



## CONSERVATION COMMISSION MEETING MINUTES – February 22, 2016

**Present:** Scott Mclsaac- Chair, Eldon Abbott- Vice Chair, John Morrissey, Frank Gaul, Bob Mosher, Laurie Freeman, Michael Ide, Loni Fournier- Conservation Officer and Polina Supin- Asst. Conservation Officer

**Meeting was called to order at 7:03 PM.**

### Approval of Minutes

**Motion:** Commissioner Morrissey motioned to approve the minutes, as amended, from the January 25, 2016 Commission meeting.

**Second:** Commissioner Mosher                      **In Favor:** All                      **Opposed:** None

### Requests for Determination of Applicability

#### 55 Gilford Road

Applicant: Eugene Allen                      Representative: John Cavanaro

Proposed: Expansion of driveway and addition of vestibule

The Conservation Officer stated that neither the applicant nor the representative were present, per her advisement. The project will need to be continued to the next meeting because it is currently under review with Natural Heritage & Endangered Species Program.

**Motion:** Commissioner Ide motioned to continue the Request of Determination of Applicability hearing for 55 Gilford Road to March 7, 2016.

**Second:** Commissioner Morrissey                      **In Favor:** All                      **Opposed:** None

#### 55 Downer Avenue

Applicant: Stephen Dempsey, Hingham DPW

Proposed: Maintenance of existing easement

Stephen Dempsey, from the Hingham Sewer Department, spoke about the need to clear an existing sewer easement that runs along Downer Avenue.

The easement runs from the Broad Cove Pumping Station at 1 Downer Avenue to the intersection of Crow Point Lane and Downer Avenue, near Foster Elementary School. It is overgrown and needs to be cleared of brush and trees in order for staff and equipment to access the 18-inch gravity sewer main and related structures, for both routine purposes and in the event of an emergency. A 20 foot wide corridor, as well as several access points from Downer Avenue, will be cleared as part of this effort; the vegetation will be chipped and left on site.

Staff visited the site on 2/17/16. The sewer pipe runs underground, parallel to Downer Avenue. There are three access points (manhole covers) aboveground, within the wetland. The manhole covers are surrounded by brush, some trees

and phragmites. There is a stream running from a culvert under Downer Avenue, near the Broad Cove Pumping Station, to Broad Cove (perpendicular to the sewer main). A vegetated buffer will remain on either side of this stream.

The Conservation Officer suggested establishing a Memorandum of Agreement or Understanding (MOA/MOU) between the Sewer Department and Commission for future easement clearing projects, given the routine nature of the work and the known locations of the easements throughout town. The MOA/MOU would alleviate the Sewer Department from having to come before the Commission each time in order to do their work.

Commissioner Morrissey stated that the MOA/MOU was a good idea.

Commissioner Mclsaac stated that he believed something similar was done with another Town department in the past. The Conservation Officer stated that the Beach Management Plan was recently adopted and is a similar document in that it outlines what will be done in order to manage a resource and which entities should stay in communication with each other.

The Conservation Officer stated that, for this project, there is a stream nearby that she would like to see protected from the mower so the area can continue to be shaded. The Conservation Officer will schedule a site visit with the Sewer Department in order to flag the vegetation that should not be mowed.

Mr. Dempsey stated that the most of the sewer repairs done today are trench-less and can be performed by robots, such as lining the pipes. The Sewer Department has already sent a camera down the pipe in this easement and they did not see anything that would need to be repaired by disturbing the ground.

**Motion:** Commissioner Abbott motioned to issue a Negative Determination of Applicability for the work proposed at 55 Downer Avenue and adopt the findings of fact a and b and condition 1 of the staff report.

**Findings:**

- a. This project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act.

**Condition:**

1. Prior to the start of work, the Conservation Department and Sewer Department will flag the boundary of the vegetated buffer that will remain un-cleared along the edge of the stream.

