

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

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

**Members Present:**

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

**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.

Mike Hale, DPW, Reclaimed Asphalt discussion

Michael Hale, City of Gloucester, DPW, 28 Poplar Street

**Mr. Hale** explained to the Commission what reclaimed asphalt is. In the US it's used for many applications. One of reasons to use it is because there is an abundance of it. There is a big push for the use of recycled materials. It is just as suitable as raw material. It would be no different than other materials we would use in these areas. We are not looking to dump asphalt in a resource area. We work very hard to produce a very good product. The use of this material is suitable. Mr. Hale cited several states endorsing recycled asphalt. It is the activity that the Commission wants to regulate not the material used.

**Mr. Gulla** stated to the Commission and public that we have invited Mr. Hale here because of some work that was recently done on Lincoln Street. The concern was that it looked like it had been sprinkled on the street shoulder and not compacted. We were concerned it would migrate down to Walker Creek.

**Mr. Phillips** stated he did not have the proposed policy in hand, but it is was my recollection that not to prohibit the use of reclaimed asphalt but t require you in circumstances where you would be applying it within 50 feet(?) of wetlands.

**Mr. Hale** stated he did not believe there was a specific setback from resource.

**Mr. Phillips** asked Mr. Hale that when the product is going to be used within the specified parameters that the agent should be notified.

**Mr. Hale** stated we have a general permit to maintain the shoulders of roads. What is the difference if I am using scrap or processed gravel?

**Mr. Phillips** stated my recollection of the materials we read indicated that the RAP materials contains carcinogenetic and it was a material subject to migration more so than other materials. It's not to prohibit its use but to simply say if you going to use it where migration posed a real risk to a body of water that the agent be alerted.

**Mr. Hale** stated every road in the city is paved with asphalt. There has never been an issue with a resource area.

**Mr. Gulla** stated the Commission has received documentation stated some of the negatives in using this material. I still think we could come up with some middle ground and am worried about some of the future consequences. The next step is for Mr. Hale to read what the Commission has read and forward links to his material and then we can have a further discussion.

**II. PUBLIC COMMENT - None**

**III MINUTES REVIEW**

**Motion: To approve the minutes for February 15, 2012.**

**1<sup>st</sup>: Barry Gradwohl**

**2<sup>nd</sup>: Charles Anderson**

**Vote: Approved 5-0**

**IV PUBLIC HEARING approximately 7:15 PM**

**A. New- 94 Dennison Street** request for Determination submitted by Paul & Janis Halloran to convert existing deck to a living area. (map 115, lot 33),

**Presenter: Paul Halloran, 94 Dennison St**

**Mr. Halloran** stated that there is an existing deck that is 10x12 and would like to enclose it for additional living area.

**Commission Comments:**

**Ms. Press** stated that there is a gravel edge around the deck and the applicants are willing to plant for the additional impervious.

**Public Comment: None**

**Motion: Move for a Negative Determination for the project at 94 Dennison Street submitted by Paul & Janis Halloran to convert existing deck to a living area. (Map 115, Lot 33)**

**1<sup>st</sup>: Steve Phillips**

**2<sup>nd</sup>: Hugh Prichard**

**Vote: Approved 5-0**

**B. Continuation- 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).

**Motion: To continue the application for - 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).**

**1<sup>st</sup>: Steve Phillips**

**2<sup>nd</sup>: Barry Gradwohl**

**Vote: Approved 5-0**

**C. New- Bray Street**, Request for Determination submitted by Essex County Greenbelt, to construct a drainage culvert and a 20'X60'gravel parking area. (map 242, lot 43)

**Presenter: Dave Rimmer, 82 Eastern Ave, Essex**

**Mr. Rimmer** stated this project is on Bray Street. It is a 6.5 acre parcel we recently purchased. It connects into our 300 acre Thompson Reservation. It is our largest property. It gives us a new and better access point into the property. We want to put in a small gravel parking area on the shoulder on the street. It will be 60 feet long and 20 feet off the road. A portion of the parking area is in the buffer area. There is a drainage swale that runs down the side of the road. The proposal is to culvert the drainage swale with a 10 inch culvert. It will get covered over with larger stone. We proposed a gravel stone dust mix. For mitigation there will be siltation fence around the area and no materials will be left on site. It will be a two day project. We will be there for onsite for monitoring

