

## **Town of Newbury**

### **Conservation Commission Meeting Minutes**

**Location: Newbury Town Hall Offices, 12 Kent Way, Byfield, MA – 2<sup>nd</sup> Flr. Conf. Room**

**August 3, 2021**

#### **Roll Call:**

Chairman Brian Colleran; Co-Chair Ben Gahagan; Members Mary Rimmer, Frank Wetenkamp, Dan Streeter, Planning Director Martha Taylor, Conservation Agent Samantha Holt

Absent: Members Brad Duffin, Peter Paicos

Next Regularly Scheduled Meeting Dates: 9/7/21

Meeting opened at 7:03 pm.

#### **Minutes for Approval:**

February 16, 2021

February 23, 2021

March 23, 2021

March 30, 2021

April 20, 2021

May 11, 2021

#### **Public Hearings:**

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

Christopher Connolly is present representing himself. Gave brief description - retaining wall system that was there, 60 plus years according to neighbors - bought house 4 years ago, 43<sup>rd</sup> is elevated higher than 45<sup>th</sup> Street about 6-8 ft, there is a retaining wall that is holding up the driveway, failing and falling forward and breaking, hired contractor from Framingham – week of July 4<sup>th</sup> – removing old wall, old concrete set of stairs – hauled all that off site; on the opposite side of the yard there were a lot of plants there that didn't belong in the area, ground covering, there was a tree, burning bush, lots of honeysuckle, beach rose, so I just had him clear it all out, then when they come back in September when it's cooler out we plan on planting some native plants in there so it looks nice. One of the neighbors called the Town, the Conservation Agent Kara Campbell came out on the day we were completing the wall, and informed us that we needed to go before Conservation and file a permit.

Member Rimmer: Mary was on the island today, so she visited the site, and met the woman that manages the building. She saw the work being done, but she hasn't seen a plan. There is a fair amount of work that has been done in a fairly large area, and an RDA seems insufficient to me for all the work done. There is large area of vegetation on the dune that has been cleared.

There's a new retaining wall that has been constructed, and there are some areas that have been recently graded for a new driveway area. Samantha, do we have a plan on file for this project? No, just screen shots of the aerials of the site- it was submitted online.

Christopher Connolly: I came into the office and filled it out online with Kara. She generated the maps for me, 22' long, 4' high, cuts in about 4'. There was a walkway with stairs that had concrete and there was a concrete wall that was on the right side of those stairs, which are no longer there. We put in stone, and finally when we put in seashells, we just can't get them right now.

Member Rimmer: The problem is that we can't approve anything based on a verbal description, we need to see it on a plan, and we need to determine if it applies with the Wetland Protection Act and the Plum Island environment. You are stuck in the middle of changing staff and everything else that's happening in the Conservation Department, no fault of your own, and my recommendation would be to issue a Positive Determination, require a Notice of Intent, and receive a proper filing.

Member Wetenkamp: I agree, without a plan, how do we know.

Christopher Connolly: I can show you pictures of what was there before and what it looks like now, it's considerably smaller scope.

Member Rimmer: That would be good to provide that before and after plan with the filing of a Notice of Intent.

Member Gahagan: We realize you may not be familiar with the Wetlands Protection Act and activities on Plum Island, so what we are trying to say and prevent is issuing you an Enforcement Order to take remedial actions immediately, given what's happened, and what should have happened the best way to move forward is to stop work immediately, then Samantha can assist you in getting together everything you need to file a Notice of Intent, and unfortunately a higher filing fee, but given the level of work being done, and the fact it's being done on Plum Island, requires the filling of a Notice of Intent.

Member Rimmer: Unfortunately, you should hire a surveyor to do a plot plan of your property showing where the retaining wall is, what the elevations are, the condition of the property you are requesting, the final condition of the property, so we can use that to base our decision on.

Member Streeter: Other elements are a planting plan, very useful, to inform us what you plan on planting/putting in.

Member Rimmer: Do you know what kind of plants were removed?

