

TOWN CLERK

**Weymouth Conservation Commission
Council Chambers, Town Hall
75 Middle Street, Weymouth
August 15, 2012 Meeting**

Present: Steve DeGabriele, Vice-Chairman
George Loring, Commissioner
Greg Shanahan, Commissioner
Scott Dowd, Commission Clerk

Not Present: Laura Harbottle, Chairperson

Also Present: Mary Ellen Schloss, Administrator

Recording Secretary: Patricia Fitzgerald

Cmmr. DeGabriele called the August 15, 2012 meeting to order at 7:00PM in Council Chambers at Weymouth Town Hall, Weymouth, MA.

Minutes

Minutes for June 27th were tabled until the September 12th meeting.

**Sewer Access Road, Rte. 3 Median – Partial Certificate of Compliance
Weymouth DPW
DEP File #81-979**

Appearing before the Commission was Jeffrey Bina, Weymouth DPW Director. He told the Commission that 6 or 7 years ago there was a sewer overflow in a sewer easement at Pleasant St. and the Route 3 median; due to that, DPW had to create roads to access the areas to fix the problem. At that time they contacted Earth Tech (later bought out by AECOM); it is AECOM that has observed the construction process (Mr. Bina said there were multiple conditions on the project).

Ms. Schloss said the project entailed three (3) crossings of the Old Swamp River that had to be reconstructed. Initially there was an emergency because of back-up of the sewer, causing blockage and raw sewerage into Old Swamp River (which is a Class A drinking water body). DPW took emergency action to access the manholes, installing culvert pipes in the river at three (3) locations. This was a pretty involved project - they had to take out the culvert pipes, install (2) bridges and (1) culvert. It included a compensatory flood storage area, a mitigation wetland replication area and regrading to bring contours below the flood plain. AECOM was the Town's consultant engineer on the project, which required a 401 Water Quality Certificate and an Army Corps of Engineers Permit.

Mr. Bina stated the major construction has been completed and they are seeking a Partial Certificate of Compliance.

Ms. Schloss explained that it is only a Partial COC because the replication requires a (2) year monitoring period; this request is for the road construction, the bridges and the compensatory flood storage.

Mr. Bina said that Paul Carter, AECOM Services approved and pointed out compensatory storage area differences.

Mr. Carter said that most of the construction and the (2) or (3) bridges were done a year ago - the last section of access road reconstruction was done in March or April. He said the contractor did an as-built plan and, in general, it is in 'substantial compliance' with the design plan but with some minor discrepancies:

- The June 7th memo describes the emergency access road that was reconstructed adjacent to the Old Swamp River. The intent of the reconstructed access road was to bring it to the approximate grades in existence prior to the construction of the temporary access road and to provide permanent crossings of the Old Swamp River. Regarding access road construction, it varied a little horizontally (about (5) ft.) and the width is a little narrower – (10) ft. instead of (12) ft.
- All elevations are very close; Old Swamp River is fairly shallow – it moves across the floodplain. The access road is very close to the elevation of the wetland there and the bridges are a little bit higher, in order to get over the brook.

Mr. Bina offered that they didn't have much room for the road - if they went any deeper they would have hit wet soil and they could not go higher, because they had to provide compensatory flood storage.

Mr. Carter said, in terms of the as-built plan, most of the elevations vary, mostly within (0.5) ft. with a couple of sections a little higher than that. The second memo addresses the compensatory flood storage, which was in the range of 30,000 cubic ft. Mr. Carter told the Commission that when he, Mr. Bina and Ms. Schloss reviewed the as-built plan they noted that there was one area not constructed quite as high, so that provided a little more flood storage. He said storage is within 10% of 38,000 cubic ft., which is as close as they'll get to the flood storage there.

Mr. Carter said DPW will be looking for the remainder of the COC (for the wetland replication area) this fall.

Ms. Schloss told the Commission that she was comfortable with issuing the Partial Certificate of Compliance.

