

WEYMOUTH CONSERVATION COMMISSION
Town Council Chambers
April 29th, 2009 Meeting

PRESENT: John Thompson/Chairman, Cmmr. Gerald Murphy/Vice Chairman, Cmmr and Scott Coven/Clerk

ALSO PRESENT: Conservation Administrator, Mary Ellen Schloss

Chairman Thompson called the April 29th, 2009 meeting of the Conservation Commission to order at 7:37 PM.

Minutes: March 25, 20009 for Signature

Minutes were tabled due to the busy agenda.

1440 Commercial Street/Herring Run Park - Public Hearing

Applicant: Town of Weymouth

Map 23, Block 305, Lots 5, 6, 12, 13

DEP File # Not Available

Notice of Intent

Cmmr. Murphy moved to open the hearing for 1440 Commercial Street, Herring Run Park, File number still to be assigned.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

Mr. Rod Fuqua, Planning Dept. and Mr. John Ryther, landscaping architect both representing the applicant, the Town of Weymouth, came before the Board.

Mr. Fuqua gave members the background of the project, which revolved around the revitalization of the Herring Run Park/pool located at 1440 Commercial Street, Jackson Square in East Weymouth. He informed members that in the past the pool has been used for harvesting and has been a focal point in the Town for generations. This property was purchased in 1978 by the Town (which used to be the site of the Office of Youth and Family Services). In 2005 the building was demolished, in part through the efforts of the East Weymouth Civic Assn. and Developer Ken Ryder. At the same time the Back River Trail Plan was being developed (which extends from Hingham Back River to Whitman's Pond). This trail provides access to open space and allows more accessible use of the Back River. In 2007 the Community Preservation Committee awarded \$276,220 for improvement to the Herring Run Pool - in conjunction with approvals from Mayor Kay and the Town Council.

It was also acknowledged that in addition to Mr. Ryther, the efforts of many departments in the Town were involved in bringing this project to fruition, including the Planning staff, Ms. Schloss/Conservation, the Herring Run Warden and Mr. Bina, Asst. Town Engineer/DPW.

Mr. Ryther then addressed the Board and presented the site plan for all present. He confirmed that they have created and improved the Park and explained the importance of the Herring Run/herring to the Town of Weymouth. He explained to the members that the design has reduced the amount of impervious surface by 1,000 sq. ft. (this area was the old parking lot). Additionally they have improved the waters edge, which will become a rolling hillside and the proposed work will protect the slope. Further they have provided a viewing platform, which could serve a variety of purposes; i. e., educational purposes or just for viewing.

With regard to care of the stream - Mr. Ryther explained that the water will collect and pass through a grass channel providing for the amount of runoff to be reduced. He pointed out that there would be no work in the river. At the base of the wall they have included additional edging along the concrete wall. This will become a safe place for all ages - plans call for the other part to have guardrails. Further, plans also call for the removal of the dead tree.

Chairman Thompson commented 'great improvement'!

Mr. Ryther wanted to add that plans also call for stepping stones that would be utilized in part to tell the story of the Run/Park.

Cmmr. Coven asked about the tree removal and Mr. Ryther explained that the tree/roots were impacting the retaining wall and would need to be removed because they could cause damage to the wall and reduces visibility. He noted that the proposed new plantings would still offer shade. Lastly they would be replacing the dead tree with another tree, possibly a Magnolia tree.

The hearing was opened to the public.

Town Councilor DiFazio came before the Board, noting he was the District 3 Councilor. He told members that he has been following this project for 3-4 years now, along with the East Weymouth Civic Assn. and the North Weymouth Civic Assn. Additionally, he has participated in ongoing meetings during this time period, where they have been shown slides on the planned improvements. He explained that initially they didn't know where the money would come from for the work, but fortunately the CPC and Town Council approved the expenditure. He commented that he felt it was very good use of the money. He said that the East Weymouth Neighborhood Assn. mitigated the area and supported removal of the old building (Weymouth office of Youth and Family Services), adding that he also supported this because he felt it was a great plan and would be a definite improvement of the resource.

