

**CITY OF GLOUCESTER
CONSERVATION COMMISSION MINUTES
WEDNESDAY January 4, 2012 - 7:00 PM**

**CITY HALL, KYROUZ AUDITORIUM
ROBERT GULLA, CHAIRMAN**

Members Present:

**Robert Gulla, Chair
Ann Jo Jackson, Co Chair
Steve Phillips
Barry Gradwohl
Hugh Prichard
John Montoni
Charles Anderson**

Staff:

**Lisa Press, Agent
Pauline Doody, Recording Clerk**

Items may be heard 15 minutes before their scheduled time.

I. 1-5 minutes, review of amended, updated or final information, status reviews, modifications, signing decisions etc.

Minor modification: 35 Rockholm

Ms. Press stated that boulders were supposed to be individually placed from the upland. The request to change the condition is because of impacts to the resource and difficulties in doing the work.

Alex Sands 13 Vulcan St. Gloucester

Mr. Sands stated by backing in a one ton truck to dump the rocks will cause less damage, especially since the ground is frozen. A few boulders could stray, but even so, the impact will be less. There would be three loads of rocks necessary.

Ms. Press stated she would like to be able to manage it so the boulders don't go into intertidal area.

Mr. Gulla suggested that the agent be present for the first load of rocks being dumped into the area. If the agent is satisfied, then the rest of the rocks can be dumped.

Condition:

- **Agent to observe and approve the first load of boulders dumped into site.**

Motion: Approval of the minor modification for 35 Rockholm.

1st: Ann Jo Jackson

2nd: Barry Gradwohl

Vote: Approval 7-0

II. PUBLIC COMMENT - None

III MINUTES REVIEW

Motion: Approval of the December 21, 2011 minutes

1st: Ann Jo Jackson

2nd: Charles Anderson

Vote: Approved 7-0

IV PUBLIC HEARING approximately 7:15 PM

A. New- 120R Wheeler Street Notice of Intent submitted by Joan & Greg Lepore,

to demolish and reconstruct portion of dwelling, install gravel parking area, repair deck, pier, seasonal ramp and float in riverfront resource area. (Map 99 lot 39).

Presenter: John Barrow, 90 Pine St, Danvers, MA.

Mr. Barrow stated the property is located off of Wheeler Street. There is no frontage on Wheeler Street but is accessed through a 20 foot right of way. The existing property is a 1300 square foot single two story house with a detached garage. It is surrounded with coastal bank, a seawall, shellfish area, intertidal are, and is in a riverfront. The owners would like to add to the existing building with modular components. Building will take a day or two. There will be a new foundation and a gravel pea-stone parking area. The parking area will also be used as staging area to drop in the modular home. The site will be prepared with a erosion control barrier. They would also like to maintain walkway from the home and of the existing deck, dock, and pier which is existing. The site never had a Chapter 91 which is part of the filing.

The Alternative Analysis: The building has been in existence since 1912. The site is tight and there is a limited amount of area to work. The only alternative is to do this work would be to move the house to a different part of the lot. It would disturb the site quite a bit of more that what is proposed.

Commission Comments:

Ms. Press stated there may be other alternatives. She asked about building up instead of out and to reconsider the parking area.

Mr. Barrow stated we are limited to the zoning height ordinance which is 30 feet high and we are at 29 feet high already. It is an existing two story.

Ms. Jackson asked what the elevation difference of the retaining wall by the house.

Mr. Barrow stated that it was 3-4 feet high and at its worst point it will be 8 feet high.

Mr. Montoni asked about the condition of the seawall as it exists presently.

Mr. Barrow stated that it is in very good shape.

Ms. Press suggested that a structural engineer look at the property so issues come up after the fact.

Joan Lepore: 120R Wheeler St

Ms. Lepore stated the whole front of the house is staying. She explained the house construction to the commission for clarity. The back section is being replaced.

Mr. Gulla suggested to Ms. Lepore to check into all related issues regarding the construction so the application is complete.