**Commission Comments:**

**Mr. Anderson** asked if there is mitigation for trees being taken down.

**Mr. Rimmer** stated there was not, but if the Commission wants mitigation they are amenable to it.

**Ms. Press** stated it's a little difficult to plant trees in a forested area.

**Mr. Gulla** stated his concern is that when loose materials are used they require more work to maintain over time. In this case the use of compact some small stones may be a better option. However in this case we have just gained 300 acres of land. It may not really be a concern. Linpac may be fine in this situation.

**Public Comment:**

**John Feener 45b Warner St**

**Mr. Feener** stated that if you require any planting may consider doing shrubs along the road to help prevent erosion. Filter fabric will also work to help control the migration of stones.

**Motion: Move for a Negative Determination for the project at Bray Street submitted by Essex County Greenbelt, to construct a drainage culvert and a 20'X60'gravel parking area. (Map 242, lot 43)**

**1<sup>st</sup>: Steve Phillips**

**2<sup>nd</sup>: Barry Gradwohl**

**Vote: Approved 5-0**

**D. New 2 Lanes Cove Road** Notice of Intent submitted by City of Gloucester, DPW, 2 Lanes Cove Road, to reconstruct fish shack structure on existing footprint, and add granite support columns in a coastal resource area. (Map 142 lot 38).

**Presenter: Jim Haffey 6 School House Road**

**Mr. Haffey** stated that the fish shack is 130 years old and is owned by the city. It has been abandoned for many years and is in disrepair. This past summer it was condemned. A committee was formed to restore it. The construction process will be phased. We will rebuild the first floor deck and then wall by wall. The materials will be stored off site and as work is done materials will be removed. The footprint will not

change. The work will be done by volunteers. We want to bring it back to the last working period.

**Commission Comments:**

**Mr. Gulla** asked if there were Chapter 91 issues.

**Ms. Press** stated they are technically above mean high water. With that and the storm wall that was built under the public works in the 1800's make it exempt for a Chapter 91.

**Mr. Gulla** asked about controls being in place for the work being done. Who will supervise the project as everyone is volunteer.

**Mr. Haffey** stated we are in the process of finding someone suitable for the job. We are looking for a Contractor.

**Public Comment: None**

**Conditions:**

- Daily check from supervisor in with the Agent when work is in progress.

**Motion: To approve the application for 2 Lanes Cove Road submitted by City of Gloucester, DPW, 2 Lanes Cove Road, to reconstruct fish shack structure on existing footprint, and add granite support columns in a coastal resource area. (Map 142 lot 38).**

**1<sup>st</sup>: Steve Phillips**

**2<sup>nd</sup>: Charles Anderson**

**Vote: Approved 5-0**

**V. PUBLIC HEARINGS approximately 8:15 PM**

- A. New-133 Atlantic Road-** Request for Determination submitted by Thomas Burger & Andree Robert, to construct a shed on pilings. (map 72, lot 15)

**Presenter: Attorney Meredith Fine, 38 Pleasant Street**

**Attorney Fine** stated the applicant own a half acre parcel. It is heavily landscaped and has a gravel drive. The shed will be placed on pilings in the back of the property on lawn. There will be a gravel drip line for runoff.

**Commission Comments: None**

**Public Comment: None**

**Motion: Negative determination for the application for 133 Atlantic Road submitted by Thomas Burger & Andree Robert, to construct a shed on pilings. (Map 72, lot 15)**

**1<sup>st</sup>: Steve Phillips**

**2<sup>nd</sup>: Barry Gradwohl**

**Vote: Approved 5-0**

- B. New- 1 Wingersheek Road,** Notice of Intent submitted by Bill Tracia, to construct a dwelling on piles with a utility foundation, and a driveway with associated grading and utilities in a coastal dune resource area. (Map 142 lot

38).