Chairman Thompson concurred.

Ms. Schloss wanted to point out that the file number has not been received as yet, so the hearing would need to be continued. She was proposing a Standard Order of Conditions plus a few 'specials'. Her primary concern was the machinery that would be used to do the work and possible negative affect it could have on the Run. She was recommending that no work take place between 4/15/09 and 6/15/09, migration season.

Mr. Fuqua acknowledged that would be okay with their anticipated schedule.

Ms. Schloss commented that she hated to see the tree go, but realized if it remained it would compromise the structural integrity of the retaining wall.

Mr. Ryther reiterated that it could be replaced with a Magnolia tree.

Cmmr. Murphy moved to continue the hearing to 5/13/09 for receipt of the file number.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

0 Pond Street - Public Hearing

Map 61, Block 641, Lot 8

DEP File # 81-1057

Notice of Intent

Cmmr. Murphy moved to open the public hearing for File 81-1057, 0 Pond Street.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

Chairman Thompson wanted to clarify that this Notice of Intent/proposal was for the 'sidewalk' only, adding it was required by the Zoning Board of Appeals for safety purposes. He noted that is was also necessary for protection of the resource re. debris sedimentation.

(File Note: At this point the applicant submitted the certified mailing receipts).

Mr. John McGrath and Mr. Thomas Pozerski, PE/Merrill Associates representing the applicant, came before the Board along with Atty. Roger Mervis. It was noted that John Reilly, another representative of the applicant was also present.

Atty. Mervis explained that they were before the Board this evening to propose off-site work with regard to the addition of a sidewalk that would be located on the west side of Pond Street. It was also noted that it was mandated by the Zoning Board of Appeals for public safety purposes. He also wanted to point out that they have a superceding Order of Conditions with DEP. He wanted to emphasize that they were before the Board tonight only for the sidewalk.

Mr. Pozerski told members that his and John McGrath's work met with Town compliance re. the inclusion of a sidewalk - in addition the proposal called for the addition of a black vinyl fence and a crosswalk, along with a minor water main extension. Further the amenities included drainage improvements (replacing the old catch basin) and a grass infiltration trench that met the mitigation requirements re. a 100-year storm. He also noted that there would be no loss of trees. Work would take place within the 25 ft. buffer zone and in order to accomplish that work they would be requesting a waiver. Further there would be no filling of a wetland, adding the only resource area is the buffer zone - and there would be no affect to endangered species. He reiterated that they would need to work within the 25 ft. buffer, but there would be no alterations to the resource area proposed. Lastly he wanted to point out that the project would provide pedestrian safety.

Chairman Thompson asked if the wall from the lowest point would support the sidewalk.

Mr. Pozerski replied that all of the work would be done from the street side. They are planning to use a small backhoe and hand compactor. He went on to explain that the wall would be elevated and they would cap/fence inserts. Lastly, the fence would eliminate the debris and give a clear demarcation line.

Ms. Schloss noted there would be a lot of mitigation with regard to the storm water runoff, commenting 'more than what we typically see' (re. trench). With regard to the trees on the plan, she clarified that the larger trees would remain outside the boundary of the wall.

Mr. Pozerski confirmed that whatever trees come down they would replace. The only trees removed were where there would be sidewalk construction.

Ms. Schloss told members she was okay with that, adding that she had met previously with the applicant and all of her comments were incorporated into their plan. At this point she just needed the fees before any work begins.

The hearing was opened to the public.

Mr. John Wayne Smith, 595 Pond Street was the first speaker.

Before taking any testimony, Chairman Thompson wanted to reconfirm to those who wished to speak this evening that they were addressing the 'sidewalk work' only.

Mr. Smith asked the applicant to show him the location of the sidewalk starts and where it would begin.

Mr. Pozerski explained that the sidewalk started across from 688 Pond Street, went up to Cross Street/641 Pond Street and ended at 626 Pond Street.