Christopher Connolly: There was a whole giant oregano patch, plus other crazy stuff, with about 100 rabbits living underneath all the thorny bushes and honeysuckle.

Member Rimmer: what we can do right now is request the information of plot plan and planting plan by October 1<sup>st</sup>, and continue the Hearing to October 5<sup>th</sup>, and issue a Positive Determination with the Notice of Intent due in time of the deadline for the first meeting in October.

Member Rimmer made the Motion to Issue a Positive Determination, with the Notice of Intent due by September 21<sup>st</sup> by noon to be placed on the Agenda for the 10/5 Hearing. Member Wetenkamp seconded the motion; 5 Yea / 0 Nay – 2 Members absent.

**Michael Kirkpatrick (8 12<sup>th</sup> Street) DEP File# - Not assigned yet** - an NOI to build a 9' x 15' shed on property. Pilings will be required to raise the shed 2' off the lowest elevation;

The applicant Michael Kirkpatrick has requested a continuance to the next hearing due to an issue with abutter notification. Continued to the 9/7 Hearing.

Member Streeter made the motion to continue the hearing until 9/7. Member Rimmer seconded, 5 Yea / 0 Nay – 2 Members absent.

**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 13<sup>th</sup> meeting;

Ben Osgood, Senior Engineer at Ranger Engineering & Design is representing the applicant. Attorney Doug Deshaine is also present. Ben provided a brief summary of current events and the project for Member Paicos to update him; Site visit was conducted, members present, 24 unit housing development accessed from Pearson Drive, limited project filling to access the upland areas on the site. Replace 1.5 times the wetland filling; balance of project is a Buffer Zone project; wetlands on north side; the C-series wetlands are on the east side; there is a section of Land Subject to Flooding; there is an Isolated Wetland, but it is not jurisdictional. The Isolated Land Subject to Flooding is jurisdictional, but the work avoids any impact to the Isolated Wetland or the ILSF in that area. Stormwater efforts in place, underground detention storage into a detention pond in Buffer Zone, detention treatment system, discharges to north wetlands; discussion on vernal pools – one vernal pool – overlaps the property, most of it is on the Martin Burns Reservation property, we meet all the requirements for the offset to the vernal pool. With regards to the possible vernal pool on the property, since the last hearing, Natural Heritage came out to investigate it, and determined that they don't have enough information to certify it. Three formal submittals, one other informal submittal, NHESP states they cannot certify it as a vernal pool.

Open discussion to Commission:

Member Streeter: in all previous reviews of the project, was there any commentary on the retaining wall in the northwest corner of the property? What is the distance between the vernal pool and the retaining wall? How tall is the retaining wall?

Ben Osgood: Approximately 35' from the edge of the vernal pool. It is 8' at its highest point.

Member Streeter: Does that meet the standards?

Ben Osgood: The vernal pool doesn't have an offset that states it can't be any closer than this as far as work is concerned. The requirement is that stormwater from impervious surfaces cannot flow towards the vernal pool. So, we have roofs, driveways, so the purpose of the retaining wall, which we added, it wasn't there originally, after a review with the Town's consultant, they said that the stormwater needs to go the other direction so that retaining wall raises the land and allows the stormwater to flow away from the vernal pool. There won't be any stormwater coming from pavement or roofs which could possibly provide pollution to the vernal pool. All flows will go through the stormwater system and into our treatment systems. There is no offset requirement for the retaining wall, but, it does stipulate that stormwater cannot drain into the vernal pool and stormwater management structures need to be at least 100' from the vernal pool. The question has come up about the amount of area that drains into the vernal pool, we are taking water away from the vernal pools, we had actually done a calculation on a map way back in the beginning. This vernal pool has an approximately 18 acres drained into it from the Martin Burns Reservation, and what presently from our site drains into that vernal pool is 0.9 acres. We are not taking much water away from the vernal pool, so it will continue to remain and function as a vernal pool.

Member Gahagan: I still have questions I brought up before – the need to put the restored wetland on the northwest side of the current wetland. It's a Series A wetland, why can't it be on the development side of things vs. the Martin Burns Reservation.