**Second:** Commissioner Mosher                      **In Favor:** All                      **Opposed:** None

**Commissioner Mclsaac read the Public Hearing Notice of Intent.**

**Notices of Intent**

**246 Lazell Street – DEP 034-1245**, continued from 1/25/2016

Applicant: James McGorry & Alicia Secor                      Representative: Brad Holmes

Proposed: Driveway and associated improvements

Adam Brodsky, environmental lawyer, and Peter Palmieri, engineer, were present to continue discussing the proposed driveway and associated improvements. Brad Holmes, wetland scientist, had unexpected business to tend to and could not attend. The applicants were traveling and also unable to attend.

Since the last meeting, additional information was submitted to the Commission. The depth of the proposed rain garden could not be increased due to an existing tree on site. However, the stormwater processing area of the rain garden was

increased from 256 ft<sup>2</sup> to 307 ft<sup>2</sup>. The rain garden has approximately 490 ft<sup>2</sup> of planting area, 307 ft<sup>2</sup> of which is dedicated to processing stormwater.

In addition, an Operation and Maintenance Plan for the rain garden, a construction sequence, several special conditions and revised plans were also submitted.

Mr. Brodsky handed out a photo of the applicant's neighbor's car (244 Lazell Street) on snow covered driveway. He explained that the car was stuck at the bottom of the applicant's current driveway, a common driveway, during the last snowstorm. This prevented the applicants from being able to enter or exit from the common driveway and explained, in part, why they would prefer to have access to their property from their own frontage.

Mr. Brodsky summarized aspects of the project that were discussed at the last meeting.

Commissioner Mclsaac asked the Conservation Officer if she had any comments. The Conservation Officer stated that unless there were any edits to or questions about the special conditions, she was happy with what was proposed.

Commissioner Morrissey asked the Conservation Officer if she felt the project was an improvement to the wetlands. The Conservation Officer replied that she did not think it would harm them.

Commissioner Mclsaac restated his position that he felt the project would not have an adverse impact on the wetlands, but the issue was fairly black and white in terms of the 50 foot buffer being sacrosanct, including driveways. Commissioner Mclsaac went on to say that in terms of the other projects that were approved in the 50 foot buffer, he felt there was a need; and although the applicant's current driveway is outside of the Commission's jurisdiction, his concern was, as long as it was there, even if cars get stuck, he did not see the need for the proposed driveway and had a hard time approving it out of principle. Commissioner Mclsaac stated that he found it objectionable that the applicant's were not willing to remove their current driveway.

Mr. Brodsky recalled that the applicant's were asked about their plans for the current driveway at the last meeting and their response was that they had not thought about it yet. Mr. Brodsky stated if the Commission felt as though the plan for the current driveway was a critical issue, he would request a continuance so that he could ask the applicants if they were willing to remove it.

Commissioner Gaul stated that he agreed with Commissioner Mclsaac's position completely. He also felt the broader issue was that there seem to be people that come into town and purchase property with certain restrictions and after the fact, as was discussed at the last meeting, they have enough money to generally move the weights and get what they want. Commissioner Gaul went on to state that, from his perspective, he found the way the Commission was addressed at the last meeting, regarding this project, was somewhat disrespectful. At times he felt like there was a discussion, but then the conversation would revolve back to legal and he felt as though the Commission was being lectured to. Commissioner Gaul stated that he did not appreciate that or the way the members of the Commission were dealt with, or the people who put their time and hard work into reviewing the project.

Commissioner Morrissey stated that he had a different opinion, which came back to the question about whether the project had an adverse impact on the wetlands. He felt it was clear the wetlands would not be adversely impacted and he was prepared to support the proposal.

Commissioner Ide stated that he felt the Commission had a hard and fast mandate to protect the 50 foot buffer and 100 foot buffer; and even though it was suggested that there would be no impact, there was no absolute guarantee. He stated that there was a proposed mitigation that may or may not work, but the project was still violating the principle of not crossing the 50 foot boundary.

Mr. Brodsky reminded the Commission that if the wetlands were impacted as a result of the project, they would remain in the Commission's jurisdiction and be subject to enforcement and remedying any harm. He also stated that the Commission granted waivers for projects within the 50 foot buffer zone in the past, two of which were driveways.