Chairman Thompson pointed out to Mr. Smith that the Conservation Commission does not deal with the crosswalk, because that came under the jurisdiction of the ZBA.

Mr. Smith differed with the Chairman and cited to Chapter 7/301 Ordinance.

Again Chairman Thompson explained that what he was referring to was not a Conservation-related issue.

Mr. Smith commented that this was a dangerous area re. pedestrian/safety issues - and there shouldn't be any growth that would block the view. He went on to disagree with the applicant, stating that the sidewalk was not ending where the applicant initially said it would.

Chairman Thompson clarified that tonight's project was a new and separate file re. this project and the past Notice of Intent was now under a superceding Order of Conditions - emphasizing that file was closed.

The next speaker was Harvey Welch, 674 Pond Street. He told members that he has a letter dated 3/24/09 from the DEP that includes (3) Conditions the applicant was to meet. One referred to reduction of the footprint, another reduction of the size of the sidewalk/access drive; i. e., reducing it from 24 ft. to 20 ft.

Mr. Welch went on to say that he has an Order of Conditions from the Zoning Board of Appeals dated 2005 that states they needed to make a reduction re. the impervious surface - including a turnaround for the bus. He wanted to point out that although they proposed reduce the impervious surface in the past, they were now telling the DEP they are going to do it now for the sidewalk. He said in order to get more impervious area, the applicant is now saying they are adding 6,000 ft. and that is not true. He noted that he lives across the street from the site and his property is flooding now. He felt that this work would increase the problem. He told members that the applicant was lying about the amount of impervious surface they would be adding, commenting that's a large area. Additionally, he told members, the sidewalk was supposed to go to Galway Road, and he commented if this happens, it would cut across more culverts and cause additional problems.

Chairman Thompson again emphasized that Zoning Board of Appeals issues are not the Commission's problems and that the applicant was before them this evening only for the sidewalk work and the access way only - and he didn't see a problem with what they were proposing. Further he didn't see the proposed sidewalk causing problems to Mr. Welch's property.

Mr. Welch asked if the Commission needed to consider the impervious surface and Chairman Thompson replied 'yes'.

Mr. Welch asked what would happen if the information is incorrect.

Chairman Thompson explained that the applicant was requesting a 25' Waiver to work in the buffer in order to construct the sidewalk.

Ms. Schloss further explained that the 25' No Disturb Buffer is not a requirement of the state.

Dennis Lynch, 664 Pond Street was the next speaker. He agreed that the residents would need to go back to the Zoning Board of Appeals with their zoning issues. With regard to the safety issue and the sidewalk, he said that originally in 2005 the proposal was for the work to take place on the west side, then in 2008 it was changed to the east side - and now in 2009 it is back to the west side. He said the only problem he has is in regard to the safety issue. He informed members that in 2005 there was a lot of discussion about this. He noted that the sidewalk starts at 688 Pond Street and his house is at 640 Pond - pointing out that drivers would have less than 200' of visibility to stop and this was a big concern for him.

Chairman Thompson understood their concerns, but again stated that there was nothing they could do about traffic, the curvature of the road, etc., because that was not part of Conservation's business. He then took a moment to explain the charge of the Conservation Commission.

Mr. Lynch said he realized they would need to go back to the Zoning Board. He noted that the water was migrating northeast and getting worse. He acknowledged that the applicant was making an effort to mitigate the flow. He noted that the Commission had agreed to look into this in the past.

Chairman Thompson confirmed that they all of the Commission made a site inspection and looked at it.

Mr. Lynch commented that he didn't see anything being done.

Chairman Thompson said he understood some of the residents didn't want the project because of water concerns. He said the members tried to make sure that the proponent did all they could, but the Commission cannot make new laws, only ensure they comply with the present Rules and Regulations. Further, they can't re-hear the past project again (which was presently under a superseding Order of Conditions from DEP), adding the Board didn't have the authority to solve all their problems - and at this point could only address the applicant's proposal for a sidewalk.