Cmmr. DeGabriele asked what the practical impact would be of 10% less flood plain storage. Mr. Carter said nothing much, "the flood elevation varies between 85, 81, 75, across the whole couple of miles".

Cmmr. Dowd moved to issue a Partial Certificate of Compliance, seconded by Cmmr. Loring.
UNANIMOUSLY VOTED

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

Cmmr. Shanahan moved to reopen the public hearing, seconded by Cmmr. Loring. UNANIMOUSLY VOTED

Cmmr. DeGabriele announced that the applicant requested a continuance to Sept. 12th.

Cmmr. Loring moved to continue the public hearing to Sept. 12th, seconded by Cmmr. Dowd.
UNANIMOUSLY VOTED

**Finnell Drive/Weymouth Club – Notice of Intent (WPA and Local Ordinance) – Continued Hearing
Map 36, Block 452, Lot 9
DEP File # 81-1103**

Cmmr. Dowd moved to reopen the public hearing, seconded by Cmmr. Loring. UNANIMOUSLY VOTED

Appearing before the Commission were Attorney Gregory Galvin, applicant Steven Goldman and the engineer Mike Joyce, Green Environmental.

Mr. Galvin explained that a couple of months ago the Commission requested that certain flagging be done in regards to the parcel. Mr. Galvin said Mr. Joyce has modified the plan to show the flags and also the significant reduction in the amount of work to be done.

Mr. Joyce said, originally, this project was for an 18,000 sq. ft. parking area with (64) spaces. Since then they have done a site walk, and a question arose as to whether the pond is a vernal pool. Since this parcel is not owned by the Weymouth Club, they will respect the 100 ft. buffer and treat it as if it were a vernal pool. They have now reduced the footprint to a 9000 sq. ft. parking area with about (35) spaces. The lot now slopes to the southern side and they have relocated the bioswale so there is no need for catch basins and, because of the decreased size of the project, they are now outside of the buffer.

Ms. Schloss asked Mr. Joyce to speak on the grading changes. He explained that as they are moving the parking lot south, there will be a top elevation of 170 and it will be further from the wetland. He added there will be both horizontal and vertical separation and, in total, (65) trees will be taken down.

Cmmr. DeGabriele asked about the plantings. Mr. Joyce replied that there will be (2) different planting types – native and “not-so native” (hydrangeas, mountain laurel, callery pear). Callery pear will line the driveway and the mountain laurel and hydrangeas will be placed along the parking lot area. The bioswale plantings will need to be of a wetter variety (sweet pepper bush, American hazelnut and Virginia creeper) and (2) red maples will border both sides of the bioswale.

Cmmr. Dowd requested that all native plants be used and agreed with their decision to avoid the vernal pool.

Cmmr. DeGabriele mentioned the split rail fence on the southern side of the field and asked if the natural elevation was the barrier on the other side. Mr. Joyce said yes, that there is an elevation difference of about (8) ft. so it can act as a barrier.

Ms. Schloss asked if the playing field will be mowed or will the clippings be left (or composted). She also mentioned that the Commission will want the dirty plowed snow stored on the parking lot, not on a pervious surface.

There were no questions or comments from the public.

Ms. Schloss told the Commission she only received the plans on Aug. 13th and hadn't had time to prepare a draft Order of Conditions. It was agreed to continue the discussion of the conditions until Sept. 12th.

Cmmr. Shanahan moved to close the public hearing and extend the discussion of the conditions to Sept. 12th, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

**Pleasant Street/Quarry Access Road Gas Main – Notice of Intent (WPA and Local Ordinance)
Continued Hearing
National Grid
DEP File # 81-1108**

Cmmr. Loring moved to reopen the public hearing, seconded by Cmmr. Shanahan. UNANIMOUSLY VOTED

Brad Malo, Coastal Engineering Co., representing National Grid, appeared before the Commission.