Ben Osgood: We had it over there, but from the review engineer, LEC, Ann Marton wasn't comfortable putting replacement areas in an area where there's already been a continuing violation that we are fixing, and she thought it would be better on the other side where it wouldn't be disturbed or encroached upon. There is no chance for encroachment on that wetland replacement area.

Member Gahagan: I understand but why couldn't you place it on the side with the treatments and everything else on the west /north side of your planned road?

Ben Osgood: We have a vernal pool in that area, we can't go near the vernal pool, we have to cross in this location, we have to capture stormwater at the lowest spot, it just isn't an area where we can place the wetland replacement area, we can't use the wetland replacement to also deal with stormwater so we had to run the road where we did, and it's just geometrically impossible to put it there. We were asked to move it to the other side. We will use mats, it will

be a 30' long mat placed down to cross the wetlands, it will span that wetland, the trucks will drive over it, they won't disturb any of the soil or vegetation, and when the mat is pulled, the vegetation will just grow back. Just setting the mats on the ground and it won't have any real disturbance to the wetlands below it.

Chairman Colleran: There are two things that I feel need to be covered. One is the vernal pool you mentioned; you had NHESP out a few times, I'd like to get NHESP involved, and actually get copies of all the correspondence between everyone on the project, and the abutters just to get the full picture of what they have been doing, there is enough back and forth disagreement between the various parties, I'd like to bring the source in to deal with that.

Ben Osgood: Gave contact name of Jacob Cobble as NHESP contact, he is happy to correspond by email. I'm not sure he will come to a meeting. He is happy to speak with anyone who has questions, just contact him. Ben provided the email that Jacob sent with his contact info.

Chairman Colleran: Sam, this will be your responsibility – contact him and state the Town has this set of data, the abutters have a different string of data and communication, and they are coming to different conclusions about the same issue – we need to discuss it and come up with a resolution in the middle so both sides can agree.

Ben Osgood: The abutter in question trespassed on the property, did his investigation, and submitted his findings to NHESP in April, and was denied. There isn't conflicting evidence, there is an answer from NHESP that the abutter didn't like.

Chairman Colleran: To avoid any debates on who is right, we would like the 3<sup>rd</sup> party, NHESP, to tell us themselves.

Attorney Doug Deshaines: As I recall as part of the comprehensive permit application the Zoning Board was in fact acting as the Conservation Commission if you will for the local regulations. I do know that they provided the Commission all of the information that they had received, we received a letter from Mr. Packard thanking us for supplying all that information and we did get some comments in that regard, the Zoning Board made it very clear that they didn't want us to wait until we filed our Notice of Intent because they were aware that the Notice of intent wouldn't be filed until we got through the comprehensive permit process, and they were very explicit in their requirement that they didn't want to wait. They wanted to do a complete review of not only the stormwater, but also the whole project with respect to both the local regulations and the Wetlands Protection Act. We acquiesce to hiring LEC, Ann Marton, we understood that they have provided peer review services to the Town in the past, and were well respected, and were in fact directed to use those parties. LEC then underwent a very comprehensive peer review, and that they held us to answering and addressing all of the comments and questions that were in Mr. Packard's letter, which I assume the Commission was aware of. Quite frankly held us to the letter of the law with respect to both your local regulations, and those governed by the Wetlands Protection Act because the Zoning Board

wasn't going to make a determination. So to say it was a process unlike what Conservation would do (cut off by Chairman Colleran).

Chairman Colleran: This may in fact be a complete duplication of the exact same work that Ann Marton did and she or whoever you hire may come to the exact same conclusion.