Mr. Lynch asked Mr. Pozerski if he would show him where the crosswalk would be located on the plan - which he did.

Mr. Lynch then referred to the wall, asking 'why so large'.

Mr. Pozerski explained that the materials they have proposed allows for much faster construction and is less invasive.

Ms. Schloss requested clarity re. a 'point of information'. She wanted to make it clear to those present that they all did a site visit (Administrator/Commissioners). Additionally she contacted the railroad about some improvements. At this point she has not received a response. She said when they/the Town reviewed the work for Route 18; they brought to their attention the problem with the water and encouraged the Mass. Highway Dept. to work with Mass. Bay Railroad and the applicant regarding the drainage.

Chairman Thompson said he clearly recalled walking the tracks with representatives of the Mass. Bay RR some time ago.

Town Councilor Smart asked the applicant why they chose to end the sidewalk where they did, why not bring it further north.

Mr. Pozerski replied 'we are', pointing out the location on the plan. He went on to say that they stopped where they did due to the location of the wetland.

Town Council Smart then asked about the distance and Mr. Pozerski replied "120 ft."

Town Councilor Smart commented that in 2004 he had to have State Safety there for safety purposes, commenting the end of the sidewalk was 120 ft. short. He noted that at this point the residents were being encouraged to cross there. He further acknowledged to those present that it was not a Conservation issue, although he would appreciate it if the Commission would consider their concerns.

Chairman Thompson apologized to Town Councilor Smart that he couldn't address the issue further, restating that it was not a Conservation issue and it was out of their jurisdiction. Further, he commented, the Commission was not there to redesign the project for them.

Mr. Pozerski informed those present that they were requested to connect to Galway and they honored that request. They were also requested to come up on the west side - again which they did. He said that at some point they need to cross the road and they feel where they are proposing to cross is one of the most favorable locations to do so.

Town Councilor Smart asked if they viewed the location of the crosswalk as a financial decision and Mr. Pozerski replied 'no'.

Chairman Thompson commented that it appeared to be a design decision by the proponents.

Town Councilor Smart asked if the Board had the latitude to refuse the request for the 25 ft. waiver and Chairman Thompson explained that the applicant is required to meet the maximum extent possible and at this point the Commission has decided they have.

Joe Celini, Captains Way was the next speaker. He asked why they couldn't eliminate the sidewalk at that locus with Chairman Thompson replying - 'again it's the zoning'.

Mr. Celini told members that what is presently being proposed is not the sidewalk that was originally proposed.

Chairman Thompson thanked him for his presentation.

Mr. Smith took the podium a second time with additional questions. He told members that there were 120 errors in the engineer's last drawing, asking the Commission if they were going to have other professionals look at their plans. He noted that Mary Stokes used the words "approximate" when describing the measurements, commenting he was concerned with the accuracy of the engineering. In closing he asked if the Town Engineer had reviewed the plan.

Chairman Thompson replied 'no' they would not be hiring a consultant because they didn't deem it necessary.

Mr. Welch then stated he had a question regarding the drainage trench located next to the sidewalk that, he said, is supposed to be covered with 2" of loam. He said he would like to know what would happen when there are driving rains, noting that the road slants toward his property.

Again Chairman Thompson explained to Mr. Welch that the Commission did not have any plans to hire an engineer.

Mr. Welch then asked about the height of the wall and Mr. Pozerski told him that the wall was 4' with a 4' fence.

Mr. Welch felt the addition of the fence would add more noise and Chairman Thompson pointed out that 'noise' also did not fall under the jurisdiction of the Conservation Commission.

Mr. Welch then asked what would happen in the winter when/if the trench is covered with ice/snow - where will the water go.....onto my property?

Chairman Thompson told him that this issue had been addressed with the 2005 Superceding Order of Conditions.

At this point there were no further questions.

Cmmr. Murphy moved to close the public hearing for O Pond Street, File 81-1057.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

O Pond Street - Public Hearing

Map 61, Block 641, Lot 8

DEP File # 81-1057

Order of Conditions

Ms. Schloss recommended a Standard Order of Conditions.

