

**WEYMOUTH CONSERVATION COMMISSION
RECORD OF MINUTES AND PROCEEDINGS**

**Wednesday, August 12, 2015, 7:00 p.m.
Council Chambers, Town Hall, 75 Middle Street, Weymouth, MA**

Present: Steve DeGabriele, Chairman
Tom Tanner, Vice Chairman
Scott Dowd, Commissioner and Clerk
George Loring, Commissioner

Also Present: Mary Ellen Schloss, Conservation Administrator

Chairman DeGabriele called the August 12, 2015 meeting to order at 7:00 p.m. in the Council Chambers, Town Hall, 75 Middle Street, Weymouth, MA.

Approval of Minutes:

On a motion made by Cmmr. Loring, seconded by Cmmr. Dowd, the Commission voted 4-0 to approve the June 24, 2015 minutes as written and amended.

45 Regatta Road – Request for Determination of Applicability, Public Hearing

Warren Sponsler

Map 2, Block 12, Lot 19

Deck, patio, structure modifications

On a motion made by Cmmr. Loring, seconded by Cmmr. Tanner, the Commission voted 4-0-0 to open the public hearing.

Appearing before the commission was Celia Civello, RA, representing the applicant. Ms. Civello explained that a portion of the lot is within 100' of a coastal bank. She said this project is a full renovation of the house but the exterior will remain the same. At the rear of the lot, they will be removing the deck from the lower-level basement entry which will result in a reduction of square footage. They are proposing to remove the existing deck and replace it with a larger one and will also be removing 25' of hedgerow on the wall. The driveway is beyond 100', but they are proposing to expand the driveway to the property line.

Ms. Schloss asked about excavation and erosion controls, adding they will be needed before work nears the slope and wall. Ms. Civello said they will be excavating for Sonatubes and patio substrate (two 4' deep holes).

There were no public comments.

Ms. Civello asked if there would be any issues if the flag stone under the garage is replaced; Ms. Schloss said she did not foresee a problem with that.

On a motion made by Cmmr. Loring, seconded by Cmmr. Dowd, the Commission voted 4-0-0 to close the public hearing.

On a motion made by Cmmr. Dowd, seconded by Cmmr. Tanner, the Commission voted 4-0-0 to issue a Negative 3 Determination of Applicability.

Lovell Playground Renovation - Notice of Intent, Continued Public Hearing

Town of Weymouth

1250 Commercial Street

Map 23, Block 253, Lot 26; DEP File # 81-1141

NOTE: This public hearing is being continued to Sept. 9th without discussion.

Broad Street, Lot B1 (Subdivision of #487) - Notice of Intent, Continued Public Hearing

John Lamparelli, K.M.L., LLC

Map 22, Block 291, Lot 29; DEP File # 81-1159

Single family house

487 Broad Street, Lot B2 - Notice of Intent, Continued Public Hearing

John Lamparelli, K.M.L., LLC

Map 22, Block 291, Lot 7; DEP File # 81-1160

Single family house

Hearings for DEP File #s 81-1159 and 81-1160 were held concurrently.

On a motion made by Cmmr. Loring, seconded by Cmmr. Tanner, the Commission voted 3-0-0 to re-open the public hearing; Cmmr. Dowd could not participate as he has not listened to prior minutes concerning these agenda items.

Representing the applicant was Jeff Hassett, engineer with Morse Engineering. He explained that this project is for the building of two single-family homes, with the closest point being 50 ft. from the wetlands and, as such, they will use mulch sock as the erosion control barrier.

He explained that since the last hearing they have corrected some of the flag placement plus staked out the houses and limit of work. He said he and Ms. Schloss did a site visit yesterday to look at trees to be saved but thinks it will be left to the homeowner to decide on which trees to save as some are within the limit of work. He said there has been discussion on marking the limit of the lawn area and they are okay with a post and rail fence.

Cmmr. DeGabriele said there are fairly significant trees along the limit of work and said he would be more comfortable designating which trees are anticipated to be saved. He suggested it would be best to put them on the plan, or mark the trees and take pictures. He stated it needs to be clear what is being approved: where is the bump out? Where's the clearing? Which trees are to be saved? He said he is also concerned about potential runoff onto adjacent properties.

Mr. Hassett said they will probably extend the stone trench and they are waiting on a storm water permit from DPW.

Ms. Schloss said the new driveway will send water towards the neighbor's property, but it is out of Con Comm jurisdiction. She offered to send an email to DPW and the Building Dept. about the stormwater permit.