**Presenter: Bill Manuell, Wetlands and Land Management Danvers MA.**

**Mr. Manuell** stated there is currently an Order of Conditions on this lot already. There are isolated wetlands that span  $\frac{3}{4}$  the length of the frontage. They are flagged. There is a primary dune line and it is very evident on this site. There is a distinction from primary and secondary dunes. There are several species of pines trees and not many if any, are native. The best way to approach this site is to come in through the open area and go up to the proposed house. The vegetation on this site is very stressed. There is a certified arborist on the team. A large percentage of trees on the site have been killed. There is advanced blight that has taken over the site. There has been enough deviation from the previous plan that we wanted to come back in and start fresh. **Mr. Manuell** stated he would like the Commission to have a site visit to better understand the area and to view the degradation of the site since the last time they were there. He stated they it is still 200 feet from the beach and the 100 foot flood elevation. The septic has not changed; the design is the same and has been approved by the Board of Health. The tank components have been moved to preserve the area. This is a better design from an engineering and environmental standpoint.

**Commission Comments:**

**Mr. Gulla** stated that his biggest concern is the principal of protecting dune.

**Mr. Manuell** stated when you see where the driveway access is, you will see that we are working with the land. It uses the material on site instead of having to import material.

**Mr. Gulla** requested that the area be staked prior to the site visit.

**Ms. Press** stated the house is 200 feet from the beach and is the toe of the primary dune.

The isolated wetland is not protected by the State. It's just protected by the City of Gloucester

There is a significant amount of grading and filling for this revised driveway.

**Mr. Gulla** requested that **Mr. Manuell** submit for the next meeting a footprint overlay from the last plan.

**The site visit is scheduled for Saturday March 17 at 8:30am.**

**Public Comment: None**

**Motion: To continue the project at 1 Wingersheek Road, Notice of Intent submitted by Bill Tracia, to construct a dwelling on piles with a utility foundation, and a driveway with associated grading and utilities in a coastal dune resource area. (Map 142 lot 38) to March 21.**

**1<sup>st</sup>: Barry Gradwohl**

**2<sup>nd</sup>: Hugh Prichard**

**Vote: Approved 5-0**

**C. New- , 27 Wingersheek Road** Request for Determination submitted by George Adam, to accept the as built construction of the concrete utility pads, with fencing, concrete stairway pads and walkways (map 257, lot 1)

**Presenter: Bill Manuell, Wetlands and Land Management**

**Mr. Manuell** stated construction was finished in 2007 and we are at the point where would like a Certificate of Compliance. Ms. Press visited the site and noticed that the utility chases were larger than they were supposed to be and that there is a walkway that is not supposed to be there. We want to bring the site back into compliance. We are looking for a Negative Determination for the minor changes that were not shown on the original site plan. Any activity within a resource area within the buffer zone in the Commonwealth you have to have either an Order of conditions or a Negative Determination. If you do not have either of those the activity is not permitted. We are suggesting that these are minor enough that this could be done with a Negative Determination then those activates are then in compliance. We discovered with the as built survey there were two utility chases that were shown on the approved plan, but there were no dimensions on the plan. They scaled to be 10x8, but they are 14x10 and 13x8. They are slightly bigger by 114 square feet. They are under the footprint of the approved home. One of the amendments was a reduction of the size of the home. It was reduced by 392 square feet. With the reduction of the home there is a net reduction of 278 square even though there chases are slightly larger. The second item noticed by Ms. Press is the wood seasonal walkway. It is removable. The Commission's has allowed them in the past. Grass is growing through the slats. These features are beneficial for the site and are not impeding the dune grass. It is controlling foot traffic.

**Commission Comments:**

**Mr. Gulla** stated his concern about starting a precedent. If having the walkway is beneficial to the site and can be supported by facts then we can discuss it further. Can it reduce the erosion of the dune by using them

**Mr. Manuell** stated that any house along the beach where there is foot traffic and there isn't some kind of boardwalk the vegetation gets trampled and channels are created in the dune.

