

**CITY OF GLOUCESTER
CONSERVATION COMMISSION MINUTES
WEDNESDAY February 15, 2012 - 7:00 PM**

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

Members Present:

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

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.

Brierneck Grant Application

Ann Jo Jackson recused herself.

**Councilor Paul McGeary, 31 Eastern Ave
Meredith Fine representing Friends of Good Harbor**

Councilor McGeary stated the Friends of Good Harbor have started negotiations with the land owners on acquiring the land. What we are looking for this evening are two votes from the Commission. One is to proceed with the land grant and the other is for the Commission to partner with us in applying for CPA funds. He stated there is oral support from the Mayor.

Mr. Gulla asked Ms. Press what Suzanne Egan said about this acquisition.

Ms. Press stated that Ms. Egan said it has to legally be in the care and custody of the Commission but can be maintained by the city.

Mr. Phillips stated he wanted to make sure a contract could be drafted with the DPW stating they would maintain the property. His concern being that the Commission would not be liable for the land if anything should happen on it or to it. At the last meeting there was talk of a board walk to be built on it.

Councilor McGeary stated that was more of a vision for the land in the future, along with marsh restoration.

Motion: To move forward and support the acquisition for the Brier Neck Grant application.

Vote: All in favor 5-0

Motion: To move forward with the LAND grant, with the Conservation Commission being the applicant.

Vote: All in favor 5-0

Motion: Being a co- applicant with the Friends of Good Harbor in applying for a CPA grant to acquire Brier Neck Crossing.

Vote: All in favor 5-0.

Ann Jo Jackson rejoined the Commission.

28-2106 6 Fortune Lane- Landscaping changes

Bill Manuell, Wetlands and Land Management

Mr. Manuell stated a plan has been submitted. There are no landscaping changes. It includes 23 trees replacing the 19 that are gone.

Ms. Press stated her concern that some of the trees are not native and was not quite sure how to count mitigation for the patio.

Mr. Gulla confirmed that the gaps in the patio would be pervious. **Mr. Manuell** confirmed yes. He stated that on the bigger projects it's up to the Commission to ask for the planting plans.

Ms. Press stated that some of the items were not on the original plans. When we originally discussed the site, we wanted more planting near the resource not near the road.

Mr. Manuell stated there is a significant amount of planting near the coastal bank.

Motion: To accept the submitted planting plan with the 23 trees to be native species

1st: Ann Jo Jackson

2nd: Barry Gradwohl

Vote: Approved 6-0

Rob Gulla recused himself

28-2188 120R Wheeler St

Ms. Press stated she would not issue the Order until it is signed off by engineering. The replacement of trees must be native trees. There will be five in total.

Public comment:

Miguel Echavarri, 122 Wheeler Street

Mr. Echavarri was concerned about the water runoff.

Ms. Press stated the roof runoff is not going into the driveway. The driveway is now pervious and there will be a gravel drip edge.

Mr. Echavarri asked if the house going to sit at the same elevation?

Mr. Gradwohl stated that is an issue we cannot address.

Ms. Press stated there will be no blasting.

Mr. Echavarri asked if the area under the porch pervious or impervious?

Ms. Press stated we have not got into that level of calculation. It is done on a case by case basis.

Motion: To approved the plans for 120R Wheeler St with the stipulation that the engineering plan does not change the plan submitted to the Commission.

1st: Barry Gradwohl

2nd: Charles Anderson

Vote: Approved 5-0

Rob Gulla rejoined the Commission.

28-1768 COC re-sign, recording information change

II. PUBLIC COMMENT - John Feener 45B Warner Street

Mr. Feener stated that the winter moth caterpillar will be in full force this spring. He stated his concern about the pesticides that could be used in controlling them. It might be a problem. The Commission may want to consider some regulation to control the type of pesticides used. It could be detrimental.

Ms. Press asked for a recommendation.

Mr. Feener stated a pesticide with Chiton inhibitors and to spray it early before leaves are on the trees.

Ms. Press stated she will put it in the paper now so the information is available to the public.

III MINUTES REVIEW

February 1, 2012 minutes

Motion: Approval of the February 1, 2012 minutes

1st: Barry Gradwohl

2nd: Steve Phillips

Vote: Approved 6-0

IV PUBLIC HEARING approximately 7:15 PM

A. B. C. Guidelines for Ordinance.

Mr. Gulla stated this discussion is regarding Piers and Vegetation replacement for projects. A report from Division of Marine Fisheries stated that ACA and ACQ are a no go. At this point we can use steel, concrete, hardwoods, and fiberglass.