Cmmr. Murphy moved to issue a Standard Order of Conditions which will be issued after receipt of the fees that are due.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

File 81-396

1119 Washington Street

Certificate of Compliance

Ms. Schloss informed members that there had been some outstanding conditions that needed to be addressed; i. e., the catch basin needed to be cleared, but quickly noted that this has recently been taken care of. Further, she noted, they

have reshaped the area re. the swale, pulled back the slope, addressed the rock. The owner told her he would loam/seed. At this point she would like to verify that all has been done.

Cmmr. Murphy moved to approve approval of the Certificate of Compliance based on the Administrator's approval after her upcoming site inspection.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

File 81-1007

Martin Street

Certificate of Compliance

Ms. Schloss told members that she made a site inspection and found the property in pretty good shape. At this point the only thing outstanding is the riprap, commenting they were talking about a 3-lot subdivision. She noted that they had brought in an engineer to look at the base of the rock. Lastly, at this point Mr. Zeboski has agreed to move the riprap to the appropriate location and she is okay with that.

Cmmr. Murphy moved to approve a Certificate of Compliance for File 81-1007, Martin Street, based on a final site inspection/approval by the Administrator.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

File 81-979

Route 3 Median Project

Extension to Order of Conditions

Members were told that the Town Engineer has requested an extension to give them additional time to complete the project and she was supportive of this request.

Cmmr. Murphy moved to approve a one-year extension for File 81-979, Route 3, Weymouth/median project.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

File 81-975

30 Unicorn Avenue

Extension to Order of Conditions

Cmmr. Murphy moved to approve a one-year extension for File 81-975/30 Unicorn Avenue, based on the Administrator's recommendation.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

File 81-953

29 Tamarack Trail

Certificate of Compliance

Ms. Schloss told members that she hadn't had a chance to make a site inspection so would like to table the request until the next meeting.

Cmmr. Murphy moved to continue the request for a Certificate of Compliance re. File 81-953/29 Tamarack Trail until 5/27/09.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

File 81-982**82 Prospect Hill Drive****Request for a Certificate of Compliance**

Mr. DeLuca, applicant, was present for his request.

Ms. Schloss told members that at this point there are still some outstanding issues; i. e., a downspout question, corrugated piping, connecting to downspouts into the line then going out back to the left - but she quickly noted when she viewed the area the water had not been gushing out.

Chairman Thompson asked what the downspouts were supposed to flow into and Ms. Schloss referred to their Order of Conditions, Condition #46.

Chairman Thompson noted that it was not supposed to erode the coastal bank, but there was some disturbed soil there - although it did not adversely affect the bank.

Mr. DeLuca confirmed that it didn't. He explained the process to the Board, adding that some dirt had been dumped over the coastal bank by the developer - and that the coastal bank was not disturbed.

Ms. Schloss said she would like to wait to make her recommendation until after she has viewed the site - after the next rainstorm. She told members that she has tried to call the engineer, but has not spoken with him as yet.

Chairman Thompson asked Mr. DeLuca if he needed his Certificate of Compliance now and he replied that he did, explaining the bank was holding \$40,000 until the Certificate of Compliance was issued.

Members discussed approving a Certificate of Compliance with the stipulation Mr. DeLuca would contract for a Conservation Bond in the amount of \$10,000 (at an estimated cost to the owner of approximately a couple of hundred dollars) until all the work was completed - once the balance of the work was approved by the Administrator, Mr. DeLuca would be 'good to go' and would no longer need the Performance Bond.

Mr. DeLuca was in agreement with this.

Ms. Schloss said once the Order of Conditions was complied with she would be happy to recommend approval of the Certificate of Compliance and sign the Certificate of Occupancy. She said she would put a letter of explanation in the file.

Ms. Schloss told members she would want Mr. DeLuca to use coastal erosion mix on the bank (to stabilize and seed) before giving her final approval.