Ms. Schloss gave her comments:

- Preventing encroachment is important to protect the adjacent area - this site abuts 25 acres of protected open space.
- They have talked about a post and rail fence or markers, with the fence being preferred. Cmmr. DeGabriele suggested markers on the fence.
- Trees to be preserved are to be wrapped/protected during construction.
- Pre-construction meeting can include review of trees to be removed.

The hearing was opened to the public.

Herb Cundict architect, assured the commission that the fewest number of trees will be taken down and offered to notify the commission 48 hours before they would be taken down; Ms. Schloss stated that is not enough notification.

Mr. Hassett asked if trees to be saved within limit of work could be marked instead of putting them on the plan; Ms. Schloss said she wants them on the plan. Cmmr. DeGabriele added that it is okay to put the saved trees and fence designation on the current plan.

On a motion made by Cmmr. Tanner, seconded by Cmmr. Loring, the Commission voted 3-0-0 to close the public hearing.

On a motion made by Cmmr. Loring, seconded by Cmmr. Tanner, the Commission voted 3-0-0 to issue an Order of Conditions with conditions discussed.

Weathervane Golf Course and Village at Weathervane – Request for Extension of Order of Conditions, Public Hearing

Off Liberty Street

Map 51, Bl 535, Lots 79, 80; Bl 574, Lot 4; Bl 576, Lots 29, 30, 31, 32; Bl 608, Lots 2, 12

DEP File #s 81-756 & 81-963

On a motion made by Cmmr. Dowd, seconded by Cmmr. Tanner, the Commission voted 4-0-0 to open the public hearing.

Appearing before the commission was Carl Erickson, Bristol Brothers, explaining that they would like to extend the Orders of Condition retroactive to the expiration date (March 24, 2015). He said they are working toward the overall closeout of the project, the biggest piece of it being the off-site mitigation as

an alternative to the trail by Ralph Talbot School. The abutter notices were sent out and receipts were given to Ms. Schloss.

He updated the current status of the project:

- Lot 30, Weathervane Dr., has a Building Permit that is pending.
- Several of the 100-ft buffer homes have received Partial Certificates of Compliance.
- All of the roadways are done except for the Clubhouse parking lot.
- All of the Weathervane 1 roadways that have had some drainage have been submitted and he thinks they are ready to be closed out.
- Last season, Mr. Erickson and Ms. Schloss inspected the mitigation planting around the golf course. A sign has been put up and bridge erected to keep people away from the 5th Green intermittent stream channel and the plantings that need to be replaced or supplemented will be done this fall. The plantings on the 7th Fairway are doing better.

Ms. Schloss gave an update of the July 31, 2013 Enforcement Order (plantings to compensate for encroachment):

- The September 14th inspection was of View 1, the 5th Green.
- View 3: 20 shrubs to be planted, plus an additional shrub.
- View 4: a few shrubs are missing; Ms. Schloss asked they be planted this fall.
- Still outstanding is the stand-alone turf management report that was due Oct. 20th; Mr. Erickson said the areas are marked on the course and that the UMass program has not been fully updated.

Ms. Schloss said she believes she received the fly-over plan but has not received the ground water and surface water quality reports that were due spring 2015. Health Director Dan McCormack provided comments to make the water quality reports more understandable.

Other project updates included:

- Drainage compliance comments have been received.
- She needs to do a brief scope-of-work for the off-site mitigation.
- Irrigation pumping data received.
- Lot 30 still has to be developed and she wants to see where the erosion controls are. Mr. Erickson said they will put in silt socks adjacent to the road. Ms. Schloss said a site walk will be needed before they are installed.

Ms. Schloss stated the extension will be for one year and will extend to March 24, 2016.

There were no public questions or comments.

On a motion made by Cmmr. Loring, seconded by Cmmr. Tanner, the Commission voted 4-0-0 to close the public hearing.

On a motion made by Cmmr. Tanner, seconded by Cmmr. Loring, the Commission voted 4-0-0 to issue a one year extension to the Order of Conditions for DEP File # 81-756 and DEP File # 81-963, both to expire March 24, 2016.

**Alexan at Arbor Hill - Discussion (vernal pool impacts, stormwater control)
DEP File # 81-1046**

Stormwater

Before work began on the east side of Burkhall Street, Ms. Schloss said there was a verbal request to change the erosion controls from a wire-backed silt fence to a silt sock, and to install a road that would be required for the silt sock installation. She asked the engineers to review it for suitability and was told "it should work here". She said she thinks the site is probably vulnerable - about 5 acres have been cleared and there is a lot of disturbed area all of which drains to one low point. On Aug. 11th she observed stormwater coming out of the pipe, clear, running into the disturbed soil and picking up sediments, discharging turbid water off-site into the drainage channel, and then going into the wetlands. Water was flowing under the silt sock. These conditions violate the Order of Conditions.

