

Newburyport Conservation Commission
Minutes of the May 4, 2010 Meeting

1. Call to Order

A regular meeting of the Newburyport Conservation Commission was called to order by Chair Joe Teixeira at 7:00 p.m.

2. Roll Call

In attendance were members Joe Teixeira, Dan Warchol, Steve Moore, Doug Muir, Mary Casey and Jannell Zarba and conservation agent Mary Reilly.

3. Minutes

Steve Moore moved to approve the minutes of the April 20, 2010 meeting as amended. Doug Muir seconded the motion. The motion was unanimously approved.

4. Requests for Certificates of Compliance, Requests for Determination and Requests for Minor Modifications

James Miller

9 Basin Street

Request for Certificate of Compliance

DEP File #051-0767

The wooden framework has been removed. Steve Moore moved to issue a Certificate of Compliance. Mary Casey seconded the motion. The motion was unanimously approved.

Sheri Knight

10 Frances Drive

DEP File #051-21, DEP File #051-91, DEP File #051-267

The property is located in the Kelleher Pines subdivision and is being sold by the owner. There were general conditions for the subdivision as a whole recorded on the deed. Mary Reilly visited the site with the applicant's attorney and found that there are no obvious violations. The applicant had previously received a Certificate of Compliance for the house. Steve Moore commented that there are three different addresses on the forms and none of them refer to 10 Frances Drive. Mary Reilly said the Certificates of Compliance would reference only 10 Frances Drive. Dan Warchol moved to issue Certificates of Compliances for 10 Frances Drive, DEP File #051-21, DEP File #051-91 and DEP File #051-267. Jannell Zarba seconded the motion. The motion was unanimously approved.

Bob and Kim Richards

4 P Street

Request for Determination of Applicability

The RDA is for a shed and fence that were installed without permission. DEP issued a superceding Order of Conditions for the house and has not yet issued a Certificate of Compliance. Joe Teixeira read a letter submitted by Jack Van Loan stating the applicants have exceeded what was allowed under the Superceding Order of Conditions: the driveway is larger than it was supposed to be and is located where a replication area was to be, native plants have been removed and loam, mulch and ornamentals added and the fence extends to the ground. The Commission cannot comment on most of the issues raised in the letter because of the Superceding Order of Conditions. The shed should not be a part of the RDA because it is being

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considered by DEP. The fence and plantings are outside of the jurisdiction of DEP because they are located in the City's right of way. The applicant said the fence replaced one that had previously existed in the same location. The spacing of the pickets is 2:1. The fence must be raised to be at least 2" above grade along its entire length, which was the guideline at the time the fence was installed. The requirement cannot be achieved by removing the sand from underneath the fence. Doug Muir said he does not want to comment on the plantings, as they are not a part of the RDA. The applicants were told they are only allowed to plant species that are native to barrier islands. Mary Reilly will provide a list of acceptable materials. Doug Muir moved to issue a Negative 2 Determination for the fence with the condition that it is raised at least 2" above ground along its entire length. Dan Warchol seconded the motion. The motion was unanimously approved.

Arthur and Sandra Manley

266 Water Street

Request for Determination of Applicability

Dave Ouellette appeared for the applicants, who are proposing to construct an addition on their home and alter the landscaping. The entire site is in the river zone and is within the 100-foot buffer zone of the salt marsh. Mr. Ouellette said the elevation of the site is above land subject to coastal zone flooding. The applicants wish to remove an existing gravel parking area and a block driveway and patio. A garage, brick driveway and bluestone patio are to be added. There will be a net increase of impervious ground cover of 725 square feet. A rain garden will handle runoff from the roof and patio. Steve Moore said he is concerned with the runoff. The applicants may be required to file a Notice of Intent rather than an RDA. A decision on this will be made after a site visit, which will take place on Friday, May 7 at 5:30 p.m. Steve Moore moved to issue a continuance to May 18. Mary Casey seconded the motion. The motion was unanimously approved.

Rod L'Italien (Circle Finishing, Inc.)

19 Graf Road

Request for Determination of Applicability

Michael Seekamp appeared for the applicant, who is proposing to install solar panels in the industrial park. The purpose of the RDA is to determine if there are jurisdictional wetlands on the property. Mr. Seekamp said that Port Engineering delineated the wetlands in 1993 and 1989 and found there to be bordering vegetated wetlands. He believes that conditions have changed in the industrial park since then and the wetlands are instead isolated. If so, the Commission would have no jurisdiction over them. The project would disturb 4,971 square feet of the wetland, which Mr. Seekamp said is a low functioning one with no significant wildlife habitat. Orders of Conditions had previously been issued for two phases of the project, but no Certificates of Compliance were issued or as-built plans submitted. A site visit will take place on Wednesday, May 12 between 5:00 and 6:00 p.m. Mary Casey may have to recuse herself from the procedures. The applicant decided to keep the panels outside of the 100-foot boundary due to time constraints. The Commission will need only to determine the location of the boundary. Steve Moore moved to issuance a continuance to May 18. Joe Teixeira seconded the motion. The motion was unanimously approved.

5. Public Hearings

Steve Moore moved to recess the meeting and open the public hearings. Joe Teixeira seconded the motion. The motion was unanimously approved.

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Newburyport Pentecostal Assembly

13 Hale Street
Notice of Intent
DEP File #051-0843

John Hargreaves appeared for the applicant. A Notice of Intent had previously been filed for the construction of a building, two detention ponds and a parking lot. Only a portion of the parking lot was paved and the Order of Conditions has expired. The Notice of Intent is for the completion of the parking lot. Mr. Hargreaves said the detention ponds that were constructed are adequate as they were sized to handle runoff from the whole parking lot. There are invasive species on the site. The applicant must submit a plan for them to be controlled in perpetuity. Dan Warchol moved to close the public hearing. Steve Moore seconded the motion. The motion was unanimously approved.

Newburyport Harbor Marina

51 Merrimac Street
Notice of Intent

Tim Sullivan appeared for the applicant. An emergency certification had been issued for storm damage to the site. There was an immediate need to repair to the bulkheads. Erosion control was installed and debris was removed. Additional work to stabilize the site is needed. The emergency certification will expire May 24. A site visit will take place on Wednesday, May 12 at 6:15. Dan Warchol moved to continue the public hearing to May 18. Steve Moore seconded the motion. The motion was unanimously approved.

Steve Moore moved to close the public hearings. Doug Muir seconded the motion. The motion was unanimously approved.

6. Orders of Conditions

Newburyport Pentecostal Assembly

13 Hale Street
Notice of Intent

Doug Muir moved to issue an Order of Conditions with conditions that Mary Reilly approves the plan to control the invasive species and the plan is in place in perpetuity.

7. Other Business

The draft letter to the Mayor about the use of the wetlands protection fund was reviewed.

A letter was received from Robert Lake of Lake Manufacturing stating that he would not allow chemicals to be used on his property as part of the phragmites control for 2 Opportunity Way.

8. Adjournment

The meeting was adjourned at 9:45 p.m.