Attorney Deshaines: Why doesn't the Commission read the report from Ann Marton – it is very extensive, and it may just answer all your questions. We spent a considerable amount of time determining where these replication areas should go. We had proposed them in the location that you suggest, but was advised by LEC to move them. My client is extremely disappointed that he may have to pay for another peer review that's going to provide the exact same information, and quite frankly I don't believe it is fair, but, nevertheless, there could be a solution that to the extent the Board after reviewing Ms. Marton's review and what she concluded and what she made us do to meet the rules and regulations. If you read the report and feel that there is something that wasn't addressed, perhaps the Commission utilize Ms. Marton to do a supplemental or additional review vs. the full-blown peer review.

Commission discussion on how the members feel about the peer review; all in favor that the peer review should be read in full by the Commission, and that if they feel that some of the Conservation questions/comments were not addressed in the peer review, to bring LEC in to address those additional Con Comm concerns.

Martha Taylor: Did the Commission read the Zoning Decision on the comprehensive permit because that also has Conditions in it regarding the wetlands and that in addition to reading what Ann Marton provided, I think that might be useful. Martha will provide the Commission with a copy of the ZBA Decision.

Chairman Colleran: We will read the report and the ZBA Decision, and come up with questions, concerns, and issues that were left out and advise. We will put together a list of what is missing by the next meeting so that the applicant can address those additional questions.

Attorney Deshaine: It would be beneficial to have Ann at the next meeting, as you come up with questions, we reply, Ann can listen, very beneficial.

Chairman Colleran: Let's figure that out administratively.

Meeting opened to floor for public comment:

Dan Lyndon, 68 Pearson Drive: We had a letter submitted on behalf of the neighbors from our attorney, and I haven't heard any discussion on the list of issues that were put forth.

Chairman Colleran: That will be discussed at the next meeting.

Dan Lydon: With regard to the 100' boundary, it is relevant here and I am a little confused about the interpretation of the WPA because there are other towns like Ipswich that have a 200' buffer zone, that's a town bylaw, right? So they are stating 200' vs. the state's mandate of the 100' boundary as put forth in the WPA. The reason for that is that the 100' buffer is a joke. 100' of habitat around a vernal pool is not enough. We are not saying there needs to be more, in this case we really can't enforce more, but you can enforce the 100', it's in the WPA. The wildlife management area is a protected area owned by the state. You have a design that doesn't make sense for the property. From the beginning, there have been changes, but they haven't changed the design for 24 units. The property cannot support 24 units. Cut the number of units in half, and design it the proper way so that you don't have to be exempt from any kind of wetland protection bylaws or anything that would result in a decrease in the function of the habitat there. That land in the middle, the Isolated Land Subject to Flooding – Mary surveyed it in 2017, she found tadpoles, wood frogs, hundreds of wood frog tadpoles, and a later visit found metamorphs. Those are two pieces of evidence for a vernal pool. That was submitted and was deemed equivocal by NHESP for reasons that have not been made clear. We want to know why with all the wood frog masses and metamorphs, that is clear evidence for the ruling of a certified vernal pool. We need clarification. Mary followed up this spring and found wood frog egg masses. The vernal pool guidelines have information about obligate and facultative species. Obligate species are wood frogs spotted, salamanders which cannot breed anywhere else. A facultative species would be spring peeper where they can breed in many different places. Why would we care about facultative species in a vernal pool habitat? If we aren't willing to protect a wetland that is vernal pool like but maybe not a high-quality vernal pool. What we have is wood frogs successfully breeding in the vernal pool. Two potential solutions – treat it as the vernal pool it is, NHESP stated that Conservation Commissions have the authority to do that, which would decrease the impacts and reduce the number of units, or conduct a long-term study to evaluate the ILSF in the middle. Those are two potential solutions. We would appreciate it if the concerns raised in our letter submitted at the last meeting can be addressed at the next meeting.

Melissa Goldner, 19 Pearson Drive: Just wanted to add that I perked up when the developer did a visit between the last visit and now, the vernal pool is a spring time event, and not finding a vernal pool now, isn't validated. Thank you for your due diligence.

Dan Lydon: the abutters did receive a letter from the attorney about trespassing when taking samples from the vernal pool, that vernal pool crosses a stone wall that goes onto an abutting property, so all our sampling was done on the abutting property, so no trespassing was conducted.