Cmmr. DeGabriele commented that it is particularly troubling because Meredith Way also had erosion controls that were not properly maintained and he is beginning to see a pattern of stormwater controls not being maintained.

Mr. Erickson said he talked to Gale Associates about the silt sock and they supported the change. He said the large check dams were working but there was soil between them and some of it passed through during heavier rain events. He said "from ledge to ledge" they will remove all of the 'fines' and replace it with filter fabric filled with 3-5 inches of stone.

Mr. Bristol, Jr., explained that where the water is getting turbid, is where the site is muddy. He said on the day of the storm (Aug. 11th) he walked in the basin at 4p.m. where he dug down until he reached gravel and some of the water had infiltrated into ground.

Peter Spanos, PE, Gale Associates, said he found a gap under the silt sock which will be corrected and they will add another layer of silt sock on top of it. He said a series of "plunge pools" is the best solution.

Ms. Schloss commented that, three weeks ago, a lot more had been cleared than what was needed for the roadway for the silt sock installation.

Mr. Bristol, III, said the only stump removal was for truck access to do the silt sock installation.

Mr. Bristol, Jr., said they will do the fabric replacement immediately, within 1-2 days, "it should be finished tomorrow" (8/13/15).

Mr. Erickson said that they will make modifications as warranted.

Cmmr. Dowd asked if the initial stormwater control plans were approved by Con Comm; Ms. Schloss confirmed they were reviewed and approved.

Cmmr. Dowd asked if anyone is monitoring the site.

Mr. Erickson said different people were out there (Aug. 11th); he was there at 6:30a.m., then went out at 11a.m. (during the heavy rains) and there was nothing wrong, then, at 1p.m., it 'had turned'.

Cmmr. DeGabriele said he thought it appropriate to issue another Notice of Non Compliance as this is another turbidity issue on a large project; Cmmr. Tanner said he did not think it was necessary.

On a motion made by Cmmr. Dowd, seconded by Cmmr. Loring, the Commission voted 3-1-0 to issue a Notice of Violation for failure to maintain adequate stormwater controls. Cmmrs. DeGabriele, Dowd and Loring voting for, Cmmr. Tanner voting against.

Vernal Pool

Cmmr. DeGabriele asked what the applicant's thoughts were regarding the possibility of directing the stormwater from the combination vernal pool/stormwater system to somewhere other than into the existing major vernal pool (Wetland C). He said there was also a discussion about the two smaller vernal pools; would they continue to propose they be eliminated, notwithstanding the fact that on two occasions there was shown to be breeding activity.

Tom Godfrey, Bristol Bros., said the SWPPP plan offers 2 options, towards Wetland C or towards the back of the site, away from Wetland C. He summarized that there has been a lengthy procedural history and ultimately there was a Superseding Order of Conditions issued. He said when all appeals were done, the issue boiled down to Wetland C and how it would be impacted and how the combination basin would function; he said that was the subject of 14 rounds of peer review consultants. He stated that the town hired 3 review consultants - Tetra Tech to review stormwater and habitat issues in that basin, and GZA to prepare the blasting report which said the blasting would not affect Wetland C. He said all consultant issues were incorporated into the Order of Conditions (OOC) which has at least 20 conditions that focus on Wetland C. Also, the OOC requires a bond (they posted a bond of \$750,000.00) to ensure the stormwater system performs properly, and to ensure the viability and function of the new basin and its effect on Wetland C.

Mr. Godfrey said they have received building permits, started construction and clearing on the east side and have reviewed all the conditions and believes "that issue" has been studied and there is flexibility and controls in place in the Order that allows for it to be built as proposed. In addition there is a 3 year monitoring program proposed to study the basin and effects on Wetland C and to make adjustments, and there is a bond to back it up. They feel there are controls in place to protect any issues that come up.

Mr. Godfrey said, since the last meeting, Gale Associates has contacted Natural Heritage and they said they don't offer opinions on stormwater.

Cmmr. DeGabriele asked if Natural Heritage was deferring to DEP. Mr. Godfrey said DEP doesn't have jurisdiction and Ms. Schloss said DEP wouldn't likely provide a formal review of vernal pool impacts.

Cmmr. DeGabriele said he would like to talk to Natural Heritage because the commission's decision was partly based on their statement that it is never a good idea to discharge stormwater to a vernal pool.

Cmmr. DeGabriele asked if it is possible to divert the stormwater and what effect it would have on Vernal Pool C.

Mr. Godfrey said the flexibility exists to increase or decrease flow (by putting a valve on the outlet control structure).