Commissioner Morrissey stated that he understood there could be no guarantee in terms of adverse impacts. He also thought there was an agreement between Mr. Holmes and the Conservation Officer that, with the best scientific evidence available, there would be no adverse impacts. The Conservation Officer restated her position from the last meeting; she could not guarantee there would be no adverse impacts and she felt as though the applicants were using the best techniques, management practices and technology available in order to mitigate potential impacts to the wetlands and nearby stream. The Conservation Officer stated that her concern was that the mitigation would not be necessary if it was not for the proposed driveway.

Commissioners Ide and Mclsaac discussed the current driveway.

Commissioner Freeman indicated that she was also struggling with the project and could see both sides of the argument; that there was a very clear rule and it was the Commission's job to follow it, yet she didn't want to give the applicants a hard time for no good reason. In terms of Commissioner Mclsaac's question regarding "want" versus "need," she felt that while there might not be anything in the wetlands regulations about that issue, the Commission tries to be reasonable and not automatically apply the regulations exactly by the book if doing so does not seem to serve the purpose for which they were written. She felt that Commissioner Mclsaac was not seeing any reason to accommodate the project and that he was concerned if the Commission decided to not protect the 50 foot buffer "just because," it would nullify the regulations and set a precedent.

Commissioner Morrissey stated that he felt the purpose of the 50 foot buffer was to protect the wetlands and if the Commission could accommodate the protection of the wetlands at the same time as accommodating the homeowners, they would be upholding the regulations.

Commissioner Mclsaac stated that the applicants arguably went above and beyond what the Commission would normally ask of them in terms of mitigation, but the one area where they fell short was the overall gain or loss of impervious surface, which was one of the more common themes to the Commission's deliberations. He believed that in most cases, applicants agreed to remove impervious surface, yet in this case the applicants have stated that the current driveway does not meet their needs and, at the same time, they have not agreed to remove it. He also indicated that he was hesitant to make that a condition because the current driveway was outside of the Commission's jurisdiction. He concluded by saying his vote would be to deny the project, but that he would be open to approving it if he could be told why the applicants want to keep their current driveway or assured that it would be removed.

Commissioners Ide and Mosher discussed the proposed mitigation for the project.

Commissioner Mosher observed that if the applicants removed the current driveway, at any point in the future the driveway could be rebuilt without review from the Commission because it was outside of their jurisdiction.

Commissioner Mclsaac discussed approving, denying or continuing the project.

Mr. Brodsky apologized to Commissioner Gaul for potentially saying anything offensive at the last meeting.

Commissioner Mosher indicated that he felt the project would improve the area and if the current driveway did not exist, it would be a "no brainer."

Commissioner Abbott stated that he agreed with Commissioners Mosher and Morrissey and the applicants did a good job, but the issue came down to the fact that the Bylaws stated no new driveways in the 50 foot buffer zone. He also felt the project was an improvement over the current conditions, from the wetlands perspective.

Mr. Brodsky asked the Commission for a continuance so that he could confer with the applicants about their plans for the current driveway.

**Motion:** Commissioner Morrissey motioned to continue the Notice of Intent hearing for 246 Lazell Street to March 7, 2016.

**Second:** Commissioner Ide

**In Favor:** All

**Opposed:** None

**28 Crowes Lane – DEP 034-1248**

Applicant: Daniel & Christine Rodriguez

Representative: Jeffrey Hassett

Proposed: Addition to single family home

Gregory Morse, from Morse Engineering Company, Inc., presented the plans for several small additions to a single family home on Crowes Lane.

The applicant is proposing to construct two additions. One addition, to the north side of the house, will be a total of 495 ft<sup>2</sup>. The second addition, to the south side of the house, will be 61.8 ft<sup>2</sup>. Both additions will be outside of, but close to the 50 foot buffer zone. The porch, at the back of the house, will be converted into living space. The nearest point from the additions to the bordering vegetated wetland is 50.8 feet. All of the proposed work is within the 100 foot buffer zone.

Staff visited site on 1/27/16. The property is adjacent to a bordering vegetated wetland and vernal pool. Staff agrees with the wetland delineation line. The property is fairly flat and consists of lawn. Converting the existing porch to living space and increasing the footprint on the south side of the house will not adversely affect the resource area. Some landscaping will be removed in order to construct the proposed addition on the north end of the house, but the increase in the impervious surface on the property will not adversely affect the resource area.

