 8/3, Member Streeter seconded, all in favor.

Town of Newbury - Orchard St. Cart Creek Crossing Restoration – DEP# 050-1356 - an NOI to replace the culvert underneath Orchard St. at Cart Creek on a Public Way. Continued from July 13th meeting;

Town has requested a continuance to the meeting on 8/3;

Member Gahagan made a motion to continue the hearing to August 3rd; Member Streeter seconded, all in favor.

The Trustees of Reservations (173 Hay St.) DEP# 050-1361 – an NOI for the restoration of up to 30 acres of salt marsh through restoration of hydrology altered by past agricultural practices; Continued from July 13th meeting;

Waiting on DEP File # - not 1356, correct number is 050-1361; Client asked to close the Hearing.

Member Gahagan made a motion to issue an Order of Conditions; Member Rimmer abstained.

Due to not enough votes; Member Gahagan made a motion to continue Hearing to 8/3, Member Streeter seconded, all in favor.

Marybeth and Larry Abbott (69 Southern Blvd.) DEP # 050-1358 – an NOI to replace a single-family home with a new single-family home on pilings, with associated site work. Continued from June 22nd meeting.

Marybeth and Larry Abbott (71 Southern Blvd.) DEP # 050-1359 – an NOI to replace a single-family home with a new single-family home on pilings, with associated site work. Continued from June 22nd meeting.

Tom Hughes with Hughes Environmental Consulting present representing clients:

Chairman Colleran: Let's start with 71 Southern Boulevard, as there were some questions on invasives.

Tom Hughes: There was an email that came out, followed protocol, had essentially taken basic protocols, turned it into one page that was more specific to the site, and emailed to all.

Mature trees protocol – the trees will be removed when site work starts. Ideally, would like to see them treated with Triclopyr – that will help and limit with the sprouting, before they are removed. Triclopyr is effective all year round, but most effective this time of year – mid summer treatment and fall treatment to follow up. I like to do frilling – it's a circular cut around the tree, downward cut, then put Triclopyr into and then observe for root sprouts or sprouting of the tree, and then retreat immediately once you see it, then come back a few weeks later to look for re-sprouting; at that point once you observe full mortality of the tree you cut it and you've got a really good success rate that way. I find monitoring, especially on bigger sites much easier with the plant still standing. We used to do flush cut or cut 6" or 8" up in the air, paint it on the stump, the problem is it's harder to find the re-sprouts and this way I actually get to see it die in front of me and it's much easier. Even if we don't have time, the trees will be cut, stumps will be removed, and then any remaining roots will be treated and any re-sprouts will be treated. For the smaller stuff with a small stem, typically about half an inch or smaller, there's not enough uptake of the Triclopyr through the bark, so in those cases we do a foliar and there's a product that we're using on the Boston project which is a blue foaming chemical that is a surfactant that is fairly safe for aquatic and non-aquatic critters even though it hasn't been signed off by EPA as an aquatic chemical. What we did is a toxicology sort of white paper analysis on it, and it biodegrades in both anaerobic and aerobic environments within 72 hours. What it does is it foams and keeps the Triclopyr on the plant long enough to really get good penetration.

Member Rimmer: So you would do that instead of cutting trees?

Tom Hughes: Only on the small enough stems like half an inch or smaller. What I find is I don't get enough uptake of the chemical.

Member Rimmer: So it's just the cut stem? Ok.

Tom Hughes: So in those cases what we would do is the foliar on the smaller.

Member Rimmer: Is that just because it's locus or because you find that... interrupted

Tom Hughes: I find that in basically most woody stuff and in locusts they're really stubborn, even when you treat them, they are really hard to kill. We did the hotel area over in Amesbury next to the Stop and Shop and there was just one locust in particular, it just kept sprouting, we kept treating and treating to catch the growth. The more treatment we can get in before they are removed the less likely we're going to have a massive problem on our hands. I don't think we are going to have a huge problem on our hands either way if we get most of the stuff out, but there will be re-sprouting that will occur and as long as the following year after construction, we do a July or August treatment, then do another September/October treatment for anything that's remaining, I think we will get rid of it.

Member Gahagan: So boiling down you're going to do the initial treatment of the mature trees with the spray into the cuts and probably from there on out it's distracting on the sprout system.

