CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development
Michael J. Kruse, Director

David B. Cohen
Mayor

Telephone
(617)-796-1120
Telefax
(617) 796-1086
TDD/TTY
(617) 796-1089

CONSERVATION COMMISSION
MINUTES
September 25, 2008
Beginning at 7:30 p.m.
Room 209, City Hall

MEMBERS PRESENT: S. Lunin, Vice-chair and acting Chair, N. Richardson, R. Matthews, D. Dickson, Dan Green, and newly appointed member, J. Hepburn

MEMBERS ABSENT: I. Wallach

MEMBERS OF THE PUBLIC: See attached sign-in sheet

Scout Project at Saw Mill Brook Conservation Area –clear & mark trail, remove trash.
Meeting: Andrew Norcross, and his father Bob Norcross were present. Andrew spoke about his project which is for his Eagle Scout badge. His proposal for the work was in each of the members' packet. The proposal is very thorough, and involves working in bordering vegetated wetland in places. Anne reported the trail has gotten very narrow because of encroachment by shrubs, and that some of the growth choking the trail is comprised of stickery species, including rose and greenbrier. Wooden boards are proposed in the wetland areas of the trail to distribute the weight so visitors do not cause erosion to or otherwise damage these sensitive areas. A discussion followed as to the best type of wood (not pressure-treated).
Motion by D. Green to accept the proposal as discussed with regard to the type of wood. Second by N. Richardson. Vote: All in favor. Motion carried.

32 Williams St. – NOI – continued from 2007, with new plan for 2-family dwelling and driveway in riverfront to the Charles River.
Report: The Environmental Planner and Frank Nichols of Engineering met with the attorney for the applicant and discussed information needed by Engineering and Conservation to evaluate the proposed project. No new information has been provided.
Meeting: Owner has emailed a request to continue until the October meeting.

77-79 Florence Place – Hampton Place Condo. Trust-NOI – Relocation of chiller pipes in buffer zone to bank of Hahn Brook & pond.
Report: You heard the proposal at prior meeting and agreed if applicant gets a de-watering plan approved by the Environmental Planner and Engineering prior to the September meeting, you will sign the OOC.
Meeting: Staff reported that Nitsch has responded to most of the comments from her and Engineering, but that she would like to add some conditions in the form of construction notes on the plan: Recommended Conditions

1. Prior to the start of work the contractor's name and contact information shall be supplied to the Environmental Planner. The contractor shall be available by telephone whenever work is being conducted on the site.
2. No work shall begin until the erosion and sediment control measures for de-watering have been installed and approved by Inspectional Services (ISD), the city Engineering Department, or the Environmental Planner.
3. The silt fence on the down-stream side of the work shall not be moved during construction, but the upstream silt fence may be "adjusted," removed temporarily and replaced or re-located to provide ingress or egress for equipment and supplies, provided that the Environmental Planner or City of Newton Engineering has approved proper installment and any re-location of the silt fence prior to the resumption of work.
4. Discharge from de-watering tanks SHALL NOT be directed to the brook downstream, but only to the upstream pond. Water from weir tanks shall not be discharged until the suspended solids and particles have noticeably settled out of the water. If additional filtration is needed, the contractor shall obtain and filter water through an appropriately – sized silt sac.

The Commission asked whether the recommended conditions address all the issues in the plan. Anne said she thinks they do.
Motion by R. Matthews to sign the Order of Conditions with all the conditions proposed by Anne added. D. Green seconded the motion. N. Richardson asked how the condition "until the suspended solids and particles have noticeably settled out of the water" can be evaluated – it is somewhat vague. The second sentence of condition #4, above, will be stricken. Vote: D. Green, N. Richardson, R. Matthews, J. Hepburn and S. Lunin voted "aye." D. Dickson voted "nay." Motion carried.

