

CITY OF GLOUCESTER

CONSERVATION COMMISSION

MINUTES

WEDNESDAY July 15, 2015 - 7:00 PM
City Hall, 2nd Floor, Kyrouz Auditorium
Robert Gulla - Chair

Members Present: Robert Gulla - Chair, Ann Jo Jackson – Co-Chair, Linda Charpentier, John Feener, Barry Gradwohl, Helene Shaw-Kwasie

Staff Present: Ken Whittaker - Agent, Courtney Karcher – Recording Clerk

Chairman Gulla opened the meeting at 7:05 PM

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

II. PUBLIC COMMENT: None

III. MINUTES REVIEW:

Motion to approve the **Meeting Minutes** from **June 17, 2015** made by Ms. Jackson, seconded by Ms. Charpentier, approved unanimously. Mr. Gradwohl abstained.

IV. Block 1* Continued Projects

A) Continued NOI: 59 Riverview Road MassDEP #28-2386: Submitted by Bruce Ross to reconstruct retaining wall and revetment slope on bank of Annisquam River, also repair pool and decking (Map 94 Lot 71).

Motion to continue the project at **59 Riverview Road MassDEP #28-2386** to **August 19, 2015** made by Ms. Jackson, seconded by Ms. Shaw-Kwasie, approved unanimously.

B) Continued New NOI: 510 Washington Street MassDEP #28-2395: Submitted by Lonakilty Realty Trust, Maureen Cahill, for an after the fact request to rebuild a pier and install an attached gangway and float at 508/510 Washington Street (Map 110 Lot 2).

Presenter: Charles Faia, Civil Engineer - Parsons and Faia Inc., 60 Lewis Street #2, Lynn, MA

Jack Cahill, 510 Washington Street, Gloucester, MA

Mr. Faia reviewed the history of the Application including correspondence with DEP and The Department of Marine Fisheries. He noted he received a letter July 15th with DMF comments.

Mr. Gulla and Mr. Whittaker discussed and questioned whether or not the proposed pier would be located in the same footprint as the prior pier.

Presenter: Steve Cahill, son of Jack Cahill

Mr. Cahill stated the new poured concrete footings were placed on top of the prior footings.

Mr. Feener questioned the height of the proposed pier. Mr. Cahill stated the whole proposed project would be completed in the same footprint.

The Commission discussed various Conditions with the Applicant.

Public Comment: None

Conditions:

1. Mr. Whittaker will inspect the project for defects in one-year time
2. Applicant will have an Engineer sign off on the project before construction resumes

Motion to approve the project at **510 Washington Street MassDEP #28-2395** made by Ms. Charpentier, seconded by Ms. Jackson, approved unanimously.

C) Continued New NOI: 154 Wheeler Street MassDEP #28-2387: Submitted by Gateway Consultants for the installation of a pier/seasonal float in the Annisquam River (Map 100 Lot 14).

Presenter: Richard Nylén - LDNLLP, 10 Post Office Square, Boston, MA
John Judd, Engineer - Gateway Consultants, 33 Forest Hill Avenue, Lynnfield, MA

Mr. Nylén reviewed comments from the Commission from the last meeting addressed in a letter dated July 9, 2015 filed with the Agent. He noted Leslie Fields of Woods Hole Group provided references of literature pertaining to effects of piers on shellfish habitat as well as references to past studies where Woods Hole Group had recommended a non-approval of a proposed project. Ms. Fields also stated that the proposed lengthening of the pier would provide a gain of three hours of tide use for boats.

Mr. Gulla noted the Commission had received unfavorable comments from the Shellfish Constable and DMF and would not overrule their comments. Mr. Nysten stated he had reviewed the Shellfish Constable's comments, but had not yet reviewed comments from DMF.

Mr. Nysten noted his concern with the Shellfish Constables comments stating the proposed project has less impact than what currently exists. He noted the Applicant has addressed all comments made from the Commission.

Mr. Gulla read from the filed DMF letter highlighting their concern with impacts, including using lack of scientific literature on impacts as justification for the proposed project. DMF noted that projects of this type contribute to cumulative impacts to historically productive shellfish habitat and further impede public access to intertidal zone.

Mr. Nysten noted he had filed a letter from a structural engineer pertaining to storm preparedness per the Commission's request.

Mr. Feener stated his concern in regard to performance standards being met five years from now based on the clam flat inventory done by Woods Hole Group.

Public Comment:

Tom Dexter – 107 Wheeler Street, Gloucester, MA

Mr. Dexter stated he is against the proposed project. He noted he was before the Commission representing a group who filed a letter with the Agent. Their primary concerns with the proposed project are impacts on shellfish population and impact on deeded access. Mr. Dexter noted concern within the group with the Applicant's history of actions contrary to existing protection laws.

David Flaherty – 143 Wheeler Street, Gloucester, MA

Mr. Flaherty noted, because he has a non-commercial shellfish permit, he was given a packet of information/rules. He outlined an ordinance pertaining to permits needed for scientific works on shellfish habitats. Mr. Flaherty questioned the validity of the Woods Hole Group study, as he believes they did not follow the city ordinance. Mr. Flaherty firmly objected to the proposed project.

Barbara Davis – 20 Thurston Point Road, Gloucester, MA

Ms. Davis stated her opposition to the proposed project and urged the Commission to consider the impact on migratory birds in this area.