The Conservation Officer indicated that her only concerns were a dumpster and portable toilet currently being staged too close to the wetland and she would like to see them moved outside of the 50 foot buffer before construction starts. She stated that this was a condition for approving the project.

**Motion:** Commissioner Gaul motioned to issue an Order of Conditions for the proposed work at 28 Crowes Lane, as shown on the submitted plans, with conditions 1-4 and adopt the findings of fact a and b of the staff report.

Findings:

- a. The project meets the requirements for issuance of an Order of Conditions under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. Provided that erosion controls remain in place until the disturbed area is permanently stabilized, work will not adversely impact the wetland values of the Town of Hingham Wetlands Regulations.

Conditions:

1. Prior to the start of construction, erosion controls shall be installed and inspected by the Conservation Department; straw wattles and/or hay bales will not be used as a form of erosion control.
2. Prior to the start of construction, the dumpster and portable toilet currently on site shall be moved outside of the 50 foot buffer zone.
3. Any debris which falls into the resource area shall be removed immediately by hand.
4. Erosion controls shall remain in place until all construction is complete and grass is established.

**Second:** Commissioner Freeman

**In Favor:** All

**Opposed:** None

**7 & 11 Merrill Street – DEP 034-1249**

Applicant: Edwin & Andrea Gillis

Representative: John Cavanaro

Proposed: Demolition of existing home and landscaping

John Cavanaro, from Cavanaro Consulting, and Sean Papich, landscape architect, presented the plans for demolishing existing home and adding landscaping at 7 and 11 Merrill Street.

The applicants are proposing to raze the single family home located at 11 Merrill Street. The house and adjoining decks and patios are within the 50 foot buffer zone to the coastal bank. A small portion of the house's foundation will be removed to accommodate the site improvements; the remaining portion will be filled in with clean fill. The existing driveway for 11 Merrill, the majority of which lies within the 100 foot buffer zone, will also be removed. Lawn and landscaping will replace the house, decks, patios and driveway at 11 Merrill. A 324 ft<sup>2</sup> free standing, covered deck will be constructed in the northwest corner of the property, within the 50 foot buffer zone. A retaining wall and fence will also be constructed within the 50 foot buffer zone to allow the applicants to level their expanded rear yard.

For the 7 Merrill Street property, the applicants are proposing to construct a 600 ft<sup>2</sup> addition to their existing garage, which will be located within the 100 foot buffer zone. A fence will run along the southern end of the property, closest to Merrill Street; the portion between the proposed garage addition and the main house falls within the 100 foot buffer zone. The retaining wall and fence from 11 Merrill will continue along the northern end of the property, within the 50 and 100 foot buffer zones.

The current stepping stone path on the southwest side of the property will be reconfigured to lead towards 11 Merrill; the stepping stones will remain within the 100 foot buffer zone. The stone patio behind the main house at 7 Merrill will be rearranged and slightly enlarged into a more rectangular shape; this work is mostly within the 100 foot buffer zone. The retaining wall, which supports the patio, will also be reconfigured; this work is within the 50 foot buffer zone. The applicants are also proposing to extend the existing pool patio, as well as reconfigure the existing retaining wall adjacent to the pool patio; both of these projects are within the 100 foot buffer zone. A stone path, within the 100 foot buffer zone, is proposed to connect the pool patio to the other stone patio. A proposed 162 ft<sup>2</sup> terrace with a gas fire pit and seat wall will be added to the northeastern side of the property, within the 100 foot buffer zone; this work will require some grading.

A new set of wooden stairs is proposed on the north central side of the two lots. The proposed stairs will be constructed within the 50 foot buffer zone and will end before reaching the coastal bank. The proposed landscaping includes five evergreen trees, as well as a variety of shrubs, perennials and ornamental grasses. Only one birch tree, on the northern side of the property and within the 50 foot buffer, will be removed as a result of the proposed work on the site. The total reduction of impervious surface is 2,314 ft<sup>2</sup> within the 50 foot buffer zone and 378 ft<sup>2</sup> in the 100 foot buffer zone.