Tom Hughes: Basically, yes. The initial round is really going to be dependent on timing. I know they want to get started quickly but I'm going to encourage them if the Board votes for approval to try and line someone up to get the treatment done, and with an Agent coming on board, if we reached out and asked for permission to kill off some black locust we would probably get administrative ok to do it but if the Commission didn't have an objection to us starting the killing of the black locust with a commitment that we would replant natives in their place regardless of the project, we could try to get that lined up, it will probably take a month to get somebody out there anyway.

Member Rimmer: That would be acceptable.

Tom Hughes: Ok, in which case what we will do is we will get that all lined up so that maybe we can start the minute the Order has been issued. I've given you details, the timing, and clarified that the first thing on the mature trees is the preference of treating them but they'll definitely be pulled and the stumps removed, and then everything else is treated and then if we do run into within the site other woodies, i.e., honeysuckle or bittersweet – I know there is some bittersweet wrapped around the building at 69, but that will go out with the building, but the same type of protocol will be used.

Member Rimmer: Do you have a planting plan at the site?

Tom Hughes: No, what I did is the in the narrative I said after removal we are going to add 12 woody plants. It's going to be Bayberry and Cedar, and showed the Commission where the plantings would be. I want to see what is left after we remove stuff and get the house and patio in, and all that laid out, it's tough to envision what the site is going to be like and where

the best opportunities are, we would coordinate that with the Agent or a member of the Commission.

That's it. I think we have addressed everything else on the project, if you want, I can run through anything we covered on past Zoom meetings, here's the pictures that I showed everyone online; the black locust and flower are really identifiable but they are a pretty identifiable tree anyway; here's the plan, again, single family home, elevated a minimum of 2', a little shell patio area out back; a lot of planting going on, building gets removed; clean compatible sand goes back in to backfill the hole to bring it up to match surrounding break.

Chairman Colleran: Does anyone have anything else to talk about on this one other than the invasives?

Member Rimmer: I recall that being the only outstanding item, so I would just recommend that we actually attach the report to the Order of Conditions and that we include a Special Condition that Tom or a Wetland Scientist oversee the invasive species control and that they be done by a licensed applicator.

Chairman Colleran: The only comments I think on the invasives plan would be alternatives; if Triclopyr doesn't stick, to roll in some manual pulling, mechanical stuff, a different active ingredient on the black locusts;

Tom Hughes: So, what we discussed for the half inch ones we are basically going to treat them if we can't pull them; the trees are going to be cut and pulled. I took the protocol I wrote for Roslindale Urban Wild which is a massive project and I tried to turn it into a quick one pager for this project. The preference is to pull things out entirely if we can.

Member Rimmer: I think Brian's point is if the Triclopyr fails to work, you can reach out to the Commission to modify your invasive species control plan;

Chairman Colleran: Yes; what you are going to get is a percentage of success, and then some percentage of failure. And for the percentage of failure, instead of going back with more Triclopyr.

Tom Hughes: Triclopyr is extremely effective on woody, I would just go back and apply more Triclopyr. Now, if treated with Triclopyr and it doesn't even wilt a leaf, then I might reconsider the approach; but it really is an effective herbicide. If we find failure, we would expect that before we can get a Certificate of Compliance we have to have the site free of them so we would come back to the Commission with another chemical request, but Triclopyr is a good, safe, reliable chemical, it's what the refuse uses on woody plants; it is really the one of choice, I prefer it much over using some of the other chemicals, I stay away from Glyphosate nowadays towards habitat. So we left 69 open, and I think there was some concern that we might get resprouting if it extended over onto that property so if you wanted to condition that, the same approach be applied to that.

Member Rimmer: I think we need to be mindful of this is a management plan and not an entire removal plan, I think if we make a good effort to control it, we could use less herbicide.

Tom Hughes: There is bittersweet all over the island, there is knotweed all over the island, honeysuckle, and locust is something that I don't see a lot of on the island.

Meeting was opened to the public for comment; no comments.

Member Rimmer: Do we want to vote on these separately?

Chairman Colleran: If we are giving them the same Order, if the Special Conditions for both are only going to be the invasive add-on...

Tom Hughes: What you could do is for the Order for 69 Southern Boulevard, have it stipulate that it shall follow the protocol listed in the OOC for 71 Southern Blvd.

Chairman Colleran: So these will be two separate properties/Orders?