Mr. Malo identified the issues that had arisen at the previous meeting:

- It was requested to have a profile added to the drawings regarding ground water levels.
- Method of treatment and the discharge method for dewatering the trenches.
- The dewatering process.
- Correlation of datum to Weymouth datum.

Mr. Malo stated that originally they performed (3) test pits on the roadway to determine ground water elevations which were done at the site of existing culvert crossings in the road. The gas main installation will be (3) ft. deep to the top of the main, but at the (3) culvert locations it will be installed underneath the culverts and those will be the (3) deepest points of excavation.

Mr. Malo said he has talked to Bill Kane from Clean Harbors, who will be providing the equipment for the dewatering operation. On the drawing, they have designated (3) locations for filtered discharge water which will be generally located in the area of the test holes - these will be called Dewatered Discharge Areas 1, 2 and 3.

He also said they prepared a profile of Pleasant St. into the access point for Aggregate Industries. This shows the (3) locations of the existing drainage culverts and the elevations have been changed to correlate to Town of Weymouth datum.

Regarding the (3) test holes, he was surprised to find excavation at the lowest part of the site (near the river where the culvert is) to be a (7) ft. deep hole with not any substantial water. This was left open for (20) minutes to get static water level. In a hole 6 ½ - 7 ft. deep there was little standing water. This conveys that there might not be any substantial water, but measures are there if things change. In Area 3, they did see a stain layer at a shallower level (shown on the drawing as elevation 99.5) which means at the high water season it will be at (3) ft. from ground surface.

Cmmr. DeGabriele said that the plan still shows “place hay bales around catch basins where required”; he stated the Commission thinks they are required. He thanked Mr. Malo for the information he has provided; these addressed the concerns he had regarding the dewatering operation.

Ms. Schloss said that on Hole #1 the maximum high ground water might be around (3) ft. below the surface. She then asked, if the work was done in dry weather, would they need to dewater?

Mr. Malo responded that it wasn’t clear to him but that may be the case.

Ms. Schloss asked if there were no catch basins on this road; Mr. Malo confirmed there were not.

Ms. Schloss asked if the roll-off container, used for dewatering, is mobile. Mr. Malo said it would have to be relocated, if needed (they only have one container so it would have to be moved).

Ms. Schloss asked if there would be piles of spoils or fill material and where those piles would be located. Mr. Malo said they wouldn’t be stockpiled; they would truck in sand and truck out material to be replaced.

Ms. Schloss said the Order of Conditions will include that any piles would need to be covered and appropriately protected.

Mr. Malo said no excavated material would be left overnight. He said at day’s end there may be a metal plate used to cover a small excavation and a de minimis amount of material could be covered.

There were no public comments.

Cmmr. Loring moved to close the public hearing, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Cmmr. Loring moved to issue an Order of Conditions with general conditions and other conditions mentioned, seconded by Cmmr. Shanahan. UNANIMOUSLY VOTED

21 Weyfair Path – Notice of Intent – Continued Hearing

DEP File # 81-1104

Cmmr. Loring moved to reopen the public hearing, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Ms. Schloss said the applicant requested the hearing be continued to Sept. 12th.

Cmmr. Loring moved to continue the hearing to Sept. 12th, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

25 Paomet Road – Request for Determination of Applicability – Hearing

Jorge Berrios

Map 4, Block 36, Lot 12

Cmmr. Loring moved to open the public hearing, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Coming before the Commission was Mr. Jorge Berrios, applicant; abutter cards were submitted.