Attorney Deborah Elliason, Elliason Law Office, 63 Middle Street, Gloucester

Attorney Elliason stated she is speaking in opposition for both of the guidelines. She stated her concerns are the legal concerns. Her questions are: What these guidelines are intended to be? They are not a part of the Wetlands Protection Act, not part of the Ordinance, and they are not regulations. You are calling them guidelines and best management practices, but the question is "What authority are they adopted under?" The Commission can only act with authority; the Wetlands Act does not give you the authority to enact these types of guidelines. The Ordinance says that you can enact regulations that are procedural regulations. In the MACC handbook 15.4.12, it advises you as a Conservation Commission to adopt formal policies and guidelines. You are not authorized by the by law, you are only authorized to adopt the Ordinance procedural regulations. If you want to adopt these guidelines then the Ordinance needs to be amended in order to do so.

The Vegetation Guidelines

Attorney Elliason stated the most disturbing section is section 3-C where it appears to retroactively apply to any projects that does not yet have their certificate of compliance.

What this says to me is that projects that have already gone through the process and

have already received their orders of conditions are back to square one. There are no criteria as to how it will be applied or what projects that would be looked at.

Pilings

The proposed guideline itself states that the EPA doesn't prohibit it and that the Mass Wetland Protection Act does not prohibit it. What you are proposing is a guideline, and there is no authority to adopt it. It is aimed at the single family homeowner. It is an additional cost to them. These guidelines apply to everyone and not just to the developers. Tonight on the Commissions' agenda are mostly single family homeowners and would guess that most of them don't know about these guidelines and how they might affect them.

If sweeping changes are going to be made they need to be vetted more openly to the public and other city boards and the science behind them needs to be examined. I respectfully request that the Commission table the matter and assess whether they can legally make these changes.

Mike Faherty 83 Mount Pleasant Ave

Attorney Faherty stated that one of the primary concerns for the section that says- that you would be able to adopt procedural regulations, not substantive regulations and there is a distinct difference in the administrative law.

The City Council, when it adopted this Ordinance did not want to delegate to the Conservation Commission substantive rule making authority that affected the entire city. These are not procedural; they go to the heart of what's allowed. There is a separate section on performance standards. It says that this board will be governed by the performance standards contained in sections 2 and III of the state act and then it carves out a very limited exception which address issues in which Gloucester Ordinance is different than the state act. DEP does not eliminate pressure treated piles for marine construction nor has the EPA. There is no authority for the Commission to eliminate those piles. There is a specific exception for the projects in the DPA. One of facts that have to be looked at in pile supported structures is safety and durability.

If you are going to make an investment in rebuilding a pier and wharf you want to make sure it is secure as possible. You also don't want to worry about repairs because the cost associated with that is very expensive if you don't let people use the most durable products out there. The way it has to be handled is an amendment to the Ordinance.

Mr. Phillips asked Attorney Faherty for clarification; "Is it your position we don't have authority on a case by case basis by a majority vote of this Commission to tell someone that cannot use CCA."

Attorney Faherty stated yes; because you are governed by the performance standards that are in the Ordinance that relate to sections 2 and 3.

Austin Dorr

Mr. Dorr stated he spent 7 hours going through all the documents and they based on assumptions. He asked the Commission if anyone had made visitations to manufacturers. He stated he had. He also asked them if they had made any visits to hospital and found any relations to issues with leaching. He asked what the liability factor going to be? What is the cost impact? He stated he wants to promote Gloucester.

John Feener, 45B Warner Street

Mr. Feener stated he want to address the vegetation portion of the guidelines. He stated many things can be discussed such as root systems of trees protect the soil

from falling apart. Oxygen intake, micro pours the infiltration of water and water temperature. When it comes to invasive control and mitigation: if you are going to control invasive species- instead of having 2-1 mitigation, maybe invasive control could act as one of the two of the mitigation requirements. The last item of concern was receiving a planting plan prior to acceptance. Every construction site morphs during construction and to mandate a plan that early may cause issues later on. He suggested doing best management practice for the vegetation.