**Mr. Gulla** stated that the Commission could have CZM look at it.

**Mr. Manuell** stated the owner stated he will take out the board walks.

**Public Comment: None**

**Conditions:**

- **Wood seasonal walkway to be removed**
- **The Agent to confirm the reduction of the house from the original amendment.**

**Motion: Negative Determination for the project at 27 Wingaersheek Road submitted by George Adam, (map 257, lot 1) is limited to the concrete utility chasers that are larger than specified than on the original plan and it would be subject to confirmation that the scope of work on this site has been reduced by 392 square feet as originally approved.**

**1<sup>st</sup>: Steve Phillips**

**2<sup>nd</sup>: Barry Gradwohl**

**Vote: Approved 5-0**

**E. A- Continuation- - 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)

### **Rob Gulla recused himself**

#### **Presenter: John Judd, Gateway Consultants**

**Mr. Judd** stated that since the last hearing there were some questions regarding the performance standards and qualifications of the property as being eligible for the Rivers Protection Act. In our opinion, the lots were combined for zoning purposes. There is no intent to form these lots to a consolidation deed. It is our position that the lots are eligible under the statute as they were created prior to 1996.

As part of the revision, but due to the size of cars that will be parked, the garage depth has been reduced and the shed has been removed. The calculations have been revised. The removal of the shed amounts to 48 square feet and deck area to be covered by the improvements is 140 square feet. There is a net improvement of 1188 square feet. The city engineer is verbally ok with this revised plan. We are providing 200% mitigation. There are erosion controls in place for the project and there is no demolition

**Mr. Judd** reviewed the Alternative Analysis with the Commission. We are meeting the entire performance standard in terms of mitigation.

**Mr. Phillips** stated when he reviewed the CMR it says "that a minimum a 100 foot wide area of undisturbed vegetation is provided". You do not have a 100 foot area.

**Mr. Judd** stated in that same section it does allow potential off site improvements; in the case of pre-existing sites. We have the opportunity to do this work on site.

**Mr. Phillips** asked for clarification as to how the proposed mitigation this complies with the CMR. Mr. Phillips read from the CMR requirement. It is difficult to figure out how this applies to an area that is already disturbed.

**Mr. Judd** stated it goes on to further expand saying provided that the 100 foot section vegetated cover is preserved or extended to the maximum extent possible.

**Mr. Phillips** asked how is you approximated the 100 foot section of natural vegetation.

**Mr. Judd** stated because as of now, that entire side of the property lawn. They are providing 200% of mitigation. They are doubling what is not there now.

#### **Commission Comments:**

**Ms. Press** stated she had done some research and most Commissions want mitigation where it can be done. The other option, under the Rivers Act of previously developed section which requires that you leave the site with an improvement.

**Mr. Judd** stated that is not our interpretation of it.

**Mr. Phillips** stated he was a little troubled by whether or not this is in compliance with the 100 foot issue and only if it complies with the 100 do we have the authority to allow up to the 5000.

**Mr. Judd** stated that this is that threshold of meeting a lot in that is in existence. In that respect first 100 foot can be approved. It is very clear that we are extending it. We are doubling the area and have to look at the proposed improvements.

**Mr. Phillips** stated that you have the burden of proving by the preponderance of evidence that there will be no significant adverse impacts. Are you challenging the presumption being applicable here because this is previously disturbed? If you don't challenge that, then we have to assume that this area is significant for all considerations of the act.

**Mr. Judd** stated for the most part it is all disturbed filled land. The net improvements are just over 1000 square feet. I do challenge the presumption that this will make an adverse impact. It is an opportunity to repair the area.

**Mr. Phillips** asked Ms. Press is she agreed that the Riverfront Act are not applicable.

**Ms. Press** stated the inner riverfront is not serving the same functions as a pristine vegetated in a riverfront. It doesn't serve the same habitat values or storm water values that you get when you have a pristine riverfront.

**Mr. Phillips** stated to Ms. Press if she believes if this project will have significant negative adverse impact on the riverfront area.

**Ms. Press** stated that she believes it is more cumulative. This is a hard project because there are small lots on Woodward. Any expansion on one of these lots will cover a lot of the lot. It is tricky in this area. The rain garden has value as far as storm water; however, Paul Keen will have to review it first. I would also want to lock them into a planting mitigation prior to issuing the order.

**Mr. Phillips** read the applicable CMR section to Attorney Faherty. He asked Attorney Faherty where in those requirements does this fit and comply.