Mr. Berrios explained that he extended his deck from 8' x 16' to its present size of 16' x 20'. Ms. Schloss said this is an 'after-the-fact' filing and, as such, Mr. Berrios has paid twice the usual filing fee. She explained that this single family home was built in 1905/1906 and predates WPA. It is in the flood plain (Subject to Flooding). Ms. Schloss handed out photos that she took in 2007 showing that this area was flooded. She explained that Mr. Berrios constructed a deck off the back of the house and the area behind the house is maintained as lawn, to keep phragmites away. Mr. Berrios is looking at possibly elevating the house as it is subject to flooding. She said there is no impact to the area, the GIS map shows wetland is tight to the house and he was not asked to do a formal delineation of the project. She stated that, at least, (30) ft. back is pretty much muck soil and there is a stream about (9) ft. back from the mowed area that the owner cleans, which is helpful to prevent flooding (Norfolk County Mosquito Control occasionally sprays and does cutting.) She commented that the area is problematic and she said she is inclined to let it go as an RDA and she doesn't have a big issue with the deck.

Cmmr. Dowd asked if he replaced the entire deck; Mr. Berrios said yes.

Cmmr. Dowd said he dislikes phragmites more than lawn and it would probably be hopeless to replant with something like cat tails as they wouldn't push the phragmites out, so he agrees with Ms. Schloss.

Cmmr. Dowd asked if he had filed for a Building Permit; Mr. Berrios said "not yet".

Cmmr. DeGabriele told Mr. Berrios there can be no further alterations without coming before the Commission first.

No one from the public was present for the hearing.

Cmmr. Loring moved to issue a Negative 3 Determination, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

36 Kings Cove Way – Certificate of Compliance
DEP File # 81-902

Ms. Schloss said this is a single family home that has had some reconstruction and expansion of a deck, and expansion of the foot print of the house. There was some work within 100-ft. of a coastal bank, (there is a retaining wall which forms the coastal bank; the house is behind the coastal bank). The architect's letter has been stamped and work is confirmed to be in 'substantial compliance'. Ms. Schloss went out to the property and doesn't have any concerns.

Cmmr. Loring moved to issue a Certificate of Compliance, seconded by Cmmr. Shanahan.
UNANIMOUSLY VOTED

Meredith Way – Partial Certificate of Compliance**Lot 16**

Ms. Schloss explained that this is a planned unit development with (21) homes and with permanent protection of about (17) acres of open space. For the Planning Board, they had to come up with conventional density, with the houses clustered together and leaving open space. The Commission had an ANRAD, and a Peer Reviewer, Dr. Desheng Wang who did not find any breeding in (3) potential vernal pools, but they will be protected, as required by the Commission. Ms. Schloss did a site walk and has received a plan of the existing foundation. She also received the engineer's letter, certifying compliance for the elevations, the grading, the dry wells and the living fence area (to prevent access to the vernal pool).

Cmmr. Dowd asked about the young evergreens growing together to form the living fence; Ms. Schloss stated that it will not be as dense as she had envisioned.

Ms. Schloss then explained the content of the applicant's Environmental Consultant's report:

- Plant substitutions were made (about which the Commission was not asked).
- The E.C. was not present during planting; substitutions were made for the Smooth Rose – *Rosa rugosa* was planted instead.
- The E.C. recommended some additional plantings for Lot 16's 'living fence': 5-10 additional rose plants (they will be told to use Smooth Rose or Virginia Rose and not *Rosa rugosa*) plus 5-10 more Blackberry.

Cmmr. DeGabriele asked if there will be other homes seeking a COC for a 'living wall'.

Ms. Schloss said yes - Lots 15, 16, 17 and 18, which are homes adjacent to the potential vernal pool.

The Commission discussed holding the Partial COC, as the Conditions specified were not followed:

- Appropriate plants not used.
- Work not done under supervision.

Cmmr. Loring moved to deny issuance of Partial Certificate of Compliance, seconded by Cmmr. Dowd.
UNANIMOUSLY VOTED

Ms. Schloss will notify them that they need to:

- Remove the *Rosa rugosa*.
- Do what they were supposed to do.
- Come back before the Commission to say what they'll do instead.
- Address the knotweed; she will suggest a chemical treatment. (She will see if this can be added to the Order of Conditions.)
- Provide a plan for permanent protection of the (17) acres.