Chairman Collerman: We have a list to do, read the peer review, Sam will contact DEP on regulations, emails back and forth over Ann Marton information, Martha to give ZBA Decision to Sam to distribute. We will give Sam our input from our reviewing of the peer review for the next meeting so that we aren't duplicative at the next meeting.

Ann Marton made a few suggestive Conditions, and Zoning added them to the Decision.

Member Gahagan made Motion to continue the meeting until September 7<sup>th</sup>; Member Streeter seconded, approved by all - 5 Yea / 0 Nay – 2 Members absent.

**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 13<sup>th</sup> meeting;

TJ Melvin with Millennium Engineering present representing the client; site walk conducted, walked the resource areas on the site; question at the site walk was connection between the Isolated wetland and the BVW on the Parker River.

Mark West: what kind of connection is this? Stream? Not? Mark was out 4 different times, twice in September of 2020, and March 26, 2021; and then again on 5/12. I know it was drying out in May, dry in June. Mark took pictures May 12<sup>th</sup> – picture locations, then four pictures showing what it looks like in May. Even the fact that no leaves had moved the entire fall, winter, spring, no indications of a spring. It seems like this is a one or two events in a year, just a flow path. To me, there is no real stream on any regular basis. Just one major event had pushed the leaves a bit.

Chairman Colleran: Photo 3 – leaf movement, not a stream; site walk point – I think though when we continued walking, every minor depression that we walked through, I looked for the minor catchment, through the rocks, no wetland upstream, nothing even vaguely “100-year storm” every two weeks – precipitation –

Member Gahagan: Pulled out the stream gauge for the Parker River, was ridiculously dry period, up until the June rain. I thought it was connected, saw a connection, during the site walk.

Member Wetenkamp: Missed site walk, any questions? How does this impact the plan?

Member Rimmer explained the ANRAD process to Frank: ANRAD process, to confirm wetland boundary, that green wetland island, if that doesn't connect downgradient, it isn't jurisdictional.

Member Rimmer: My opinion, my experience with DEP, intermittent stream needs to have channel forming, can't die into ground, has to have defined channel from Point A to Point B. Very stony, clear there was water flowing from wetland above to wetland below, in barest sense, my take was there wasn't enough there to call it a channel. There isn't a min or max time frame that it has to flow, (annually) has capacity to convey flow from Point A to Point B.

Mark West: If you look at other descriptions of streams, over the ground, scouring the ground, that's what this didn't do.



Member Rimmer: WPA – two sentences on what a stream is. Gave the applicant an indication of what way the Commission is leaning towards.

Member Streeter: I was on site walk, learned a lot, close call, limited evidence of any substantial movement.

Chairman Colleran: borderline on decision – 3<sup>rd</sup> party review of what a stream is under the WPA. I call it a stream.

Meeting opened to the public: No public comments:

Mark West: either is or isn't connected, either is a stream, or isn't a stream. We could hire a consultant, for a second opinion. What is the most accurate description.

Chairman Colleran: Perennial intermittent at best. Channeled column, with Bank and sediment movement. Discussing it regulatorily. MA needs to better define.

Member Rimmer: have to come back with revisions to the plan anyway, if you have a third party review, ultimately the decision is up to the Board.

Mark West: We will likely come back keeping this as isolated for the proposed ANRAD with the additional changes to the plan the Commission requested.

Member Rimmer: We need the information on ILSF at the next Hearing.

Member Gahagan made motion to continue the Hearing until 9/7; Member Streeter seconded, 5 Yea / 0 Nay – 2 Members absent.

**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 13<sup>th</sup> meeting;

No one present representing the applicant:

Agent Holt: Have copy of letter from DEP to applicant that more information is needed with regard to elevations, sourcing of sand, more detail that DEP has requested.

Commission to contact applicant with project status question.

Member Streeter made motion to continue the Hearing until 9/7, with the Commission reaching out to the applicant for project status update. Member Gahagan seconded. 5 Yea / 0 Nay – 2 Members absent.