**Attorney Michael Faherty** stated it is not a clean fit no matter what. Those sections that relate to the undisturbed 100 foot buffer zone really apply to previously undeveloped lots. When they were drafted, they were setting two types of standards. On this lot the entire riverfront in front (riverside) of this proposal is being left undisturbed. All of the runoff on Woodward Street goes to the river. I will not argue with you that you are misinterpreting that section. As in a lot of regulations there are allowances. The regulations recognize that there are circumstances on riverfronts like this one.

**Mr. Phillips** stated his concern whether the Commission has the authority to do this. The only way to get there is by the argument that there is a partial rebuttal of the presumptions of significance and Mr. Judd did make an argument to that effect.

**Mr. Gradwohl** suggested an additional rain garden to be place to help with the sheet water coming down. It will make a significant difference with the quality of water going into riverfront.

**Mr. Judd** stated there is a good opportunity

**Mr. Phillips** stated that we can vote on the Alternative Analysis tonight.

If we are going to find a partial rebuttal of the presumptions of significance we need to make a finding to that effect. We would take two preliminary votes tonight and then continue.

**Public Comment: None**

**Motion: To approve the Alternative Analysis for 66 Woodward Avenue 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)**

**1<sup>st</sup>: Barry Gradwohl**

**2<sup>nd</sup>: Charles Anderson**

**Vote: Approved 4-0**

**Motion: There has been a finding that there has been a partial rebuttal of the presumptions of significance under the Riverfront Act sufficient to justify a lesser**

area of undisturbed vegetation

1<sup>st</sup>: Barry Gradwohl

2<sup>nd</sup>: Hugh Prichard

Vote: Approved 4-0

**Motion: To continue the project at 66 Woodward Avenue 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 21, 2012.**

1<sup>st</sup>: Barry Gradwohl

2<sup>nd</sup>: Hugh Prichard

Vote: Approved 4-0

**VI. PUBLIC HEARINGS approximately 9:15 PM**

**A. 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).

**Applicant requests continuation to March 21, 2012.**

**Motion: To continue the application for 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).**

1<sup>st</sup>: Hugh Prichard

2<sup>nd</sup>: Barry Gradwohl

Vote: Approved 4-0

**B. Continuation- 28-2101-31 Stanwood Ave.** Notices of Intent submitted by Gary Litchfield, Litchfield Company, to construct 3 duplex dwellings, driveways, utilities, grading and landscaping in a riverfront resource area. (Map 230 lot 51).

**C. 28-2100 33 Stanwood Ave**

**D. 28-2099 35 Stanwood Ave**

**Applicant requests continuation to March 21, 2012.**

**Motion: To continue the application for 28-2101-31 Stanwood Ave, 28-2100 33 Stanwood Ave, 28-2099 35 Stanwood Ave Notices of Intent submitted by Gary Litchfield, Litchfield Company, to construct 3 duplex dwellings, driveways, utilities, grading and landscaping in a riverfront resource area. (Map 230 lot 51).**

1<sup>st</sup>: Hugh Prichard

2<sup>nd</sup>: Barry Gradwohl

Vote: Approved 4-0

**D.**

**VII. AS TIME PERMITS: COMMISSION BUSINESS**

**A. Requests for Letter Permits/Modifications  
28-2103 6 Fortune lane**

**John Feener 45b Warner Street**

**Mr. Feener** state they had come in and applied for a Notice of Intent for vegetation

removal. 99 % of the work has been done; however, as work progressed we noticed there is a lot more ledge outcropping. With the outlying ledge we would like to extend the rain garden to the edge of the ledge. We will not be disturbing any soil on top of ledge.

**Motion: To approve the modification for 6 Fortune Lane if no additional vegetation is disturbed.**

**1<sup>st</sup>: Barry Gradwohl**

**2<sup>nd</sup>: Steve Phillips**

**Vote: Approved 5-0**

## **VII. AGENT'S REPORT ON VIOLATIONS**

- B.** Requests for Certificates of Compliance  
28-2029 18 Bennett St N  
28-1462 46 Vine St

**Motion: To approve the Certificates of Compliance for 18 Bennett St. N and 46 Vine St.**

**1<sup>st</sup>: Steve Phillips**

**2<sup>nd</sup>: Charles Anderson**

**Vote: Approved 5-0**

- 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](mailto: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](http://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**