Public Comment:

Lana Doughty, 120 Wheeler St

Ms. Doughty asked if the construction will have an effect on the ecosystem or the drainage toward her home.

Mr. Gulla stated that the commission is here to protect the ecosystem and the applicants must get an engineering permit so the storm water management is taken care of.

Ms. Doughty also asked if drainage could be affected with the new placement of the garage.

Ms. Press stated concern with a potential drainage issue and suggested the existing driveway could be made pervious.

Miguel Echavarri, 122A Wheeler St

Mr. Echavarri stated he had several questions and asked if they were coming back

again in front of the commission with more detailed information.

Mr. Gulla stated that it most likely will be continued for more information.

Mr. Echavarri stated he would wait until the next meeting to voice his questions.

Motion: Approval of the Alternative Analysis

1st: Steve Phillips

2nd: Ann Jo Jackson

Vote: Approved 7-0

Mr. Gulla stated the commission has several areas of concern. The storm water management, the driveway, the impervious nature of the new structure and its size, and there is no mitigation plan. Please provide us with all the information as requested.

Mr. Montoni requested more detail on the dock, pier, and pier, because it was never approved in any manner.

Ms. Press stated that between now and January 18 we could have a sit down meeting with Bill Sandborn to go over the structure of the building. We want to know what his comfort level is.

Mr. Gulla stated a letter from engineering or the building inspector would also be acceptable.

Motion: To continue the project at 120R Wheeler Street Notice of Intent submitted by Joan & Greg Lepore, to demolish and reconstruct portion of dwelling, install gravel parking area, repair deck, pier, seasonal ramp and float in riverfront resource area. (Map 99 lot 39) to January 18, 2012.

1st: Barry Gradwohl

2nd: Ann Jo Jackson

Vote: Approved 7-0

New- 40 Vine Street Notice of Intent submitted by Deborah Nowell, to demolish and rebuild a deck, and conduct repairs to a shed, a pier gangway and seasonal float in riverfront resource area. (Map 112 lot 23, 24).

Presenter: John Barrow, 90 Pine Street, Danvers, MA

Mr. Barrow stated that the property is in disrepair and the new owner would like to repair and replace what is already there. There is a dock, pier, shed, float and ramp. They removed the decking because it was rotted and dangerous to walk on.

The second story had an open wooden deck that was supported by columns on existing footing. They will utilize what already exists and would like to do the same on the dock and pier. There is a timber frame that exists on boulder and bedrock. The owners know they will have to follow DEP guidelines. The entire site is within riverfront and the Chapter 91 license expired in 2008. They want to repair the remaining shed, take away the decking some of the concrete in that area that will be removed.

Commission Comments:

Ms. Press stated the Division of Marine fisheries had comments on the project and read them to the commission. She also stated that the plan presented is slightly different than what was submitted. The shed was not going to stay or be maintained. Also was

removing one piling was also initially presented. That is different. We discussed at the site visit if all the pilings are needed.

Mr. Barrows stated that he believes that what is in place now is what's needed. There were two sheds on the property one was taken down and will not be replaced and the other would be repaired.

Ms. Press read Dave Sargents comments on the shed to the commission.

Mr. Gradwohl asked if the wood underneath the decking was in good shape and what the material for the decking would be.

Mr. Barrow stated that the contractor feels it is in good repair to use. He stated he did not know what the materials will be used for the deck.

Mr. Gulla stated that the entire scope of the project must be presented to the commission so an informed decision can be made.

Public Comment: None

Motion: To continue the project at 40 Vine Street Notice of Intent submitted by Deborah Nowell, to demolish and rebuild a deck, and conduct repairs to a shed, a pier gangway and seasonal float in riverfront resource area. (Map 112 lot 23, 24) to January 18, 2012.

1st: Ann Jo Jackson

2nd: Hugh Prichard

Vote: Approved 7-0

New- 55 Riverview Road Notice of Intent submitted by Paul Douglas, to construct a 2nd story addition, construct a one story addition, replace and expand a deck over water, construct a detached garage, expand gravel parking area, expand a float and build a walkway in riverfront resource area. (Map 94 lot 70).