785 Centre Street – ANRAD by Sacred Heart, Inc. for delineation of Bordering Vegetated Wetland
Report: This area falls under the Newton Watershed/Floodplain Ordinance with a flood elevation established. If there is Bordering Vegetated Wetland, there is a question of what it "borders". There are wetland plants and hydric soils present below the flood elevation that could constitute "isolated vegetated wetland," not protected as a separate category under the WPA, but possibly subject to federal protection. Mr. Smyers believes the drains at bottom of declivity may lead to a "stream" out of the area. If Bordering Vegetated Wetland, there is a 100 ft buffer zone; if only flood zone, there is no buffer.
Meeting: Mr. Smyers of Osbow Associates, Inc., has consulted with the City of Newton Engineering Department to try to find out if the drains in the area go to any nearby streams, and has consulted with DEP. He now is in agreement the area does not qualify as bordering vegetated wetland, as defined by 310 CMR 10.55(2). Also, he has concluded the area would not contain sufficient water to meet the criteria at 310 CMR 10.57(1)(b) for isolated Land Subject to Flooding. The area below elevation 84 identified as "Cabot Street Meadow, " is, however, protected by the Newton Watershed/Floodplain (Revised) Ordinance sec. 22-22. Additionally, the owner(s) should be aware that an area contained within this elevation which shows a predominance of wetland vegetation and which has hydric soils may be protected by Federal Law as "isolated vegetated wetland." The owners are asking for a delineation for long-term planning, but are proposing no work at the moment.
Motion by D. Green to approve the delineation as described on plan (revised) dated 9-17-2008. Second by D. Dickson. Vote: All approved. Motion carried.

Los Angeles St – RDA for demo of shed/garage in flood zone
Report: The Commission heard from Mr. Franchi representing the owner at its last meeting. Because the request is to remove impervious surface and structure from flood zone, the result is beneficial to the resource area. Erosion and sediment control in the form of a silt fence should be installed at the back of the lot until the area is re-stabilized with vegetation. Materials should not be stock-piled in the flood zone but should be removed immediately from the area.
Meeting: Mr. Franchi was present for the owner. There was some discussion of de-construction methods. Mr. Franchi asked why erosion and sediment control was needed. The Commission noted that removal of the concrete block foundation will require some "excavation" and until the soil underneath has been stabilized by vegetation, water running off the steep slope can carry sediment toward the property boundary with the supermarket. Mr. Franchi asked whether a silt sox could be used instead of a silt fence. The Commission agreed.

Motion: D. Dickson moved to issued Determination of Applicability with a negative determination on the work, provided erosion and sediment control installed and checked prior to the work. Second by D. Green. Vote: All approved. Motion carried.

24 Warren-NOI for demolition of house and barn and construction of new house, garage, driveway, grading, & utilities in the 100 ft buffer to inland bank of an intermittent stream, and partly within the 100 ft buffer to bordering vegetated wetlands.
Report: Engineering is waiting for drainage calculations prior to approval. Otherwise, plan is reasonable, given that it is a large increase in impervious area very close to an intermittent stream. No impact to bank is proposed. To protect bank, a minimum 8-10 ft vegetated buffer should be maintained at all times.
Meeting: Mr. Goldman and Ms. Sevransky (owners), Mr. DeVellis, and Ms. Martin of DZI were present to present the project.
D. Dickson spoke about the City's interest in a Conservation Restriction on the eastern portion of the property. Mr. Goldman said he is not willing to grant a CR right now but it is still an open question. Anne said there is need of a buffer, ideally of native plants, along the bank to protect water quality from run-off carrying chemicals from turf care, and suggested a minimum 5 ft wide vegetated buffer zone, which could narrow to "0" width at the culvert crossing in the middle of the lot, and which should not be cut lower than 3 ft in height. Any planting or other work along the bank would require a new filing.
Motion by D. Green to approve project with the following conditions:

1. **The new fence shall have openings of 4 in above the ground at the culverts at Elgin and Warren**
2. **Only organic fertilizers shall be used on the property**
3. **Owner shall submit a plan for a vegetated buffer of an average 8 ft minimum width from the top of the bank as starting point. Whatever is planted shall not be mowed to less than 3 ft in height**
4. **Owner shall file a landscape plan (RDA or NOI) for the buffer area, and after the landscape plan is approved the area in turf grass (grass lawn) shall be fixed and shall not be expanded or changed in outline without approval by the Commission.**

D. Green said, although not a condition, he is asking the applicant to make a good faith effort with the city to agree on a Conservation Restriction so as to put no structures on the east side of the stream, except for environmental purposes. R. Matthews thinks this is asking for a lot from the applicant. Applicant said he is comfortable with the conditions. Anne noted the main issue before the Commission is protection of the bank and water quality in the stream.
N. Richardson seconded the motion. Vote: All in favor. Motion carried.

126 Albemarle-NOI for single family house addition in the 200 ft riverfront area to Cheesecake Brook
Report: Plan submitted to alter 964 sf, most in outer 100 ' of riverfront, to remove 2 existing porches and steps and construct an addition and deck. Applicant (via Oxbow Associates) cites 10.58(3) Presumptions … of significance, and states, "OA does not believe that the area in which the work is proposed provides any of the aforementioned functions since it is already maintained as residential yard and has been for many years." Therefore, we request that the Newton Conservation Commission consider the presumption of significance is partially overcome." OA cites riverfront performance standards that allow the CC to permit alteration of up to 10% of the lot or 5,000 sf (whichever is greater) on a lot recorded prior to passage of the riverfront act. However, that section is provisional and requires "a. At a minimum, a 100 foot wide area of undisturbed vegetation is provided." and other requirements b-d, but the CC may allow it if the CC deems a partial rebuttal of the presumptions of significance is sufficient to justify a lesser area of undisturbed vegetation. And, under 10.58(5) Redevelopment, (a) "At a minimum, proposed work shall result in an improvement over existing conditions of the capacity of the riverfront to protect the interests identified in M.G.L. C. 131 § 40.
Meeting: Owner Mary Murray, Ray Wiese, and Scott Smyers, Oxbow Associates, were present for the project. Discussion of owner's attempts to get a street tree planted, and what mitigation is appropriate followed.
Motion by J. Hepburn that the Commission approve the project with mitigation of 3 native, berry-producing shrubs be planted as condition of the OOC. R. Matthews seconded the motion. Vote: All approved. Motion carried.

392 Boylston – Have plan, but the plan needs details – it is an old plan from our files with colored lines and virtually no explanatory text or other annotations to explain what is proposed. Also, retaining wall not shown.

Meeting: D. Green said he has spoken to Al Travaglini about what is still needed and Mr. Travaglini has agreed to provide a plan with the requested detail. Then Commission can vote on acceptance.

1676 Commonwealth - DEP #239-545- exceeded OOC – mitigation is offered, then owner wants CoC
Report: J. Porter previously asked for amended OOC for drainage in driveway to be routed to the city system, and noted other changes to the plan, including steps added to the front and rear of retaining wall around driveway, alteration of driveway alignment, change of location of catch basin in driveway, and 2 trees in buffer zone removed. If trees accepted, should be native trees – plan says "columb" maple. Area where they are to be planted is quite small – I wonder whether there is really room there for mature trees.
Meeting: Mr. Joe Porter was present for the owner. Mr. Porter said he thinks the description of replacement trees as "columb maples" means "columner" maples Since this is mitigation for not following the plan, the requirement is usually 1.5 times the caliper size lost. A 15" conifer and a 9" conifer were removed, which totals 24 " caliper size lost, which would mean replacement should equal 36". Mr. Porter said the owner planted 39" of arborvitae, and asked if that counts for mitigation for wrongdoing and discrepancies from approved OOC.
Motion by J. Hepburn to require owner to plant 2-3 new trees of combined caliper size totaling 12" , to be native species and approved by Anne for mitigation prior to getting Certificate of Compliance. Second by R. Matthews. Vote: All approved. Motion carried.

<u>Violations</u> (*needs action)
***394 Boylston St**. **–**condo owned by BC and Mr. Liu. Plan for proposed mitigation for vernal pool submitted (see above).
***15 Harwich Rd – Joyce Hastings, GLM** consultant is attending to again ask permission to plant twice the amount of plants for restoration/mitigation and get sign-off on EO right away.
Meeting: No one appeared from GLM or for property owner. No action at this time.