**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 13<sup>th</sup> meeting; waiting on DEP number.

Member Rimmer: Recused herself.

Conservation Agent Holt stated that the DEP File# listed is not 050-1355, but 050-1361.

Member Gahagan made Motion to approve the project with the Special Conditions discussed in past meetings; Member Wetenkamp seconded, Member Rimmer recused, 4 Yea / 0 Nay – 2 Members absent.

**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 13<sup>th</sup> meeting;

Mike DeRosa of DeRosa Environmental representing the Town/Project: Since the last meeting, we went through the MEPA process, received MEPA Certificate, we had rip rap at the crossing, increasing the size of the culvert at Orchard Street, took rip rap out, provided with a salt marsh restoration plan, those are the two major changes – no rip rap in the restoration and we are requesting the OOC, then we will file for the 401 and the ACOE permits. The Commission suggested speaking with Tom Woodruff, Director of Facilities – The Governor’s Academy – regarding the direction of the detour – his only concern was the pedestrian crossing, so they will be looking at that closely. Division of Marine and Fisheries had a time restriction from March – June so we will comply with that. MA DOT approved the plans also. It is just outside of NHESP’s jurisdiction.

Member Rimmer: Mike, there are a number of DEP Comments, have those all been addressed?

Mike Derosa; Yes, we addressed all of those concerns with Pam Merrill, and she submitted her final comments as part of the MEPA process, and those were the rip rap issues and the replication area.

Member Rimmer: Are you comfortable enough that the slope with be stabilized with no rip rap?

Mike DeRosa: Yes, the engineers looked at it and stated it won't be a problem. It will be supported by columns that will be set pretty deep.

Commission: Construction schedule? It will be outside of March – June. Funding from the state from resiliency money.

Member Rimmer: Did you commit to any monitoring protocol through the MEPA filing or the Notice of Intent? As far as the salt marsh goes?

Mike DeRosa: It can be included in the Conditions.

Member Rimmer: You are not creating new salt marsh, just restoring?

Mike DeRosa: Yes, just restoring. You can use the standard Condition time frame of two years.

Member Streeter: Looks like the MEPA review with Pam Merrill addressed all the questions and concerns we would have had.

Member Rimmer: We need a construction schedule when available, 72 hour start notice to inform, have eyes on it, pre-construction meeting, standard boiler plate Conditions.

Provide:

- Construction Schedule
- 72 Hour Advance notice
- Monthly reporting during construction activities
- Two years of monitoring the salt marsh to state it's successfully re-established. 75% minimum coverage – salt marsh species. No stockpiling of material within 100' of resource area.

Member Gahagan made motion to approve the NOI with the Conditions that were discussed; Member Streeter seconded, 5 Yea / 0 Nay – 2 members absent.

**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 of Hughes Environmental Consulting present to represent applicant; requested a continuance for this Hearing until 9/7.

Member Streeter made a motion to continue the hearing until 9/7. Member Rimmer seconded. 5 Yea / 0 Nay – 2 members absent.

**Nathan Gray (21 Cottage Road) DEP# 050-13##** - a continued NOI/Enforcement Order 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 the 7/13 Hearing.

Commission not sure if Enforcement Order was issued/sent; letter was never sent.

Agent Holt to look for the Enforcement Order letter, see if it was ever sent, get Nathan Gray to come to next meeting and explain what is going on.

Member Rimmer: Made motion to continue Hearing until 9/7; Member Streeter seconded, 5 Yea / 0 Nay – 2 members absent.

### **COMMISSION DISCUSSION:**

#### **Certificates of Compliance:**

Kassandra Galipeault (25 Northern Boulevard) DEP #050-1345 – Certificate of Compliance; was originally issued to add a 2<sup>nd</sup> floor addition to already existing single-family home, work never completed, never started, site visit, no work done. Owners trying to sell house now, work never started, homeowners requested the OOC closed out.

Member Gahagan made Motion to close out the Order. Member Streeter seconded. 5 Yea / 0 Nay – 2 members absent.