Weymouth Salvage – Continued Violation Hearing
307 Middle Street
George Eacobacci
Map 22, Block 290, Lot 5

Ms. Schloss explained the documents provided for the Commissioners:

1. DEP Administrative Order.
2. 6-20-12 Violation Notice (with an aerial photo).
3. Enforcement Order (Draft).
4. Photographs.

Ms. Schloss explained that she went out to the site over a year ago with the Health Dept. and Kathy Kiley of DEP. She said DEP got involved because a couple of issues were raised regarding this salvage company (that been in operation for over (50) years); the issues that led to the DEP Administrative Consent Order were:

- The areas of staining on top of the hill towards the N.E. corner near the (car) crushing operation.

Mr. Eacobacci said they don't crush cars. He added that 'LSP' will be working with them.

- A lot of material had been buried historically at the site.

Ms. Schloss said they had removed quite a bit so far. Mr. Eacobacci said they've removed over (1000) tires and 'a few ton' of metal.

Ms. Schloss told the Commission that an Administrative Consent Order was issued on June 28th, prior to that Mr. Eacobacci removed material from the wetland area. She explained that debris had been there so long that trees had to be removed to get to it, which put him in the buffer area and slightly into the wetland area. She said in June she told him erosion controls had to be used, which he did. On June 20th a Violation Notice was issued and Mr. Eacobacci was asked to come in on June 27th – he did, but at the wrong time. He has continued to do the removal. Ms. Schloss was out on Aug. 1st and then again a few days ago. At that time she noticed regrading of soil that went beyond removal. As this requires Commission notification (new activity within (100) ft. of wetland) she drafted an Enforcement Order, which she gave to Mr. Eacobacci. She explained to Mr. Eacobacci that the Commission's jurisdiction is (100) ft. from a wetland and (200) ft. from a perennial river or stream and this is new activity.

Cmmr. DeGabriele said he feels the Commission should not interfere with the DEP's order to remove certain waste materials from the property, but any other work (regrading or new activity) would most likely fall under Con Comm jurisdiction. He said Con Comm needs to understand what the activity is, but the wetland line needs to be determined to know where the 50-ft. and 100-ft. lines are. There is the issue of historical uses of the property but that does not include improper storage or disposal of materials - which can't be grandfathered. He said rules for going forward need to be established and added that a professional needs to establish the wetland line and informed him that an NOI is needed for such things as regrading or changes to their operation.

Mr. Eacobacci countered that, as far as the regrading, they are just picking up and putting soil back.

Cmmr. DeGabriele told him that where he puts the soil back may affect the wetland, adding that he assumed Mr. Eacobacci had not taken grades or elevations; Mr. Eacobacci confirmed that he had not.

Cmmr. DeGabriele explained the Order to Mr. Eacobacci: he is prohibited from altering, regrading, reshaping or doing work, unless the work is necessary to remove the materials that DEP has ordered be

removed (he also has to file a restoration plan for work to be done within Con Comm jurisdiction), but to do that the wetland line needs to be known.

Mr. Eacobacci said "It would've been nice to know that (where the wetland line was) before we started".

Cmmr. DeGabriele explained that the wetland line determination is usually the applicant's responsibility to hire a professional to determine the line. He emphasized that Ms. Schloss *offered* to establish the line (which the Commission doesn't usually do) but once the line is established there can be no work within (50) ft. of wetlands.

Mr. Eacobacci stated that there will not be any activity within 50 feet of the wetland line.

Cmmr. DeGabriele added that, then, the Commission needs to know what activity will take place within 100-ft. of the wetland line. He told him that is what this order needs to establish in order for Mr. Eacobacci to be in compliance with the Weymouth bylaw and to protect the wetland resource. He said this meeting is to issue the order that spells out what needs to be done.

Ms. Schloss told Mr. Eacobacci that:

- She would try to get out the following day (Aug. 16th) and would come back with DEP and the Health Dept. the week of Aug. 20th.
- She explained that the restoration plan would not be elaborate.
- The material (tires, metal parts) in the stream on the bank needs to be removed and she wanted the Commission to know that the wetland will need to be disturbed to accomplish that.