Mike Carrigan-77 Norwood Heights

Mr. Carrigan asked what the difference is between a guideline and regulation. He stated he does not believe more regulation is needed. Many times providing 2-1 mitigation in a buffer causes more disturbances.

Bill Manuell, Wetlands and Land Management

Mr. Manuell commented on the Vegetation guidelines. He stated he echo's the attorneys. My comments regarding vetting and going through proper procedure is more geared toward the citizens of Gloucester. They do not realize the impact these guidelines would have on them. It triples the footprint of the project. This came out of the blue. All of a sudden projects are required to have 2-1 mitigation and there was never an opportunity for any discussion. The cost of it is in the thousands of dollar's and the mitigation directly targets the most usable and accessible portions of peoples property. I don't think it is fair to the citizens of Gloucester. They should have more information. Mr. Manuell stated with respect to the intent to move everything away from the resource area, an Alternative Analysis is required for every project, it means more cost for the simplest amount of projects. The people of Gloucester need to be able to really understand what you are asking them to accept.

Mr. Gulla stated to the public that the Commission will review and look into all the comments, questions and issues that have been discussed this evening. This is what the public forum is for. The public will be notified about future discussions.

D New- 4 Wolf Hill Road Notice of Intent submitted by William Friend, to construct a new dwelling and driveway with grading and utilities in riverfront resource area. (Map 87 lot 3).

Presenter: John Judd, Gateway Consultants

Mr. Judd stated the lot is currently vacant. It will be a single family dwelling with a driveway and drainage. The applicant is looking for approval for the structure and driveway. The lot is restricted by zoning. If any blasting is needed it is out of the Commission jurisdiction.

Commission Comments:

Ms. Press stated there are no issues. The area is very wooded.

Mr. Phillips asked for the Alternative Analysis.

Mr. Judd stated there are limitations on the property, there are zoning constraints and steep slopes. Mitigation will be done with native plantings.

Motion: Approval of the Alternative Analysis for 4 Wolf Hill Road

1st: Ann Jo Jackson

2nd: Barry Gradwohl

Vote: Approved 6-0

Public Comment: None

Motion: Approval of 4 Wolf Hill Road submitted by William Friend, to construct a new dwelling and driveway with grading and utilities in riverfront resource area. (Map 87 lot 3).

1st: Charles Anderson

2nd: Steve Phillips

Vote: Approved 6-0

V. PUBLIC HEARINGS approximately 8:15 PM

A. New- 31 Rocky Neck Avenue Notice of Intent submitted by Michael Faherty, 2531 RNA Realty Trust, to construct a wall, repair a wall, construct a ramp, install a boat washing station and pave the lot in a coastal bank resource area. (Map 130 lot 5,6,7,8).

Presenter: Attorney Mike Faherty,

Attorney Faherty stated the LLC purchased the property in June and has been cleaning up the site. A new water and sewer line must be brought into the property. The framing of the structure is not complete. There is a stone wall around the premises made with large boulders and some have fallen into the flats. The wall will be capped and rebuilt in the sections that have to be rebuilt. Part of wall will be built off site and floated up and set. The cap will be concrete. Where the railways a new concrete ramp will be built. A basin will be put in with a grid. When a boat comes in, it will position itself over this pit, and it can be washed down. The water will go into the grate, into a retaining chamber. In water events, it will go through the same grid system and the valves will be adjusted. Off the property there is a distressed area, and there is runoff coming off of it. We would like to build a 6 inch retaining wall above grade so it can encapsulate the gravel. The existing wooden structure and winch will be removed. This property is subject to an activity and use limitation because of the presence of lead in the soil, so we want to make sure the asphalt on the site is restored

Commission Comments:

Ms. Press stated a narrative was not submitted for the Commission.

Mr. Gulla stated he would like to have a site visit.

Ms. Press stated there is a state boat person who reviews the boat wash plans. I will submit it for review. DEP has not commented.

Public Comment: None

Motion: To continue the project at 31 Rocky Neck Avenue Notice of Intent submitted by Michael Faherty, 2531 RNA Realty Trust, to construct a wall, repair a wall, construct a ramp, install a boat washing station and pave the lot in a coastal bank resource area. (Map 130 lot 5,6,7,8) to March 7, 2012

1st: Barry Gradwohl

2nd: Hugh Prichard

Vote: Approved 6-0

B. Continuation- Amend- 15 Horton Street, Ginger Attaya, to amend existing order of conditions #28-2153, to change approved addition to a 2 story addition, in a coastal

bank resource area. (Map 128 lot 23).