Presenter: Bill Manuel, Wetlands and Land Management, Danvers, MA.

Mr. Manuel stated that the owners would like to put a second floor addition, with small bump-out, a new stoop, a new wood walkway to replace the existing one and a new detached garage by the street. The back of the house is on the coastal bank line. There is a seasonal ramp and float and would like to add a 10x20 float to existing it. They will use standoffs and are confident the standoffs will support this addition. A low tide site walk is coming up on the 13th of January. One of the biggest issues is there are tree roots pushing into the wall of the foundation of the house that has to be removed. It will be mitigated for by planting two additional trees. The deck as it exists now is a cantilevered. We will rebuild it, and it will also be cantilevered one story above the ground. The roof will come off the exterior wall will be built off the second floor and the deck will be built from there. The deck does not extend over mean high water. We will need a Chapter 91 license for the deck and float. There is an interim license now.

Alternative Analysis: We chose to go up to add living space and ground floor alteration is the small bump out. The garage is near the street and we have minimized it to 1.5 car garage.

Public Comment:

David Curley, 52 Riverview Road

Mr. Curley stated at a high tide the deck is over the water. He stated his concern is given the location of the garage. He stated a step sewage system was put in and questioned how it would be serviced if the garage was there.

Mr. Manuel stated that the mean high water elevation is 4.5. He stated that the gentleman might be discussing an extreme high tide.

Ms. Press stated she would double check the FEMA and Mr. Manuel's plan regarding the mean high water level and the deck.

Ms. Press stated the application will have to be continued because there is a site walk scheduled for January 13, at 8:45.

Motion: To continue the project at 55 Riverview Road Notice of Intent submitted by Paul Douglas, to construct a 2nd story addition, construct a one story addition, replace and expand a deck over water, construct a detached garage, expand gravel parking area, expand a float and build a walkway in riverfront resource area. (Map 94 lot 70) to January 18, 2012.

1st: Barry Gradwohl

2nd: Ann Jo Jackson

Vote: Approved 7-0

D. New- 50 Atlantic Ave Request for Determination submitted by Francis Goodhue, for after the fact excavation and installation of utilities and drainage. (map 151, lot 257/201)

Presenter: Matt Wolfe, 159 Aspen Road, Swampscott

Mr. Wolfe stated a pipe for a seasonal house breaks every year due to the cold. This year when repairing the pipe we wanted to install a valve and put in a concrete riser to alleviate the pressure in the pipe. He stated that everything has been fixed, recovered, and put back to the original condition.

Public Comment: None

Motion: Negative determination for 50 Atlantic Ave submitted by Francis Goodhue, for after the fact excavation and installation of utilities and drainage. (map 151, lot 257/201)

1st: Steve Phillips

2nd: Ann Jo Jackson

Vote: Approved 7-0

Continuation- 152 Concord Street, Request for Determination submitted by Michael Carrigan, Carrigan Enterprises, (map 242, lot 41) request the Conservation Commission to determine the applicability of the Wetlands Protection Act and the local Wetlands Ordinance, to determine a stream classified as perennial ins USGS, is intermittent.

Presenter: Attorney Deborah Ellison, Ellison Law Office , 63 Middle Street Micheal Seakamp, Seakamp Environmental, Mike Carrigan

Attorney Ellison stated this is an application to determine the applicability to determine that a stream that is shown as perennial on the USGS map is actually an intermittent stream. It is based on documented field observations by two competent sources. Attorney Ellison read from regulation 310 CMR 10.58 subsection 2A1D. You have been presented with affidavits and photographs from Mr. Seakamp and Mr. Carrigan. Mr. Seakamp made observations on July 27, 28, 29 and August 1 on lots 41