Cmmr. Murphy moved to require a \$10,000 Conservation Bond in exchange for the Administrator's signature on the Certificate of Occupancy for 82 Prospect Hill Drive, then once all the work is completed to the Administrator's standards, the Bond would be released and a Certificate of Compliance issued by the Commission.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

Department of Conservation & Recreation - Discussion**Invasive Species Control at Webb State Park**

Ms. Schloss told members that they were speaking about 50 sq. ft. re. Phragmites and that the Dept. of Conservation & Recreation would like a letter from the Conservation Commission stating they are fine with that.

Members were in agreement, based on the Administrator's recommendation.

Other Business**Alexan at Arbor Hill**

Ms. Schloss reported that Mr. and Mrs. Marques have filed an appeal re. the Conservation Commission's approval of this project. She said that she has spoken with Trammel Crow today about the \$7.5 million dollar bond the Commission had required as part of their Order of Conditions. They told her that in their pursuing a bond for this amount they were told that the amount is more than the project is worth and that the appropriate amount for this bond would be \$450,000, adding that their cost would be 3% of the amount of the bond - or about \$225,000 annually.

Ms. Schloss went on to say that at this point the Conservation Commission needs to decide how they would like to proceed, adding that the applicant has 60 days to register their appeal. She noted that some of the Conditions are on the state only - with others being state/local. She noted that the bond would fall under the local regulations/ordinance only. Lastly she told members that she has requested Trammel Crow speak to other bonding companies then get back to her.

60 Patterson St. Update/Silvestro, Owner

Ms. Schloss reported that she met with Mr. Silvestro and his consultant Sterling Wall in early April regarding removal of some sand and filling sand bags (which could be used as fill when he takes down the wall). During their conversation Mr. Silvestro once more asked her why he couldn't leave the wall and she told him 'because the DPW said so'. She emphasized that all of the work was supposed to be completed by the end of April which was his final deadline (including the planting). At this point she would like to send him a certified letter regarding the required removal of the wall as well as his need to restore the slope - if not he would be subject to fines. She pointed out to the Board that this work was originally supposed to be done no later than September/October 2008. She noted that she was concerned with the oversight, emphasizing they were talking about a sensitive area.

Chairman Thompson felt that assessing fines to Mr. Silvestro would be the way to go as it would be an incentive for him to comply.

Ms. Schloss told members that she would speak further with Town Solicitor Lane about it.

Chairman Thompson felt now was time to act.

Ms. Schloss will get back to the Board with the Town Solicitor's response.

Conservation Report**39 Patterson Street - 2006 Order of Conditions**

Ms. Schloss told members that the one-year Order of Conditions for 39 Patterson Street will expire in July and they didn't have the money to complete/pave the driveway. At this point she was recommending members approve the Certificate of Compliance to be accompanied by a letter stating that the driveway still needs to be done.

Members agreed.

Violation Order - Richard's Auto Service, Main Street

Ms. Schloss reported that there were dirt bike trails in back of the gas station where there are wetlands. In the past she warned the owner about this type of activity, but it still is ongoing. Now she would like to send a letter and request a site visit. She suggested that the Conservation Commission might possibly ask the owner to come appear before them, with thought given to possibly issuing an Enforcement Order requiring restoration work.

The May 13, 2009, Meeting will begin at 7:30 P. M. at the Weymouth Town Hall.

Ms. Schloss informed members that King Phillip would be on the 5/13/09 agenda.

Whitman's Pond Hydro raking Work

Ms. Schloss noted that the DPW is proposing chemical treatment of Whitman's Pond, in addition to hydro raking.

Adjournment

Cmmr. Murphy moved to adjourn at 9:35 PM and to meet again on Wednesday 5/13/09 at Weymouth Town Hall/Town Council Chambers.

Cmmr. Coven seconded.

UNANIMOUSLY VOTED

Respectfully submitted,

Susan DeChristoforo
Recording Secretary

APPROVED: _____
Scott Coven, Clerk

DATE: