

TOWN CLERK

**Weymouth Conservation Commission  
Council Chambers, Town Hall  
75 Middle Street, Weymouth  
September 12, 2012 Meeting**

**Present:** Laura Harbottle, Chairperson  
Steve DeGabriele, Vice-Chairman  
Greg Shanahan, Commissioner

**Not Present:** George Loring, Commissioner  
Scott Dowd, Commission Clerk

**Also Present:** Mary Ellen Schloss, Administrator

**Recording Secretary:** Patricia Fitzgerald

**Cmmr. Harbottle called the September 12, 2012 meeting to order at 7:30PM in Council Chambers at Weymouth Town Hall, Weymouth, MA.**

**Minutes**

Cmmr. Shanahan moved to approve the minutes for June 27<sup>th</sup> with changes mentioned, seconded by Cmmr. DeGabriele. Cmmr. DeGabriele moved to approve the minutes from July 25<sup>th</sup>, seconded by Cmmr. Shanahan. UNANIMOUSLY VOTED

**Meredith Way, Lot 16 – Partial Certificate of Compliance  
DEP File #81-1025**

Appearing before the Commission were Carl Erickson and Jim Bristol, Bristol Brothers Development. Mr. Erickson began by apologizing for not attending the August 15<sup>th</sup> meeting.

Mr. Erickson said John Zimmer, wetland specialist, was out to the site on August 31<sup>st</sup>, after filing the Partial Certificate of Completion; Mr. Erickson's letter highlights those changes:

- All Rosa rugosa has been replaced with Rosa Virginia.
- Stressed blueberry and blackberry have been replaced.
- Mr. Zimmer recommended increasing the density of the living fence along Lot 16; about (40) additional plants are in along Lot 16 and along the roadway buffer.
- The marked brush piles are in the woods.
- The as-built plan filed with the COC request, wasn't in the Town's datum; that created what looked to be a large grading change. When that was adjusted by 6.63, to get on the Town's datum, it brought it in line with what was in the permit set of the plans.

Cmmr. DeGabriele asked for clarification in respect to the '5-10 each additional rose and juniper plantings' that Mr. Zimmer recommended for the living fence; he asked if that was the (40) plants Mr. Erickson referred to.

Mr. Erickson explained that there were (32) additional and (8) replacement plantings. He also said that Mr. Zimmer suggested Glyphosate for controlling the Japanese knotweed and was seeking Administrator approval to use it. He said the knotweed will be cut and removed, and then the chemical will be applied.

Cmmr. DeGabriele thanked them for making the changes to meet the original intent of the OOC. He then told them about the discussion at the previous meeting regarding people obtaining an OOC and then they come looking for a Certificate of Compliance when they've made changes. He told them he hopes not to see that again.

Cmmr. Harbottle asked if Glyphosate is of harm to other vegetation; Mr. Erickson responded that it is a direct application to the cut stem and is not broadcasted. He said if it grows a little bigger, they will get a better application.

Ms. Schloss asked for confirmation that all along the vernal pool area would be treated; Mr. Erickson said they plan to apply it to all the Japanese knotweed along the entire area.

Cmmr. Harbottle asked if any money was being held.

Ms. Schloss said that was something that needed to be talked about, if houses are to be occupied before the end of 2-year monitoring period. She said Mr. Erickson suggested an amount of \$2000.00.

A discussion was held on the Aug. 23<sup>rd</sup> letter, page 3, #5.

Ms. Schloss said that perhaps the Order could have been clearer, but the reason for the living fence was to protect the vernal pool and prevent encroachment. She said she would consider the roadway buffer and the living fence as part of the overall mitigation for work within the vernal pool buffer.

Mr. Erickson stated that there is about \$2000.00 in plants remaining.

Ms. Schloss said that the schedule needed to be talked about and asked about the planting of the living fence.

Mr. Bristol responded, saying that a good reason for the bond is that work can't be done for 5-6 months of the year and the amount of bond would be determined depending on the time of year, and what planting still needed to be done. He said the grading will all be done, but the landscaping may not be done or the lawn in.

Ms. Schloss said a bond would definitely be needed and asked for a cost for the buffer and the (3) remaining lots (Lots 15, 17 and 18).

Mr. Bristol said the lawn is being established and the majority of the planting will be done this fall.

Ms. Schloss explained that the bond is typically held for the (2) year period and conditions include compliance with the vernal pool mitigation under DEP #81-1025. She added it stays in place until they get the Partial COC (after the (2) year period).

Cmmr. Harbottle asked what was expected of the Commission at this meeting; Mr. Erickson said they wanted to get “up to speed” especially since they missed the Aug. 15<sup>th</sup> meeting. He said they are looking for the Lot 16 Partial COC, and approval to use the Glyphosate.

Cmmr. Harbottle said she would be more comfortable issuing the Partial COC if money came with it; Mr. Erickson said “That’s fine”.

Amount of the bond was discussed and it was decided: 100% on the plantings that has not been done and 30% on plants that have been planted plus labor costs equal to those percentages.

Ms. Schloss said she could hold the issuance of the Certificate of Compliance; Mr. Bristol said they would do a cash bond.

Cmmr. DeGabriele moved to issue a Partial Certificate of Compliance with conditions mentioned (the bond and final as-built), seconded by Cmmr. Shanahan. UNANIMOUSLY VOTED

Cmmr. Shanahan moved to allow use of Glyphosate, seconded by Cmmr. DeGabriele, after verifying that Ms. Schloss will be going out to the site and there will be monitoring reports on the chemical application. UNANIMOUSLY VOTED

### **Weathervane Certificate of Compliance**

As Carl Erickson and Jim Bristol were already in Chambers, Ms. Schloss asked if they could provide an update on the Weathervane Certificate of Compliance.

Ms. Schloss explained that she has put a scope of work out to independent peer reviewer, Desheng Wang. He has tried to put together a scope of work but more information is needed.

Regarding the Sept. 12<sup>th</sup> letter (the COC review given out), paragraph 1 will be revised. She said, most importantly, she and Dr. Wang would like to go out to look at the 25-ft. encroachments onto the buffer before die-back. She also asked about the accuracy of the as-built and asked if some time could be found to check the as-built plan.

Mr. Erickson stated that there is certain encroachment.

Ms. Schloss suggested that Mr. Schall was needed there as well. She said she would like to see the areas encroached upon in the 25-ft. no-disturb, before the fall die-back.

Cmmr. DeGabriele said he might like to go out, too, and to see the changes in the cart paths. Cmmr. Harbottle said she would try to go as well.

### **186 Main Street – Notice of Intent (Local Ordinance only) – Continued Hearing Flynn Gar, LLC**

Cmmr. DeGabriele moved to continue the discussion to Sept. 26<sup>th</sup> as requested by the applicant, seconded by Cmmr. Shanahan. UNANIMOUSLY VOTED

**21 Weyfair Path – Notice of Intent – Continued Hearing**  
**DEP File # 81-1104**

Cmmr. Shanahan moved to continue the hearing to Sept. 26<sup>th</sup>, seconded by Cmmr. DeGabriele.  
UNANIMOUSLY VOTED

**72 Inman Road (Original Lot 15, Stetson Estates) – Partial Certificate of Compliance**  
**DEP # 81-111**

No one appeared before the Commission on behalf of 72 Inman Road.

Ms. Schloss explained that Stetson Estates is a sub-division off West St. She said this Partial COC is for this one lot only, adding that the wetland can't be seen from this lot.

Cmmr. Harbottle asked if there were any options.

Ms. Schloss responded that this lot was approved as part of the Order of Conditions that goes back to 1979. The problem is there was no COC for the subdivision. She said this single family lot, surrounded by other houses, is looking for a Partial COC because they want to sell the house.

Cmmr. DeGabriele moved to issue a Partial Certificate of Compliance for, originally, Lot 15 Stetson Estates under the Wetlands Protection Act, seconded by Cmmr. Shanahan. UNANIMOUSLY VOTED

**Finnell Drive/Weymouth Club – Order of Conditions (closed Hearing)**  
**Map 36, Block 452, Lot 9**  
**DEP File # 81-1103**

*As there wasn't a quorum, this discussion was held. Ms. Schloss will contact the applicant.*

**Other Business**

Weymouth Salvage: The Enforcement Order has been revised; Ms. Schloss showed changes to Commissioners. She said the applicants are aware that Con Comm is going to require a sketch plan of their proposed activities within 100 ft. of wetlands at least the day before the meeting, or better yet, by Oct. 3<sup>rd</sup>. They'll also need to provide what measures they'll take to protect the wetland when removing solid waste. Ms. Schloss said that the DEP order requires the removal of solid waste, but when she spoke to Cathy Kiley (the Strike Force person) Ms. Kiley said DEP is requiring them to remove just the debris that's on the top of the ground; Ms. Schloss stated "but there's a lot that is underneath".