and 42 of map 242. He also made observations on August 5 and 6 on the neighboring property. Mr. Carrigan made observations on July 28, 29, 30, 31 and August 1. He also made observations on August 5 and 6 on the neighboring property- lot 187. The affidavits have been presented to you under the pains and penalties of perjury and they attest to the authenticity to the photographs. The site visit confirmed two photo locations and the commission determined at that point that it was satisfied. The question here is whether or not there is a competent source. DEP determined with regard to a previous determination of an intermittent stream that both Mr. Seakamp and Mr. Carrigan are competent sources. DEP determined that the stream was intermittent based upon the same methodologies that they used this time. The only difference used in the methodology in this determination from the other methodology used previously is that Mr. Seakamp only observed one day and Mr. Carrigan observed the other three days. The question has been raised whether or not the Conservation Commission agent is required to be present at these observations. Under the regulations, there is no such requirement. I asked the question at the site visit and was subsequently provided with a citation from the agent. The citation was the last sentence in 10.58 2 A1D, but it doesn't say that. There is a presumption in the regulation that DEP staff and the conservation commission staff are presumed to be competent sources. It also says that you can take into consideration evidence from other competent sources. There isn't anything in that sentence that says the agent must be called before observations are taken. The regulations state that you may consider competent evidence. There is no question that this evidence is competent and that it meets the regulations. You don't have the discretion to act unreasonably when determining or not to consider this evidence. If you do so, it is arbitrary and capricious. As a governmental body you are not allowed to do that. We are asking you to make the determination if this stream is perennial or intermittent based on the evidence presented to you. If you deny the applicants request then what you will be doing is once again going to DEP with the exact same question DEP ruled on the last time. They ruled on the process and found it to be accurate and in compliance of the regulations and they also ruled on the sources as being competent.

Ms. Press asked for clarification from Attorney Ellison regarding the section in DEP's determination deeming the two people competent.

Attorney Ellison stated that there is no specific language that says that, however, in order for them to have found a stream as intermittent they have to base that upon competent sources. I also want to point out to the board that this board has made a determination that there is an intermittent stream on another project which is also at the lower portion of this stream.

Mr. Phillips stated that the commission made it clear at the last proceeding that they would like the agent to be called before the observations were to be made. He asked Ms. Ellison why the applicants didn't call the agent as requested.

Attorney Ellison stated that there are no legal requirements for them to call the agent. Why they made that decision one way or the other is irrelevant.

Ms. Press stated there are no requirements, but I have been called out to other streams that have been dry in places where you could photograph a newspaper, but they are running upstream, downstream, but they just gone dry in that portion, or they have gone underground on that portion, but I don't know what the situation was with this because I wasn't there and can't make that determination

Attorney Ellison stated the affidavit that has been presented to you by the wetland scientist has addressed these issues. There is no regulation that requires that any

member of the conservation commission or DEP is required to be present for these observations.

Mr. Gulla stated the reason this language exists is to avoid this conflict of interest issue. Having the applicant do their own observations and be their own competent source is a conflict. That is why we requested that the agent be called. A competent source is someone who is familiar with and not directly connected to, that can oversee.

Attorney Ellison stated the language is there to create a presumption in favor of DEP, conservation commissioners and agents to be competent sources, so that no one can question that they are competent sources. The additional language is there so that other sources can be considered. There is nothing in the regulation that hints at a conflict or bias. Mr. Seakamp is an independent wetland scientist that has been hired by Mr. Carrigan to make this determination. He has a professional reputation to uphold. He would not present an affidavit to you if the information was not true. At the last consideration, DEP did not find that to be an issue. They were not concerned with the fact that three of the days were only observed by the applicant not even by the wetland scientist. They had no concern in that regard or in regard to a conflict.

Ms. Press stated that DEP's determination had nothing to do with who observed it. You could see what the stream was on the site walk. That stream is far **upgradient** than this. It is at the headwaters, and is very small and very obvious that it does not run throughout the year. That was what their determination was. No one discussed competency on the site or on the RFD. That is making stuff up.

Mr. Gulla stated he agreed with the bulk of what the agent is saying. It just doesn't make a lot of sense to me. It seems horribly unfortunate that a simple observation could have been made if the agent was there. Anybody, if you are devious enough, and I am not saying that anybody here is, you could come up with a million reasons why this happens. There are obviously financial implications. The person who benefits from it is determining whether or not it's a stream. It is why this language exists in the first place.