Tom Hughes: Well, two separate Notice of Intents, two separate Orders, but they are intertwined in that there is an encroaching structure that crosses the property line so we can't really do one project without the other. I do think you need to close and issue separately because they are two separate Orders. They opened together, just close and issue separate orders. We are not going to do the additional 12 woody plants on this one, if we do impact any natives, we would replace that but will not give you an additional twelve on 69 Southern. 69 Southern is the smaller of the two projects.

Member Rimmer: Summary – both a reduction in impervious area; they were getting the houses up and the plants are elevated.

Member Streeter: Are the plants being placed in the same areas?

Tom Hughes: No, they are being centered onto the lot to bring them into the zoning compliance world. They have been approved by Zoning.

Tom shows the Board the plan for 69 Southern – the plantings will be more centered and wide, whereas right now it goes out into the street.

Member Gahagan: I move to approve the NOI for 69 Southern Blvd. with the Special Conditions on the Invasives Management Plan. Seconded by Member Streeter. All in favor.

Member Rimmer: Brought up discussion on sand, bringing sand in; standard Condition on sand;

Tom Hughes stated that he believes it to be clean compatible sand. Clean compatible sand to be used and the common interpretation on Plum Island; what that means is the same grain size analysis as the Plum Island Sewer Project was approved for, which is Bentley's septic sand. Correct. Actually, Bentley calls it Plum Island sand. Presby Septic Sand.

Member Rimmer: Requested an additional Condition be added; a standard Condition that a wetland scientist oversee the invasive species management plan and provide periodic reports to the Commission at the end of the first and second growing seasons. Plus add a Condition regarding the clean sand of similar grain size for any imported material.

Member Rimmer made the Motion to approve the project for 69 Southern Boulevard with the Conditions discussed; Member Gahagan seconded, all in favor.

Member Gahagan made the Motion to approve the project for 71 Southern Boulevard with the Conditions discussed; Member Rimmer seconded, all in favor.

David Daly (22 16th Street) DEP # 050-1357 - an NOI to construct a new single-family home on pilings, with associated site work. Continued from June 22nd meeting;

Tom Hughes of Hughes Environmental Consulting is representing the client, and the client, David Daly, and Matt Hammer the Engineer are present.

Member Rimmer: We have received DEP Comments - The applicant should explain how the filling of the Land Subject to Coastal Storm Flowage ("LSCSF") will not increase elevation of loss of flood waters and how the project will not cause flood waters to be displaced or reflected onto adjacent properties or public and private ways; although not specified in the plan, the driveway should not be paved, but rather compatible sand or sea shells.

Tom Hughes: So, we did talk about those issues at the last Hearing; I have the applicant here, David Daly, and Matt Hammer the Engineer, just in case we need any feedback from them. What we had shown, since the elevation in this general area is 10, we kind of extended Elevation 10 out a little bit there's no more than a foot of sand in any one location and actually let me flip to the rendered version of the plan, it's a little bit easier, so what we did since that Hearing to even further address that is instead of bringing Elevation 10 out to about where it was like Elevation 9.5, even a little towards Elevation 9, because we were trying to create a more flat area out back, what we've done is we've trimmed that up so that basically Elevation 10 ties into the Elevation 10 and it's basically taking 10 from here to here and it's about 6" of sand; it's really just to give that flat area for parking under the structure; this happens all the time in and out of flood plains on Plum Island under structures; it's really a minimal amount of sand and as I said before we are not within the limit of moderate wave action here, so in this area the flood water comes in, it doesn't really come in with a lot of velocity, it goes out, it's not really going to be subject to a lot of reflection or refraction etc.

Member Rimmer: What is the zone?

Tom Hughes: AE-13. Even when it does come in, what we are putting in is sand, and we did have a missing label, this is going to be a clamshell or gravel driveway. What we also did if you remember the last plan iteration, we had sand around the whole house; we now bring the plantings right up to the house, and in the back what we did is we shaped out a clamshell patio area; we showed four shrubs, they are either going to be Virginia Rose or Meadow Sweet, back in that area, around the back of the house planting area. What we end up with is an increase in vegetation that's actually performing dual functions on site by 300 square feet. We also itemized, we had lumped together all these areas on site that we were counting as previously disturbed areas, so we broke that down into sand areas which include some lumps of pavement, area of lawn, areas of gravel, the lawn is kind of up front, there is some gravel under it, it doesn't have a deep root structure, and it's really short so it's not serving any purpose to trap sand or perform energy functions, replacing that with new grass, increasing vegetation on site. We are still trying to leave the neighbor's encroachment in place because we are just trying not to complicate things with that.