Cmmr. Harbottle asked how old this debris might be and if anything is grandfathered.

Cmmr. DeGabriele responded that there's been a solid waste statute around for an incredibly long time and he feels grandfathering is for lawful activities. He said there's been an oil pollution statute since the 1920s or so, and it's hard to figure how to separate modern wetland decisions from all this historical stuff.

Ms. Schloss said that, in response, she has put out an interim order to protect the wetlands that reads:

- While they are doing the removal of solid waste, they will be required to provide stabilization (or interim restoration).
- Con Comm is reserving the right to require them to do more.
- They should hire a Licensed Site Professional in order to understand the extent of the material that is buried.

Cmmr. DeGabriele suggested contacting DEP. He said that DEP's instructions were to remove solid waste from the surface, but they don't do anything about what's under the ground and they didn't say anything about assessment of oil or hazardous material in the resource - other than saying 'where there's visibly stained locations'. He asked how can Con Comm ask them to plant wetland species or seed mix when it might be covering up a much more serious environmental problem.

Cmmr. Harbottle asked which division of DEP is working on this; Ms. Schloss said the DEP Strike Force, but the Enforcement Order was issued by the Southeast Regional Director and Cathy Kiley is the point person.

Cmmr. DeGabriele stated that this order is a step in the right direction, but what does the Commission do, about the possibility of buried solid waste or the oil and hazardous material that may be on this property, when the owner wants to start operations again?

Cmmr. Harbottle asked if this is in an area contributing to a public well; Ms. Schloss said that it is the headwaters of a stream that is a tributary to the Fore River, but it's not in our drinking water supply.

Cmmr Harbottle then asked what the owner's plans are for the property; Ms. Schloss said Mr. Eacobacci may want to sell eventually, but he may be unable to without cleaning up the site. She said he has brought in a business partner who is doing "white goods" recycling.

Cmmr. Harbottle asked if he can be guided or regulated to do this activity in some part of the property.

Ms. Schloss said he has to show where he plans to work, in relation to the wetland, adding that he is supposed to be submitting a plan to the Commission that shows that and she has asked him for a chronology of what he plans to do and when, but she said her concern is that it's not Con Comm that is directing the clean-up.

Cmmr. DeGabriele stated that Con Comm will start getting into the purview of cleaning up solid waste and assessing oil and hazardous material, which isn't the primary purpose of the Conservation Commission. He said the idea is to try to control what Weymouth Salvage is going to do within the resource area, as an interim step, while more information is gathered about the 'bigger-picture' clean-up, and only DEP can decide that. Cmmr. DeGabriele also said:

- Generally, it is not Con Comm that directs solid waste clean-up, or oil or hazardous waste.
- DEP required Weymouth Salvage to sample a very limited area and not near the resource.
- Draft comments: regarding earth moving and grading; nowhere in the Order does it say to stop doing it.
- Con Comm told Weymouth Salvage to comply with the DEP order but, over and above that an Order of Conditions is needed.

- He doesn't think Weymouth Salvage has the right to remove solid waste and put back soil; Weymouth Salvage may have confused grandfathered activities.
- He doesn't think Weymouth Salvage should be filling anything in the buffer area and suggested there not be any filling or grading that is not part of the DEP order; let Weymouth Salvage challenge it.
- In the section that states the property owner 'shall take the following actions', Cmmr. DeGabriele recommends replacing 'solid waste removal and restoration' with 'solid waste removal, oil or hazardous material assessment and remediation or/ and restoration'; it doesn't make sense to start wetland restoration unless you know the possible oil and hazardous material has been assessed.

Cmmr. DeGabriele's final recommendation is that the entire matter be referred to DEP.

Cmmr. Harbottle said she would be interested in coming out to see the site.