Staff visited the site on 1/27/16. The property is well maintained and consists of mainly lawn and existing stone patios and a pool. There is a steep drop from where the lawn on the property ends and the beach. The sloped area is undisturbed brush. Staff believes the work proposed at 7 and 11 Merrill Street will not adversely affect the resource area. A planting plan has been submitted to the Conservation Department.

The Conservation Officer asked Mr. Cavanaro to describe the demolition process and what will happen to the utilities at 11 Merrill Street. Mr. Cavanaro stated that the plan was to take down the house to below grade and backfill the foundation with clean fill; the foundation walls were to remain in place. The debris will be removed from the property, not stockpiled. The sewer line will be cut and capped at the property line, in accordance with the Town's requirements. Any other utilities on the site will be disabled in accordance with the pertinent utility company standards.

Commissioner McIsaac asked if the house was serviced by natural gas or oil. Mr. Cavanaro believed that it was gas, but if it was oil, the tank would be removed.

Commissioner Abbott asked if the foundation would retain water after it was filled. Mr. Cavanaro indicated that the foundation floor would be broken apart to allow water to drain.

Commissioner Abbott asked how the fence would be secured the top of the retaining wall. Mr. Papich indicated that the plan was to use a granite cap for the retaining wall and to tap into that to secure the fence.

Commissioner Abbott asked about the design and materials for the fence. Mr. Papich indicated that it would either be a picket fence or a vinyl coated metal mesh fence with cedar rails and posts.

Commissioner Abbott asked whether the fence and retaining wall would be able to withstand the high winds in the area. Mr. Papich indicated that the fence would be designed and constructed with the wind in mind.

An abutter from 15 Merrill Street stated that he fully supported the project.

**Motion:** Commissioner Gaul motioned to issue an Order of Conditions for the proposed work at 7 and 11 Merrill Street, as shown on the submitted plans, with conditions 1-6 and adopt the findings of fact a and b of the staff report.

**Findings:**

- a. The project meets the requirements for issuance of an Order of Conditions under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. Provided that erosion controls remain in place until the disturbed area is permanently stabilized, work will not adversely impact the wetland values of the Town of Hingham Wetlands Regulations.

**Conditions:**

1. Prior to the start of demolition and/or construction, erosion controls shall be installed and inspected by the Conservation Department; straw wattles and/or hay bales will not be used as a form of erosion control.
2. All materials removed from the site shall be placed into dump trucks for immediate offsite disposal or stockpiled far enough away from the resource area to prevent debris and/or sediment from entering the resource area.
3. Any debris which falls into the resource area, or on the slope leading to the resource area, shall be removed immediately by hand.
4. Erosion controls shall remain in place until grass is established and all construction and planting is complete.
5. Prior to the issuance of a Certificate of Compliance, the plantings shall survive at least two full growing seasons with a minimum of 75% survival rate.
6. The Conservation Department shall be notified of any changes in plans prior to proceeding with said changed plans.

**Second:** Commissioner Morrissey

**In Favor:** All

**Opposed:** None

**Requests for Extension**

**119 Beal Street – DEP 034-0841**

The Order of Conditions for 119 Beal Street was issued on March 6, 2006 for the redevelopment of an existing maintenance and storage yard into a condominium complex (now called Weathervane at Chestnut Gardens) with associated driveways, gardening, landscaping, stormwater management facilities and utilities, along with the replication of a filled bordering vegetated wetland and creation of a culvert.

The Order of Conditions was extended for three years, by request, in February of 2009 and was further extended by the Permit Extension Act. The Order of Conditions now expires in March of 2016 and the applicant is requesting another three-year extension in order to construct six more homes. The parcel is subdivided into 23 lots; 15 have been sold, two are under agreement and six remain. The homes are built as each lot is sold. The applicant has completed the driveways, roadways, drainage, wetland replication and culvert.

Staff visited the site on 2/17/16. Many homes have been completed, some are still under construction and several lots are vacant. The replication area seems to be thriving; there was no sign of erosion.