Attorney Ellison stated that if the commission is concerned with that they may want to enact regulations to address that concern. We are skirting very close to an issue of making some disparaging remarks against professionals in this field.

Mr. Gulla stated it has nothing to do with the professionals. It is the general idea that the person who benefits it, gains from the determination.

Attorney Ellison stated that this is one of the most objective and lack of subjective standards that you can find. Is the stream wet or dry?

Mr. Montoni asked on the days when the stream was dry; was the water running on the headwater on the down side or from that point to the terminal end of the stream.

Michael Seakamp, Seakamp Environmental, Rt.129 125 Kingston NH.

Mr. Seakamp stated that it was continually dry there and no puddle areas. Mr. Seakamp explained where the pictures were taken to the commission.

Mr. Gulla asked Mr. Seakamp if he had ever been the competent source where the applicant was the owner.

Mr. Seakamp stated yes.

Public comment: None

Motion: Positive Determination for the application at 152 Concord Street, submitted by Michael Carrigan, Carrigan Enterprises, (map 242, lot 41) with the finding of the stream shown as perennial on the most recent USGS survey and that the applicant has not presented sufficient competent evidence to overcome

that presumption.

1st: Steve Phillips

2nd: Ann Jo Jackson

Vote: Approved 6-0 with Charles Anderson abstaining.

28-2122 3325 Concord Street Mod

Presenter: Issac rowe Mill River Consulting, 6 Sargent St

Mr. Rowe stated this project was approved to replace the existing septic system and to also replace part of the coastal bank wall. DEP has a policy that if the cost to replace a system is greater than 10% then the Board of Health must present another option. The cost to repair is beyond 10% and the owner has proposed to do a tight tank. The Board of Health issued an approval for this at their December meeting. There will be fewer disturbances to the site and the plantings are still proposed.

Motion: Approval for the minor modification at 28-2122 3325 Concord Street

1st: Ann Jo Jackson

2nd: Steve Phillips

Vote: Approved 7-0

V. PUBLIC HEARINGS approximately 8:15 PM

A. Continuation- 28-2125 - Newell Stadium, 26 Centennial Avenue, Notice of Intent submitted by the City of Gloucester, DPW, to remove and replace athletic field, add additional fill, remove and replace seating and to construct an accessory building in the buffer to inland and coastal resource areas. (Map 4 lot 1)

Applicant requests continuation to March 21, 2012

Motion: Approve the continuation for the project at 28-2125 - Newell Stadium, 26 Centennial Avenue, Notice of Intent submitted by the City of Gloucester, DPW, to remove and replace athletic field, add additional fill, remove and replace seating and to construct an accessory building in the buffer to inland and coastal resource areas. (Map 4 lot 1) to March 21, 2012.

1st: Ann Jo Jackson

2nd: Charles Anderson

Vote: Approved 7-0

VII. AS TIME PERMITS: COMMISSION BUSINESS

A. Requests for Letter Permits/Modifications
Release of enforcement order

46 Leverett Street

Ms. Press stated there was no official release was done by the commission. In order to take the lien off the property there is a form that needs to be signed.

VII. AGENT'S REPORT ON VIOLATIONS

B. Requests for Certificates of Compliance
28-1120 32 Nashua Ave

28-2015 31 Rocky Neck Ave

Motion: Approval of 32 Nashua Ave and 31 Rocky Neck Ave.

1st: Ann Jo Jackson

2nd: Charles Anderson

Vote: Approved 7-0

C. Requests for Extension Permits

If you would like additional information regarding the review status of a particular item, please contact the Community Development Conservation Department via e-mail at mdemick@gloucester-ma.gov or via phone at 978-281-9781.

Additional information can also be obtained on the Conservation Web Page at www.gloucester-ma.gov Click Community Development for a link to Conservation.

Commission Members: If you are unable to attend the meeting, please contact the Community Development office at 978-281-9781 or send Lisa or Marie an e-mail