Member Streeter: They encroach over the lot line?

Tom Hughes: They encroach over the lot line with the corner; part of the gravel drive; then they have a paper walk area, no building structure but with stairs that you do cross over. We are trying to leave that in place because if we try to remove that we remove some of the functionality of the driveway and it's just not worth doing that, new neighbor moving in, immediately going after neighbor's stuff and since we can make the regulatory argument that we are improving dune function with this project while at the same time putting in a really modest small house that I think this is really well thought out in terms of how it's designed and what the project is.

Member Duffin: So that encroached area is not shown in the calculations?

Tom Hughes: It's shown on both sides of the table – it is considered in the calculations but it exists here in the existing and it exists here in the proposed. So, it is in the accounting, but on both sides of the ledger.

Member Rimmer: So it doesn't count towards the lot coverage because it's not a structure except for the stairs.

Tom Hughes: Correct. Plum Island was developed at a time when people didn't always take surveys or they thought they knew where the lot lines were. It also depends on which direction you survey from, there is a right direction or wrong direction of their places. I can show you places where there are pins all over the place and some of them are right, and some of them are wrong. That's why those of us who regularly work on Plum Island typically work with a limited group of surveyors because you want to make sure that you're actually getting the right lines surveyed.

Member Rimmer: Did this project have good surveyors?

Tom Hughes: Yes, but there are also surrounding surveys to tie into that made that helpful. You know the house that is on Northern Boulevard that a lot of people think is four stories, it's a fairly new one, if you look at the front of it, I think you will see the field of survey pins in an 8'x8' area you just see pins all over the place.

Member Rimmer: So your response comment to DEP's comment for the reflection of wave?

Tom Hughes: So what we've done is what we had there before I argue would have had no impact on reflecting wave energy, it's common practice.

Member Rimmer: You reduced it and it's only filling in the corner of the line?

Tom Hughes: Right, and it's in the range of like 6", it's really minimal and necessary in order to get a parking area under the structure.

Member Rimmer: Do you think those comments are generated based upon their anticipated LSCSF regulations?

Tom Hughes: Possibly. They have been putting that kind of stuff in since they started more aggressively working on those.

Member Rimmer: Especially asking you to defend performance standards that don't currently exist.

Tom Hughes. Absolutely true. But it's not uncommon for them to ask that, but the other thing I am wondering who the analyst is, I did email Jim Freely and I never got the answer on who the analyst was and it's possible that Mike Abel being overworked that they maybe farmed this out to somebody.

Member Rimmer: Mike Abel retired in June.

Tom Hughes: That could be what the problem is, not sure who is doing dune projects now. Mike was the one who commented on the project. So I really think it's a non-issue of how it affects flooding and even if they were to adopt a standard as long as it's a standard that has some reason behind it, there is nothing we are proposing that would effect flood policy in a meaningful way, and if you started restricting things in LSCSF you couldn't build resilient sand projects.

Chairman Colleran: It doesn't sound like the DEP got to the comments, and I don't think we are covered, but, the rip rap is here and there, so the space between, so if anything big comes in it's going to be channeled right at your structure.

Tom Hughes: The topography is about the same, so erosion and scour would occur here, but if anything big comes in it's going to go over the landform and come back. I really don't think that those are going to have any significance, once you get water up into this Elevation 8 or 9 it's actually overflowing that stuff and it's irrelevant.

Member Duffin: Does the rip rap exist?

Tom Hughes: Yes. We can't propose new rip-rap in this location for a number of reasons, one is this Coastal Dune. We used to have an interpretation on Plum Island that Plum Island had Coastal Bank, but then there's a decision that basically you can't have Bank in June. If you look back at a lot of the old NOI's, pre-me and pre-Mary, a lot of them talk about Coastal Bank on the Basin, a lot of the walls and stuff that was permitted, and then if it were Coastal Bank, we would have had to have a structure pre-1978 in order to install rip-rap so we can't propose rip-rap here. Existing rip-rap could be maintained with an NOI but it would have to be permit-ready.

Chairman Colleran: So you are not worried about anything coming in and bouncing off the house, and bouncing off the roof?

Tom Hughes: No, because you have to think three-dimensions.

Member Gahagan: How tall is it?

Tom Hughes: It's flush with the ground.

Member Duffin: That whole lot drops off towards the Basin.