Mr. Peter Spanos said stormwater discharged into Vernal Pool C would have already been treated by a separator and the forebay, before it went toward the outlet.

Ms. Schloss said she received two documents from Don Schall, representing the applicant, regarding vernal pools and, as this meeting is to discuss new information, she highlighted some of the information in the documents distributed.

From the “Best Development Practices” document:¹

- Stormwater detention basin and biofiltration ponds can serve as decoy wetlands intercepting breeding amphibians moving toward vernal pools. If amphibians deposit their eggs in these artificial wetlands, they rarely survive due to the sediment and pollutant loads, as well as fluctuations in water quality, quantity and temperature.
- Detention and biofiltration ponds should be located 750 ft. from a vernal pool; they should never be sited between vernal pools or in areas that are primary amphibian overland migration routes.
- Maintain inputs to the vernal pool watershed at pre-construction levels. Ms. Schloss said the consultants looked at pre and post runoff analysis.
- Altered and created wetlands often support highly adaptable, widespread, “weedy” species (e.g., bullfrogs or green frogs). These species prey upon, or successfully outcompete, vernal pool-breeding amphibians, which reduces or locally eliminates populations of these habitat species.
- Created wetlands that do not have the appropriate habitat often attract breeding amphibians. Eggs laid in these “decoy” pools often do not survive. Such pools serve to trap breeding amphibians and might result in local population declines.
- Redirect efforts from *creating* low value, generalized wetlands to *enhancing* terrestrial habitats around vernal pools. These enhancements could include reforestation of post-agricultural lands within 750 ft. of a vernal pool, restoration of forests, importing additional cover objects (e.g., logs, stumps), and removal of invasive plants and animals.
- Construction periods should ideally occur outside of peak amphibian breeding. Ms. Schloss commented that the OOC has no Time of Year restriction.

Ms. Schloss said she believes the document referenced reiterates some of the concerns of Mr. Kubel, from Natural Heritage. She said the created, mitigated vernal pool is potentially very misguided, that creating a pool adjacent to a functioning pool isn’t going to enhance breeding but will likely get amphibians to deposit eggs in a stormwater basin, which is not where you want them deposited.

¹ Calhoun, A.J.K. and M.W. Klemens. 2002. Best Development Practices: Conserving Pool-Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States.” MCA Technical Paper No. 5, Metropolitan Conservation Alliance, Wildlife Conservation Society, Bronx, New York.

Ms. Schloss summarized the second document (Value of Artificial Habitats for Amphibian Reproduction)² by saying that in suburban watersheds, 89% of wetlands with breeding activity, were either stormwater ponds or other artificial pools. She said amphibians can't distinguish and will deposit eggs if given the opportunity and you don't want them deposited in storm water basins. She added that created wetlands are not appropriate in this location and Con Comm's desire is to conserve what is natural and unfragmented.

Ms. Schloss reported that she went out to Wetland E during the August 11 storm event and did not see any water coming in and said she is not sure if it is stormwater or ground water coming from Wetland E and going into Wetland C. The new information includes the downside of creating an artificial vernal pool next to a natural, functioning vernal pool.

Mr. Godfrey referred to the Order of Conditions findings #9 which concludes that the peer review consultant found the combination replication wetland pond will not affect Wetland C.

Cmmr. DeGabriele reminded the applicants that the commission is acting under *new information*, which is the breeding information. They have received comments from Natural Heritage and now another report is saying that it is not advisable to create another artificial wetland area within 750 ft. of a vernal pool. He stated that he thinks it would be prudent to consult with DEP and is not prepared to issue an opinion. He explained the commission's hopes are to have a net benefit to, or, at the very least, no harm to the environment.

Ms. Schloss said it is unfortunate the commission didn't push for a biological survey, but in the spring she heard wood frog choruses. She said there are two pools being destroyed (where there is active breeding) and, potentially, a negative impact to the most critical pool that's there.

Cmmr. Tanner asked if 2-4 ft. of water is needed in the pools to sustain life; Ms. Schloss said yes, plus a duration of 60 days.

Cmmr. Tanner asked that, in light of the 12 acres of land being donated to the town (and not disturbed), doesn't that even out the loss of *possible* breeding vernal pools?

Ms. Schloss said it doesn't answer the main question which is whether the function of Wetland C is being impaired.

Cmmr. Tanner asked how Wetland C is being impacted.

Ms. Schloss responded that the stormwater discharged from the detention basin will change the temperature and chemical characteristics of water in the pool. Cmmr. DeGabriele remarked that new information is saying it's not a good idea.