Jennifer DiCarlo, Representative (3 35<sup>th</sup> Street) DEP # 050-72 – Certificate of Compliance; Jennifer is the attorney for the seller; currently trying to sell property – open OOC from 1983 – originally issued to replace a wood foundation on house with concrete foundation, work never done, site visit, never done – request to close out the OOC.

Member Rimmer made Motion to close out the OOC. Member Gahagan seconded, 5 Yea / 0 Nay – 2 members absent.

**Extension Permits: NONE**

**Emergency Certificates: NONE**

**Re-Issuance: NONE**

## **Enforcement Orders:**

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

Justin Leonard present representing himself

General update: Member Rimmer: Commission suggested withdraw the NOI, keep the Enforcement Order, get the work done.

Justin Leonard: restoration of dune vs. restoration of parking area. – Visit from Holt 4/29; would love to have parking area back, but that cannot happen. Waste of time and money on his part.

Originally, went from Doug Packard to Bill Holt, sent out NOI to DEP, sent out abutters, everything sent out, I gave, I did. No one ever answered Justin's questions, he is very fed up with this.

3<sup>rd</sup> generation in house – gravel there, yep, you are right, parking area there, water and sewer installation – been told non-conforming, but haven't been told why it's non-conforming, and no one provided any info to applicant.

Photos – emails that went through Conservation – have tons of photos. –

Grandfathering situation – sand blew in, dune took it – was time to shovel out driveway, wasn't done.

Dune long enough, can't dig it out. What is the time frame? How long did I have to dig out the parking area?

Member Rimmer: it's the condition of the resource area at the time of filing. Parking lot was considered dune at time of filing, and at time of filing was a dune, not parking lot. Two choices: Hire someone to finalize the permitting, not complete, defend parking lot. Or, accept the Enforcement Order, and do the work that the Commission stipulates needs to be done: area has to be replanted, loose the parking area.

Justin Leonard: April 29<sup>th</sup> – Bill Holt – filing to restore the dune, not the parking area, Sam has copy of sketch. Intention of sketch was part of the original NOI.

Chairman Colleran: The Enforcement Order was never issued – in the letter the Commission writes to the applicant with the Enforcement Order, the Commission will state what needs to be done. Directed to do the work shown on the plan by December 1, 2021; document that the work is completed by sending the Agent an email of what was done with pictures for proof, Agent will close out the E/O.

Commission will state December 1<sup>st</sup> for deadline to get the restoration work completed – applicant will send an email to Samantha that restoration planting is done, show pictures of planting – what constitutes clean sand? Bentley Warren Presby sand. Plum Island sand.

5 cubic yards of sand – 315 plugs of beach grass – where can he purchase it? Pearson nurseries.

Member Rimmer: Made motion to issue the Enforcement Order completing the work described on the plan with the work described in the plan for the restoration efforts to the dune being completed by December 1<sup>st</sup> with an email to the Commission – Commission will identify potential sources of plant material and sand. Member Wetenkamp seconded, 5 Yea / 0 Nay – 2 members absent.

**Other Business:** Bylaw discussion. Chairman Colleran: Not enough time to get this done before next Board of Selectmen meeting.

Letter to new homeowners on Plum Island: create a letter to new homeowners explaining to them that they purchased a house on Plum Island which is a resource area, and if any work plans on being completed, permits are required, suggest stop in Conservation Office and speak with Agent or Director of Inspectional Services – public outreach and educational program for new homeowners?

Please just don't know what they are getting in to. Active outreach.

The Realtors are another point of contact, they should be informing their clients of the issues, of course they don't want to apprise the potential buyers of this situation.

Continue discussion until future Hearing.

Chairman Colleran: The dock policy we were discussing; - does Sam have the latest greatest copy for posting.

Member Rimmer to send the revised Dock Policy to Samantha for posting. Docks are in ACEC areas.

Member Gahagan made motion to adjourn meeting; seconded by Member Streeter: Meeting adjourned at 9:26 pm.

**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.*