Group discussion – there's not going to be enough wave action to make a difference. Not enough wave action in there.

Tom Hughes: What it could do if you had persistent wave action is it could carve out this area shown here.

Chairman Colleran: So that's more of an edge of land issue rather than a building issue, right? And it's irrelevant. Did we get resolution on the buildability of the lot?

Tom Hughes: This is a grandfathered lot that has water, sewer, applicant has talked to inspector, buildable lot, in RFA and Dune, and also we are cognizant of the fact that residents have been able to walk over the vacant lot, the smallest footprint house is being proposed as far away from the Basin as possible. That will leave an area intact and improved with plantings; not planting on the beach area, keep it intact over Elevation 6.

Member Streeter: Just have a question on buildability – do you know why this has a 132 Land Use Code for so many years?

Tom Hughes: No idea.

Member Streeter: Undevelopable.

Tom Hughes: I don't know. If it has water and sewer, it is considered to be a buildable lot.

Member Duffin: there is a Betterment fee being paid on that lot.

Member Rimmer: I have a few thoughts on Special Conditions, but no further comments on the project itself.

Chairman Colleran: going back to the buildability question, have they changed any of the velocity zones? New development was prohibited by the bylaw.

Tom Hughes: The AE and EO zones. This is not near either of those zones. This zone got a 4' increase from the datum change from 29 to 88 that added a foot, in that last round of mapping from FEMA. This was an 8.2 and went up to a 13. So it's a 4.8' increase in the AE zone in that area. FEMA incorporated more conservative modeling. Modeling methods are better but the amount of data that went in is less.

Chairman Colleran: So now we are not concerned with energy flowing against the building, but now you sort of have this channelization.

Meeting opened to the public for comment:

Christopher Smith - #17 16th Street: built a house in that area where this is proposed, and wanted to come to the hearing to listen to what was discussed. We have gone back years, and there was never a building on this lot; there were electrician trailers, but they were removed. We have seen flooding on this lot, about 15-20' beyond the granite column towards the street so you will get water there I guarantee it. So if the owners are parked under the house, they will get water, that's a guarantee. We are just concerned, we witnessed something else in that area get built, and we just wanted to be involved in the Hearing because that other build out has been an issue from the beginning. We just want to make sure the rules and regulations from the building codes and Conservation are being followed.

Another Man, lives at #21 directly in front of house being proposed:

Tom Hughes: I will note that we did the equation and we have a tight limit of work – limit of work line shown on map – across the lot.

Matt Hammer the Engineer: Matt confirmed the tight limit of work.

Tom Hughes: David Daly is the homeowner but he is also the builder so he knows he's going to have to either work with neighbors for places to park the work vehicles or he's going to have to just bring people in, it's going to be a tight site to build. Addresses the public, I assume you are talking about the issues with the build at 20th Street. Even during the Hearings there was a lot of concern.

Christopher Smith: Yes, the asbestos roof was removed over-night. Parts of the house being deconstructed without permits in place. I went to the Hearing, discussed how parking would be an issue, and Day 1, I had cars in my driveway. So if we aren't involved, they get to do whatever they want. That is why we are here, to make sure the rules and regulations are adhered to, and to listen to what is proposed and learn from it.

Tom Hughes: I know for a fact that the owner/builder David Daly would meet and talk with you about your concerns, and he'd be happy to give you his contact information.

Christopher Smith: Ok, I've seen the plans.

Tom Hughes: Reach out if you have a problem with anything.

Christopher Smith: We are just concerned about how close it is to the street so that's going to have to go through a variance hearing.

Tom Hughes: You are allowed to average the setbacks of the left and right homes; Matt, can you assist here?

Matt Hammer (Engineer): we did the setbacks to the building to the lot lines with the building department to determine that out, setbacks should comply. No variance is needed.

Christopher Smith: Wow, ok.

Tom Hughes: We are under pressure from another law which is the River's Protection Act, and the Basin is considered part of the river, and we have to go through all available options to move the houses as far away from the Mean High Water of the Basin as we can, so we had to perform that due diligence.

Christopher Smith: So it's not the same as the 20th Street house with the setbacks?

Tom Hughes: It's not a zoning setback, it's being as far away from the river which the Basin is considered river. 20th Street was a replacement of an existing structure so its degraded Riverfront comes into place there, but in this case we don't have an existing structure there so we are unable to move the house further back. We followed the regulations for the River's Protection Act, and I think we've demonstrated that we have really tried to make this as small a footprint as possible, and have as less an impact as possible.