Cmmr. Dowd commented that it wasn't until Ms. Schloss went out that it was *confirmed* that it is breeding habitat, not just a potential breeding habitat.

² Brand, A. and Snodgrass, J.W. 2009. Value of artificial habitats for amphibian reproduction in altered landscapes. Conservation Biology. Vol. 24, No. 1: 295-301.

Cmmr. Tanner said the state claims that, with a volume of less than 2 ft., it is more than a possibility that it will not sustain life; Cmmr. Dowd said the commission has no evidence in hand (regarding the pools in question).

Ms. Schloss said the local ordinance defines a vernal pool as a depression that, in most years, holds water for at least 2 months.

Cmmr. Dowd asked if the vernal pool on Main Street holds 2 ft. of water for 2 months; Ms. Schloss said she believes so.

After more discussion, Cmmr. DeGabriele asked if the applicants wanted more time; Mr. Godfrey said they have provided all they have unless there are specific questions that need to be answered or Con Comm can provide them with some direction.

Cmmr. DeGabriele stated the commission requested that there be no activity on the west side, and he's not sure enough information has been received to take a vote on the issue.

Ms. Schloss said the commission put a "time out" on the process to get a resolution on the new information that has come forth on the potential impacts to the resource. She is not sure if there are any alternatives to the pond system - the burden should be on the applicant. She said nothing has been submitted after they asked if the applicant could discharge to the woods, instead of the vernal pool, so as not to affect the water to Wetland C.

Mr. Godfrey reminded the commission that they have a Superseding Order of Conditions; Ms. Schloss added that any change would have to be approved by DEP, adding she should speak to (the town's) legal counsel to discuss where things are.

Mr. Godfrey said the alleged vernal pool led to mitigation; Ms. Schloss responded that the new information is that the mitigation being done for the loss of Vernal Pools D & E could be more detrimental than beneficial based on Natural Heritage information and the documents received from Don Schall.

Cmmr. DeGabriele said the two big issues are:

- Is there any option for dealing with the mitigation vernal pool being so close to Vernal Pool C?
- Should vernal pool discharge be going to Vernal Pool C?

Mr. Bristol, III, said diverting outfall water was suggested by experts.

Cmmr. Dowd asked if the water discharge rate into Vernal Pool C could be controlled; Mr. Godfrey said a control structure, before the outfall, is designed to replicate existing flow.

Mr. Spanos said, in a larger storm event, there is a spillway where the overflow goes to the woods.

Ms. Schloss asked him what the analysis point was; Mr. Spanos said that, after all the reviews, it was taken at the discharge of Vernal Pool C.

Mr. Bristol, Jr. asked, once the erosion control fence is in place, can they get rid of the stumps where they are working?

Ms. Schloss responded that, as long as all erosion controls are in place, she is okay with it.

Discussion is being continued to Sept. 9, 2015.

Weymouth Club - Request for Certificate of Compliance

Finnell Co., LLC

Finnell Drive

Map 36, Block 452, Lot 9; DEP File # 81-1103

Terminating Order of Conditions for proposed parking lot (work never started)

On a motion made by Cmmr. Tanner, seconded by Cmmr. Loring, the Commission voted 4-0-0 to issue a Certificate of Compliance for DEP File # 81-1103, indicating that the Order has not lapsed, no work was begun and the owner wishes to close out the order.

Other Business

- **Release of Bond, Dandelion Lane (Lot 2), 81-1144 (fence):** Ms. Schloss reported that the fence and signs are up and recommended returning the \$600.00 cash security.

On a motion made by Cmmr. Tanner, seconded by Cmmr. Dowd, the Commission voted 4-0-0 to release the \$600.00 cash Bond held for fence and signs on DEP File # 81-1144.

- **136–138 Bridge Street, 81-1152:** The commission members were given the buffer strip Minor Modification information so as to be reviewed at the Sept. 9th meeting.

CPC Update

Cmmr. Loring stated there was nothing to report that impacts the Conservation Commission.

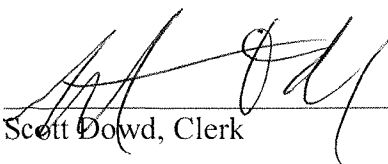
Adjournment:

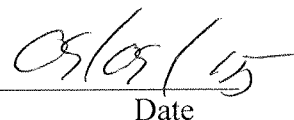
On a motion made by Cmmr. Loring, seconded by Cmmr. Dowd, the Commission voted 4-0-0 to adjourn at 10:15 p.m.

Respectfully submitted by,

Patricia Fitzgerald
Recording Secretary

Approved by:


Scott Dowd, Clerk


Date