Cmmr. Shanahan said DEP is putting Con Comm, as well as the applicant, in a bad spot and it is causing confusion. He, too, recommended turning this matter over to DEP, and said it is not Con Comm's job to translate for DEP.

The matter of referring this to DEP was discussed; Cmmr. DeGabriele suggested Ms. Schloss call the Regional Director.

Cmmr. DeGabriele said Weymouth is within its rights to say:

1. We want DEP representatives from the Solid Waste Program to tell us why they think what they're doing is sufficient to deal with all the solid waste on the site, because Con Comm doesn't think it does; Ms. Schloss has attempted soil tests with a soil auger borings and all she keeps hitting is waste materials.
2. DEP told Weymouth Salvage to do assessment, but only in the upland area. "It's only reasonable to think, if there's buried material in the other part of the property, there could be oil and hazardous materials, so why aren't they asking him to look there?" Also, where's the LSP and what does the LSP have to say about it?

Cmmr. DeGabriele stated a meeting could be requested with DEP - it would help the homeowner and the Commission to know what's going on.

Ms. Schloss said she would send out the Order.

Cmmr. Harbottle asked if the next time they can be put at the beginning of the agenda; Ms. Schloss said she would make that change.

Cmmr. DeGabriele reiterated that Mr. Eacobacci should not bring in any fill, or regrade, within 100 ft. of the resource area (and the resource area itself) unless he's complying with the DEP order. He also has to come in with a plan showing where he plans to work.

186 Main Street: Ms. Schloss said comments went to the applicant from DPW regarding the stormwater management system. She said they haven't been given clarity on where the limit of work should be. She met with the representative and DPW on Sept. 17<sup>th</sup>. She would like to be able to provide some direction

regarding the limit of work and would like to be able to protect the trees that are clustered right on the 50-ft. At this point they have stormwater discharge in the pool. Ms. Schloss asked for any thoughts the members might have on this issue.

Cmmr. Harbottle asked what is preventing him from moving that bank up closer to the street.

Cmmr. DeGabriele said that in order to make it profitable he needs to use the small piece of road front area for a building.

Cmmr. Harbottle commented that it looks like a lot of parking relative to the size of the building and she would like to investigate the amount of parking, given the sensitivity of the resource.

Community Preservation Committee update: Con Comm liaison Cmmr. Shanahan said there has been vandalism at the Herring Run that will need to be repaired and in such a way to make further vandalism more difficult. There is also talk about putting in surveillance cameras.

804 Middle Street: Ms. Schloss reminded members that this was the property owner that built a garage and who was required to remove some encroachment into wetland behind the shed. He was supposed to have done plantings last year before he finished the garage and did not so she went out last fall and gave him a Violation Notice. As of this spring, it still wasn't done and now he has stuff behind the shed in designated wetland. She has issued another NOV telling him if this is not done by the next meeting he will have to come in, and she has put him on notice that fines can be levied.

Cmmr. DeGabriele said he should have been fined after the first Notice of Violation.

Ms. Schloss said they have the authority to fine \$50.00 per day. If not done by the next meeting it will be put on the agenda.

71 Randolph Street: Ms. Schloss said this is the property with the trellis and the planters. She said the homeowners expanded their driveway and she never dealt with it by issuing an Enforcement Order, so it's been going on and on and now an anonymous person is calling. She said the bridge and boards on the bank of the stream were dealt with last summer.

Cmmr. DeGabriele said they were allowed to keep the trellis up until the end of the growing season.

Ms. Schloss said they have started to remove some of the items.

Permitted Projects:

- Active construction of Iron Hill Dam has started; coffer dam installation is underway.
- Sewer Contract 2, Replication (DEP File # 81-1066): part of a major capital improvement, work is underway, excavation and plantings to be done by early October.

Other: Route 18 – Ms. Schloss has received Supplemental Environmental Impact Report.

**Adjournment**

Cmmr. DeGabriele moved to adjourn the meeting at 9:30 PM and to meet again on Sept. 26, 2012 in Town Hall Council Chambers, seconded by Cmmr. Shanahan. UNANIMOUSLY VOTED

Respectfully submitted,

Patricia Fitzgerald

Approved:

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Scott Dowd, Conservation Clerk

Date