Member Rimmer: What is the size of the utility chase?

Tom Hughes: 3.5 x 3.5

Chairman Colleran: I think my only qualm is the tiny dumpster proposed.

Tom Hughes: Well it's temporary construction. The sewer line doesn't define the limit of it. It can go over a little. With new construction, you don't need the dumpster there all the time.

Member Rimmer: Special Conditions – Restoration plantings should be overseen by a professional wetland scientist and with annual reports provided to the Commission by December 1st of each year on the success of the restoration plantings until the issuance of a Certificate of Compliance.

Member Duffin: why would we add a special condition to something that is normally covered by the Conservation Agent, why make the applicant pay more fees for a wetland scientist. It seems like an undue burden.

Member Rimmer: We put in the special condition for the wetland scientist so if there is a problem with the success of the restoration plantings that it can be determined early enough to fix the problem and re-plant.

Chairman Colleran: The wetland scientist will ensure that the restoration plantings have been successful, and it's like an insurance policy.

Tom Hughes: It's not just 14 plants, it's dune grass. It's always helpful for a Commission to be sure that things are on track on the mitigation end because often what happens is it gets forgot about, and then the Certificate of Compliance is needed because they are refinancing and they've got no plants in the ground, so not all projects need a wetland scientist, but I think you could require photographs of the plants from the homeowner, but on this, David will probably hire me to take the photographs and submit to the Commission. I agree with Mary with the need for a wetland scientist as I have been an Agent, and I have been a consultant, and I have had to rescue people who have not done the right thing and then they panic and need a Certificate of Compliance. I would much rather have people on track with compliance, but you do have to be cognizant every time you do say under the purview of a wetland scientist is just another check and the soft costs are pretty extraordinary with a lot of these projects.

Member Rimmer: Although we do now have an Agent on board, they won't always have the time to make sure each project is in compliance and the monitoring is done. I would feel more comfortable if when the plantings are put in that someone like Tom is overseeing the effort if the homeowner chooses not to hire a professional wetland scientist. Proper plants put in, etc.

Tom Hughes: I think what is important is the overseeing of the effort; that the plants went in, when they went in, and that they just get checked on and replaced if needed during those first few growing seasons.

Chairman Colleran: Ok, let's add that it should be a PWS (Professional Wetland Scientist) and/or a CERP (Certified Ecological Restoration Professional) that would be better. If the applicant or Tom moves or retires and a new team comes in, we need to have that assurance in the Order of the need for the professionals, that is why you would overburden the Order to protect the integrity of the process.

Tom Hughes: That's why I feel instead of stating a Professional Wetland Scientist is needed, state a qualified professional.

Member Rimmer: Other Special Conditions – that there be a pre-construction meeting; what is your feeling on bi-weekly reports to the Commission once the build has started. When is the build starting?

David Daly: Although we do have a lot of construction projects going on right now, we want to take advantage of the availability of steel when it's available so it could be as soon as a month or it could be six months. Probably closer to 2-3 months out.

Chairman Colleran: Ok, when active work is being done, some kind of documentation.

Tom Hughes: May I suggest the applicant notify the Commission or its Agent seven days prior to the start of work and then update the Commission or Agent monthly during work with progress reports.

Chairman Colleran: The reports are good, but we need pictures weekly as things are happening, reports and photographs.

Member Rimmer: We don't need a 7-day notice, 3 Conditions - a pre-construction meeting, reports/status updates and photographs on the status of construction once it's started and during active construction, and requiring some reporting on the mitigation measures.

Member Rimmer made the motion to approve the project with the Conditions discussed; Member Streeter seconded; all in favor.

David Manty (0 Pine Island Road – Map R30, Lot5) DEP# 050-1330 – an NOI to construct a dock/pier, ramp, and floating dock within salt marsh resource area and ACEC. Continuance requested from applicant's representative to the July 13, 2021 meeting;

Tom Hughes with Hughes Environmental is representing the Applicant: The applicant has requested another Continuance due to the fact that the Refuge Manager was supposed to go

out to the site about 3 weeks ago due to being hung up at another site due to Pepperweed removal/treatment at another site, and is unable to go until later this month. We weren't aware of any official wildlife concerns until the last hearing, and now that we know that there are some issues, I had a good discussion with him, he wants to look at the site and then if we are able to incorporate any feedback from them into the design or encroach of building we want to do that, so we have requested a continuance.