Presenter: Paul Bergman, Bergman and Associates, 20 Washington Street, Haverhill MA.

Mr. Bergman stated he was hired to do a geotechnical exploration of the site and to design the piers to support the addition. Soil test pits were dug to verify subsoil conditions. Granite was found as could be expected. Using the results of the geotechnical study, along with drawings and loads from the architectural designer, we designed piers for the addition. Mr. Sandborn asked for a pier survey. We assembled a plan that was submitted to the office. The piers are 10 inch round concrete, pinned into the rock and extend 36 inches down into the granite

Commission Comments:

Andrew McCowan, McCowan Associates, Dodge Street, Beverly, MA.

Mr. McCowan stated he had reviewed the plans. He stated that it would be a good idea to review the means and methods of the construction which would be done in the coastal bank. There is going to be some drilling for some reinforcing bars down through to support the columns on the rock, with grouting and other construction methods on the coastal bank. My letter addresses to finalize the drawings. A submittal of means and methods is needed and then a monitoring by both Bergman Associates and periodically by myself during construction.

Public Comment:

Ellen Sibley, 17 Rocky Neck Ave

Ms. Sibley read from two letters that were submitted by other neighbors who were not able to attend the meeting.

Sherri DeLorenzo, 1 Horton Street.

I have attended other meetings regarding this proposal and am in total support of it of the project. Ginger Attaya has sought professional help to ensure the safety of the site and surrounding area.

Angel O'Connor 56 Rocky Neck Ave

I have reviewed the plans and am in full support of her proposal. All the information stated there will not be any adverse effects to the coastal bank. I urge the committee vote to affirmatively.

Ellen Sibley, 17 Rocky Neck Ave

Ms. Sibley stated she is in favor of the project. Ginger has done here due diligence. The house is only going up 5.9 feet. The footprint is not increasing and I believe there will not be any adverse impacts.

Charles Bowlin 30 Haskell Street

Mr. Bowlin stated that MG Hall contracting has been hired to do the work. They are a fantastic company. He stated he has talked to Mr. Hall and all the digging will be done by hand. The general contractor will use an impact drill for the rock.

Theodore Williams 17 Horton St

Mr. Williams stated he is opposed to the project and feels that there should not be a vote tonight. You cannot erect or fill or build in a buffer zone. But you granted the

applicant permission any way. It was said the planting scheme would offset any damage. I believe this was a mistake. That was for a one story structure and now this is a two story structure. Additionally, you have a chance tonight where you can correct your mistake. In the Act it states, that you can use your discretionary power to override the Act. In 2008 the applicant came before you and the plan was approved but the planting was never done. Why do you think it will be done this time? A new mitigation plan is needed for the two story structure. There was a special condition that the roof be flat-special condition #9.

McGowan Associates calls for a plan and the project should not be voted on until a plan is in place. I am concerned about the project because I live next door and the coastal bank protects my property and I enjoy it as it is now. To do this project is wrong. Please get all the facts and I strongly urge you to reject the proposal.

Mr. Phillips asked Ms. Press if she was satisfied that DeRosa plan is sufficient

Ms. Press stated we will lose a tree. The new roofline will impact the tree, so it will have to be addressed.

Mr. Phillips asked if the tree would survive with the large degree of pruning.

Paul Bergman stated that the roof addition is flat.

Ms. Press stated she would like to revisit the site and look at the trees and we need to get the means and methods before we make a decision.

Motion: To continue the project at 15 Horton Street, Ginger Attaya, to amend existing order of conditions #28-2153, to change approved addition to a 2 story addition, in a coastal bank resource area. (Map 128 lot 23) to March 7, 2012

1st: Ann Jo Jackson

2nd: Barry Gradwohl

Vote: Approved 6-0

C. Continuation- 28-2185- 20R Bungalow Road - Notice of Intent submitted by Robert Daly, to re-stabilize dune with sand and plantings in a coastal resource area. (Map 257 lot 74).

Presenter: John Dick, Hancock Associates

Commission Comments:

Ms. Press stated the issue is with the pipe. They will have to get the vegetation sown now for it to stabilize.

Public Comment: None

Motion: To approve the project at 20R Bungalow Road submitted by Robert Daly, to re-stabilize dune with sand and plantings in a coastal resource area. (Map 257 lot 74).