Cmmr. DeGabriele stated no heavy equipment can be used in that area.

- The Commission will need to approve all plantings.

Cmmr. DeGabriele told him that only plants that would normally be there can be used and informed him that there can be consequences if he doesn't comply with the Commission's orders.

Cmmr. Loring moved to issue an Enforcement Order, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Other Business

Weymouth Yacht Club: Christopher Butts came before the Commission regarding work that was recently done.

Ms. Schloss said she talked to WYC over (1) year ago and they had received a grant to extend their dock. She said they should have come in for a Notice of Intent for the pilings and there were some complaints about the work being done. She asked Mr. Butts what work had been done.

Mr. Butts replied that WYC received a grant from U.S. Fish & Game/DEP to increase their dock space as part of a larger plan - they plan to spend a million dollars over the next 5-7 years. He said that in 2012 they secured some heavy-duty floating docks, for storm protection. When they got the grant they thought that putting in the floating dock did not require Con Comm approval and said the crane used is what drew attention. He ended by saying there will be no further work for the next few years, as they have no money at this time.

Ms. Schloss said the pilings triggered the NOI but it was the size of the blocks (10,000 and 20,000 pounds) that goes beyond the level of an NOI. She said she feels better having seen the 5x5x5 size and that there is no vegetation or eelgrass and it is outside the tidal zone. She said it is important for WYC to have more communication with the Commission when working in resource areas. Ms. Schloss said she's OK to just let them know to contact Con Comm before putting in any installation of pilings.

Cmmr. DeGabriele suggested they check to see if filings are required. Ms. Schloss said if they are working in the water they need to contact Con Comm.

71 Randolph Street: Cmmr. DeGabriele said he received another complaint about the wooden structures and other things at this location and asked what the distance is between the stream and these structures.

Ms. Schloss said they will have to remove the hanging vegetable garden at the end of the growing season.

Cmmr. DeGabriele said they need to establish the line behind which the planters can be used; Cmmr. Loring said that has already been done.

Ms. Schloss said that the GIS lists this as a perennial stream. She said the bridges are still there but the boards have been removed; she will consider writing a letter to them.

Sept. 12th meeting: Cmmr. Dowd will not be present. He said he will review what has been received the week before the meeting, in case he has any comments for the Commission to consider.

Conservation

East Weymouth MBTA: The slope by the outlet channel is failing and needs to be repaired. Order of Conditions is still active because of the Permit Extension Act. Ms. Schloss said she is OK if they get a design schematic of the repair and she is OK if they do it without another filing.

125 Fort Point Road: Ms. Schloss has no problem with very small change to the dipping pool project.

Tirrell Woods: Second growing season replication monitoring report has been received, but they have not come in for a Partial Certificate of Compliance.

Weathervane: Nothing has been heard from Desheng Wang regarding Certificate of Compliance review.

Iron Hill: Ms. Schloss and Cmmr. Loring were out for the construction meeting – project will start in a couple of weeks.

Route 18 widening: Test borings for the NOI will be south of the South Shore Hospital, to the Abington town line, along the right of way and won't be in any wetland area.

Town sewer line work: being run along Hinton Road and Neck Street.

Kibby property: please call the Administrator with any questions, or if you'd like to get involved.

Open Space and Recreation Plan: meeting was last week; please provide any comments ASAP.

EPA Audit: Aug. 14th for MS4-municipal storm water audit.

Boy Scout Information Kiosk at Whitman's Pond: Info on weeds, boats, don't feed the geese, etc.

Adjournment

Cmmr. Loring moved to adjourn the meeting at 9:40 PM and to meet again on Sept. 12, 2012 in Town Hall Council Chambers, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

Respectfully submitted,

Patricia Fitzgerald

Approved:

Scott Dowd, Conservation Clerk

Date