**Motion:** Commissioner Morrissey motioned to issue a three-year Extension Permit for the Order of Conditions issued to 119 Beal Street.

**Second:** Commissioner Gaul

**In Favor:** All

**Opposed:** None

**Abstained:** Commissioner Abbott

## **Certificates of Compliance**

### **10 Bradley Park Drive - DEP 034-1226**

An Order of Conditions was issued on 6/11/2015 for the installation of irrigation well. Staff visited the site on 1/27/16. The as-built conditions adhere to the final approved plans. Staff recommends issuance of a Certificate of Compliance.

**Motion:** Commissioner Abbott motioned to issue of Certificate of Compliance for 10 Bradley Park Drive, DEP 034-1226.

**Second:** Commissioner Mosher                      **In Favor:** All                      **Opposed:** None

### **10 Bradley Park Drive - DEP 034-1048**

An Order of Conditions was issued on 10/7/2010 for the reconstruction of four existing tennis courts, with associated grading and the installation of an under-court drain system. Staff visited the site on 1/27/16. The as-built conditions adhere to the final approved plans, however staff made several observations:

- The surface layer of the court is being washed into the grass swale, which is directly adjacent to the bordering vegetated wetland. Staff would like to know why this is happening and if there is a way to prevent it from happening.
- A pallet of magnesium chloride flakes was stored in the 50 foot buffer zone and staff would like to have that removed prior to issuance of a COC.
- Near the pallet, there was also a small pile of bluish-green, sand-like material that resembles the surface of the court. Staff would like to see the sand-like material moved out of the 50 foot buffer zone too.
- Runoff from the southeast corner of the parking lot appears to be eroding the slope on leading to the bordering vegetated wetland. Staff recommends planting grass or sod to help reduce or eliminate this erosion during rain events. Alternatively, a small berm could be constructed at the edge of the parking lot to prevent water from running down the slope.

Staff recommended continuing the hearing to March 7, 2016 to give the applicant time to move the magnesium chloride flakes and sand-like material out of the 50 foot buffer zone and to stabilize the eroded area leading from the parking lot to the eastern side of the court.

**Motion:** Commissioner Abbott motioned to continue the Order of Conditions hearing for 10 Bradley Park Drive, DEP 034-1048, to March 7, 2016.

**Second:** Commissioner Morrissey                      **In Favor:** All                      **Opposed:** None

## **Other Business**

The Assistant Conservation Officer described a survey that was distributed to the hunters from the 2015 season and summarized some of the responses.

One issue that was raised by hunters during the 2015 season was when they could place their stands at the beginning of the season. The hunting regulations currently state: "No stand shall be placed on any parcel prior to the start of hunting season." Hunters did not feel that this was safe. Hunters were asked, as part of the survey, how much time would be appropriate to allow them to safely place their stands. The majority of responses indicated that 14 days would be reasonable.

The Assistant Conservation Officer recommended amending number three of the current regulations to address the hunter's concerns about the placement of stands and indicate when hunters may place their stands at the beginning of the season. She suggested that the last sentence could be revised to state: "Stands may be placed on designated hunting parcels no more than 14 days prior to the start of hunting season."

Commissioner Gaul stated that he strongly agreed with the Assistant Conservation Officer's recommendation. He also offered several suggestions for the 2016 hunting season, including an annual meeting with hunters and the Conservation Department to review the regulations and the overall goal of the program.

Commissioner McIsaac suggested that Commissioner Gaul lead the proposed annual meeting. Commissioner Gaul stated that he would be happy to help.

Commissioners Gaul and Morrissey stressed the importance of opening the proposed annual meeting to the public.

Commissioner Abbott and the Conservation Officer suggested issuing tags at the proposed annual meeting.

**Motion:** Commissioner Morrissey motioned to adopt number three of the Town of Hingham Conservation Commission Bow Hunting Regulations, as amended.

**Second:** Commissioner Freeman      **In Favor:** All      **Opposed:** None

**The meeting adjourned at 8:50 PM.**

Submitted,

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Elizabeth Berry, Administrative Assistant

Approved as amended on 3/7/16