Member Gahagan: What are you planning to do about a 401 Water Quality Permit?

Tom Hughes: That will be in our response. It'll be part of the regulatory part of the letter I'll be submitting. It requires a Water Quality Permit, it requires an SVN.

Member Rimmer: Does this project require a MEPA filing as well?

Tom Hughes: No, it doesn't need a waterways permit because there is no permanent structure below Mean High Water.

Member Gahagan: Was this notified correctly, did the US Fish and Wildlife Service get notified?

Tom Hughes: Yes – they were notified as deemed at the Assessor's office. The Assessor's office has the Hadley Real Estate Division, Fish & Wildlife never told the local folks about it. Way back when proof of mailing was provided.

Member Rimmer made motion to continue the Hearing to 8/3. Member Streeter seconded. All in favor.

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;

Applicant nor representative was present to discuss the project.

Chairman Colleran: Gave the Commission a brief summary of the situation at 21 Cottage Road, Nathan wants to move and sell the property, can't do it until the septic system issues are resolved, so do we want to deny this aspect of the project and just have the Enforcement Order out on the project?

Member Gahagan: I propose we vote to deny this, then he has an outstanding Enforcement Order, that he has to remove the wood shed, fabric covered steel for infrastructure and everything else he had piled in the wetland out of the resource area.

Member Rimmer: Or we just need to send the applicant a letter stating that we assume he wants to withdraw the NOI until he gets the septic issues resolved.

Chairman Colleran: There is a property transfer coming up. I know that open NOI's get noticed usually by the real estate people – wait – nothing is recorded – how would they know. Enforcement Orders are not recorded.

Member Rimmer: Did Nathan Grey ever even receive an Enforcement Order? Enforcement Orders don't get recorded. We should write a letter, attach a copy of the Enforcement Order to it, and say you filed a Notice of Intent on such and such a date, we still do not have any file number, and you've failed to appear at every Hearing since last September, we assume that this Notice of Intent has been withdrawn if you do not appear at the 8/3 hearing. The Enforcement Order still stands. We don't actually have to deny it if it's been withdrawn.

Member Rimmer: made a motion to write a letter signed by the Chair that states that the Commission is assuming you are withdrawing your Notice of Intent unless you show up for the Hearing on 8/3, but the Enforcement Order is still in place. We will provide a copy of the Enforcement Order to the letter. Seconded by Chairman Colleran. All in favor.

Christopher Connolly (9 43rd Street) – an RDA to replace a failed retaining wall, install stone and seashells in yard and replace existing invasive species with native plants.

Neither applicant nor representative were present to discuss project. Continued to 8/3.

Michael Kirkpatrick (8 12th Street) DEP File# 050-XXXX – an NOI to build a 9' x 15' shed on property. Pilings will be required to raise the shed 2' off the lowest elevation.

Neither applicant nor representative were present to discuss project. Continued to 8/3.

COMMISSION DISCUSSION:

Certificates of Compliance:

Janet Huetteman (78 Old Point Road) DEP #050-1271 – a partial COC for dune grass plantings;

Vote: Partial COC – dune grass is done.

Member Rimmer: While issue Partial vs. full. I honestly think it sounds like something we did, grass field, now they did dune grass – always fails, takes another year.

Vote: assume that's what happened.

Member Gahagan: looking at 78 aerials to see.

Member Duffin: Demolition of very decrepit house, small house built on pilings, planted dune grass on both sides – pattern of plantings are not what I would have done, but they will be fine. They planted dune grass on both sides. 100% of the sand is covered w/dune grass. It's good.

Member Gahagan made Motion to approve the project. Member Streeter seconded, Member Duffin recused himself (new member), all others in favor.

Extension Permits: NONE

Emergency Certificates: NONE

Re-Issuance: NONE

Enforcement Order: Justin Leonard (3 Southern Blvd PI) discussion of enforcement order.

Other Business: Meeting Minutes: meeting minutes from March – May are in drop box, we need to review them and approve them. We will review the drop box files of meeting minutes for the next meeting.

Member Gahagan made motion to adjourn the Hearing; seconded by Member Rimmer. Meeting ended at 9:26 pm. All in favor.

REMINDER: *The listing of matters is as those reasonably anticipated by the Chair, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.*