***229 Winchester St.** – OOC issued 2006 & entire lot in riverfront & flood zone; owner was to provide revised planting plan and plant by April/May 2007. Owner has exceeded OOC by paving driveway shown as gravel on plan of record. No planting plan was submitted or approved and no mitigation plantings completed. At time of first inspection, no berm on driveway to keep runoff out of Brook. Owner promised to attend with landscaper in Sep.
Report: In response to complaint by neighbor, site visit conducted on 9-4-08 and again on 9-5-08. All brush cut back along driveway and on opposite side of stream from house top of bank had been stripped of all vegetation from corner approximately 50 ft along bank, car parked on gravel, and brush and limbs piled at bottom of ramp at edge of stream. Owner said they had the area cleared preparatory to planting and the gravel was already there, as were limbs at edge of brook. I asked that slash pile & gravel be removed & bare dirt covered as soon as possible with mulch (heavy rain is forecast for the weekend). Area now mulched & slash pile removed. Planting plan submitted with additional mitigation plantings proposed in exchange for keeping paved driveway. Owner also asks permission to park next to stream (although any of owners can park in private road adjacent). Recommend, if CC accepts, plantings should be <u>on-going condition</u> with modification treated as administrative change to existing OOC, else owner should file amended NOI.
Meeting: Mr. and Mrs. Glukhovskiy, and representative Jay Berkson present to describe the work. In addition to the original 10 ft wide planting strip required under the original OOC, the owners now offer an additional 1600 sf of new native woody plantings and conservation grass in the disturbed areas. Owners also asked for planting area for 2 cars adjacent to Winchester Street.
Motion by D. Dickson to accept increase in mitigation plantings offered for paving driveway and exceeding OOC, and to do so as administrative changes, without requiring new NOI, and do not allow parking on Rockland Street side of privately owned riverfront. Second to motion by R. Matthews. Vote: All in favor. Motion carried.

160 Pine St – plans to do the work this fall
1203&1211 Washington – DPW finished their repairs to wall; contractor for Mr. Donato to begin.
93 Andrew St – nothing new
3 Fuller – nothing new

Certificates of Compliance
2345 Commonwealth –Marriott -239-489 – needed to replace one plant – now completed.
Meeting: Motion by D. Green to issue COC. Second by R. Matthews. Vote: All approved. Motion carried.

MWRA – Upper Neponset relief sewer (Kesseler Woods) – work completed, but you must wait for "as-built."
Meeting: Following discussion, the consensus was that no COC would be issued until we have the as-built plan.

15 Marla Circle-DEP #239-544 – not ready

285 Newtonville – not ready.
Report: Needed injection of roof drainage & planting area (plants planted, but died)

19-21 (& 11 Hargrave Circle) –requested CoC last year, but new plantings were needed and as-built did not show detail required.
Report: Still not ready.

14 Rockland St-not ready.
Report: Site visit for requested CoC. Mitigation plantings are not in compliance with OOC. A number are dead or severely damaged by obvious mowing activity. Plants appear to be smaller is size, much closer together, and different species than in plan. Plants distributed over area approximately 1200 sf, rather than the 2000 ft area described in plan. Planting area not shown on as-built.
Meeting: Above report for Rockland was meant for 15 Marla Circle. Rockland is ready.
Motion by D. Green to issue COC with on-going conditions. Second by R. Matthews. Vote: All approved. Motion carried.

Announcements & General Business:
*July, 2008 Meeting Minutes (July 24 & 31 for approval)
Motion by D. Green to approve minutes from last two meetings (including the 'meeting' rescheduled because no quorum). Second by R. Matthews. Vote: All approved. Motion carried.

*Elections to various committees (see email) – new secretary
J. Hepburn has volunteered to be the new secretary and to take minutes during meetings.

Non-criminal ticketing - report

Outstanding issues – discussion
***Draft Ordinance Amendment Creating Alternate Members of the Conservation Commission (left from last meeting.)**
Motion by D. Dickson to approve the draft of ordinance amendment creating alternate members for the Conservation Commission. Second by S. Lunin. Vote: All in favor. Motion passed.

***November 19th Meeting, 7pm City Hall Cafeteria, to develop spending priorities for CPA funds – CC requested to attend, or send representative re goals for acquisition of open space w/CP funds**
Meeting: Anne reported that Alice Ingerson will be on next month's agenda to discuss this item and urge attendance at the November meeting with the community.

Other
DEP held a site visit re the appeal for Lot 6 Kesseler Way. The abutter seemed most concerned with run-off from the lot contributing to flooding and with chlorine from pool going into detention pond. A follow-up letter from abutter's representative, Mr. Richard Bennett, addressed to Gary Bogue of DEP, said he was "most

troubled" by "…a very cavalier attitude by the Conservation Commission with respect to the failure to maintain the existing stormwater detention areas." In a meeting on 9-17 with owners/representatives of Kesseler lots I was assured any required (by their OOC) maintenance would be performed and a letter sent to the CC to document their efforts.

Anne Phelps, Sr. Environmental Planner

Conserva/agmin\9-25-07