1st: Ann Jo Jackson

2nd: Steve Phillips

Vote: Approved 6-0

D. New- 28-2191 64 Woodward Avenue Notice of Intent submitted by George & Cynthia Adams, to remodel dwelling, construct an addition, deck, porch, and a

seasonal ramp and float in riverfront resource area. (Map 219 lot 114).

Presenter: John Judd, Gateway Consultants

Mr. Judd stated we are proposing a 350 square feet of mitigation in front of the house.

Ms. Press stated that native plants could be planted underneath the deck.

Mr. Judd stated we are not opposed to doing that.

Public Comment: None

Conditions:

- **Mitigation plan and additional planting under the deck**

Motion: To approve the project at 64 Woodward Avenue submitted by George & Cynthia Adams, to remodel dwelling, construct an addition, deck, porch, and a seasonal ramp and float in riverfront resource area. (Map 219 lot 114).

1st: Barry Gradwohl

2nd: Steve Phillips

Vote: 5-0 with Rob Gulla abstaining

Rob recused himself

VI. PUBLIC HEARINGS approximately 9:15 PM

- A. New- 28-2190 66 Woodward Avenue** Notice of Intent submitted by Kimberly Costello and James Lesko, to reconstruct dwelling, construct an addition, a garage and driveway with grading and drainage in riverfront resource area. (Map 219 lot 115)

Presenter: John Judd Gateway Consultants

Mr. Judd stated the roofline and the limitations that are associated with the structure. There is no intent to put a second story or rebuild the structure. The primary issue was the qualifications of this property under the 310 CMR10.04 Wetlands Protection Act and the definition of the lot in its current form.

Mike Faherty stated the major portion of this property shows on a plan as early as 1902, when the Stanwood estate was divided. This lot for zoning purposes was merged in 1978. It is on single lot, and held in common ownership by the same owner since prior 1962. It can't be built upon by separate lots. It meets the definition of a lot.

Commission Comments:

Mr. Phillips asked why you want it to be one lot instead of two. If it's two lots, each lot can be developed to the extent of 5000 square feet.

Mr. Faherty stated it can't be two lots because it can't meet the zoning requirements. It is only one lot for the purpose of building.

Mr. Judd stated that the entire merged property is only 7400 square feet.

Ms. Press stated he is exceeding 10%. Gregg McGreggor asked us why you want to merge, because you get more without merging. Under the Wetlands Protection Act they can be looked at as two separate lots, but the building inspector sees it as one lot.

Mr. Phillips stated that since the River Act allows this to be built up to 5000 square feet it gives us discretion to allow projects that go up to 5000 square feet on a lot recorded. I think we can satisfy ourselves that there is either one or two lots recorded prior to that date and total development is less than 5000 square feet.

Mr. Judd stated he met with Paul Keane and there will be much planting, a rain garden, drainage and roof drains. A plan will be submitted for the agents review.

Mr. Phillips stated that the Commission was told that the total development was going to be 27% of the lot. It seems to be much more. Can this be done without negative impact to the resource?

Mr. Judd stated he had not calculated that figure and suspects it is greater than 27%. Mr. Judd requested an extension to incorporate the advice received from the Commission.

Public Comment: None

Motion: To continue the project at 66 Woodward Avenue Notice of Intent submitted by Kimberly Costello and James Lesko, to reconstruct dwelling, construct an addition, a garage and driveway with grading and drainage in riverfront resource area. (Map 219 lot 115) to March 7, 2012

1st: Barry Gradwohl

2nd: Hugh Prichard

Vote: Approved 5-0

VII. AS TIME PERMITS: COMMISSION BUSINESS

A. Requests for Letter Permits/Modifications

VII. AGENT'S REPORT ON VIOLATIONS

16 Hickory St

Ms. Press stated that landscaping material was being dumped down an embankment. There was none near the wetland. He has agreed to stop dumping.

80 Commercial St

Ms. Press stated they have been dumping breadcrumbs and oil into the Harbor. They have been in violation for years. The property is supposed to change hands. If they don't comply we will start fines or record an Enforcement Order and it will create a problem when they try to change hands. We will send an Enforcement Order and record it.

Motion: To issue an enforcement order for 80 Commercial Street

1st: Barry Gradwohl

2nd: Steve Phillips

Vote: Approved 5-0

B. Requests for Certificates of Compliance

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