Peter Jones – 145 Wheeler Street, Gloucester, MA

Mr. Jones outlined concerns raised in e-mail sent to the Agent and signed by 53 residents and neighbors of Wheelers Point opposing the proposed

project. Mr. Jones stated concern with impacts on shellfish population. He noted three studies cited at the end of the filed letter pertaining to information contrary to information Woods Hole Group reported.

Steve Dexter – 162 Wheeler Street, Gloucester, MA

Mr. Dexter stated his opposition to the project. He noted the area is not just a mud flat, but a beach and recreational area. He stated the Applicant's destruction of the beach as evidence of their disregard for Mother Nature.

Doug Burns – 2 Riverside Road, 4 Riverside Road, Gloucester, MA

Mr. Burns, an abutter, stated his concern with the proposed projects effect on boaters coming on shore disrupting eelgrass. He noted the route boaters with moorings currently take when bringing boats to shore to load/unload, versus the route boaters would be forced to take after the proposed project. Mr. Burns stated the latter route would have a significant adverse effect on eelgrass and marsh. He did not approve of the size and scope of the project.

Toni Borge – 8 Wheelers Point Road, Gloucester, MA

Ms. Borge stated her concern with recent events regarding the mud mooring owned by Applicant. She noted the mooring has moved and the boats are now resting on the clam flat. Ms. Borge stated her opposition to the proposed project.

Mr. Whittaker noted he had been informed by the Harbormaster, if the proposed project were to be approved, the Harbormaster would be pulling the permit for the mud mooring.

Jim Bordinaro – 126 Wheeler Street, Gloucester, MA

Mr. Bordinaro noted that by moving the float to where it is proposed, it would be moving it into the most productive area of the clam flat.

Public Comment closed

Mr. Nylen noted he reviewed the DMF's comments and found them to be consistent with the Shellfish Constable's comment.

Mr. Nylen noted Woods Hole Group did contact Mr. Sargent before conducting their survey.

Mr. Nylen requested a vote from the Commission.

Motion to deny the project at **154 Wheeler Street MassDEP #28-2387** due to the project not meeting the performance standard of no significant impact made by Mr. Feener, seconded by Ms. Jackson, denied unanimously. Mr. Gradwohl and Ms. Shaw-Kwasie abstained.

Mr. Feener noted his decision was based on comments received from DMF and the Shellfish Constable.

D) Continued NOI: 644 Essex Avenue MassDEP #28-2367: Submitted by Roger LeBlanc (Represented by Wetlands and Land Management Inc.) for the construction of a duplex, driveway, utility installation, grading, landscaping and retaining walls in buffer zone to bordering vegetated wetland (Map 237, Lot 109 and a portion of 4).

Presenter: Bill Manuel – Wetlands and Land Management Inc., 100 Conifer Hill Dr # 516, Danvers, MA

Mr. Manuel reviewed the history of the Application, initially filed in September 2014. He noted the initial Application included a home closer to the wetlands, required more retaining walls, more grading closer to the wetland, and the utilities, sewer, and water were situated through the woods road out to Essex Avenue. After meeting with the Commission and a site visit, the proposed project was revised to decrease the cellar floor elevation, which minimized the amount of retaining walls and grading on the site. A drilled well, sewer forced main was proposed to reduce impact of utility installation.

Mr. Manuel noted the Commission was concerned with construction protocols, particularly in regard to driveway improvements. A step-by-step sequence was filed along with a daily monitoring plan for various areas of the proposed project.

Mr. Manuel noted a slope re-vegetation plan was filed, as well as a proposal to employ an arborist to address any impact to large trees adjacent to the driveway. He noted the proposed plan for installation of a guardrail due to comments made by the Commission.

Mr. Manuel reviewed that Mr. Whittaker forwarded a very specific list of Conditions from him to the Commission for review before approval of the Application.

Public Comment:

Ron Gelineau- 647 Essex Avenue, Gloucester, MA

Mr. Gelineau, an abutter, stated he was not notified of the proposed project until he questioned the Applicant. He noted he has spent significant time speaking with city officials regarding the project. Mr. Gelineau expressed concern with the utilities for the proposed project, specifically the sewer. He expressed concern with the inadequate driveway in regard to the weight for emergency equipment.

Joel Swan – 648 Essex Avenue, Gloucester, MA

Mr. Swan questioned the Commission in regard to a “no disturb zone” as well as “habitat analysis”. He noted the proposed project is on a portion of a 6 to 7 acre lot owned by the Applicant, some of which has already been developed. Mr. Swan cited cumulative impact and no disturb zone and questioned why a full habitat analysis and vernal pool analysis was not completed.

Roy Gelineau, Attorney – Gelineau and Kline, 49 Federal Street, Salem, MA

Mr. Gelineau, attorney for Mr. Gelineau at 647 Essex Avenue, reiterated his client did not receive notice of the proposed project. He noted a cease and desist order received by the Applicant in the past. Mr. Gelineau urged the Commission to order a peer review of the Application, as he believes it is a flawed Application with negative impacts.

Public Comment closed

Mr. Whittaker reviewed the former Order of Conditions were specifically related to the cumulative 6.57 acres owned by the Applicant. He noted possible legal issues associated with if the prohibitions would continue to apply to the sub-divided property, or if not, would action need to take place to nullify them.

Mr. Manuel stated the original Order of Conditions was written for 3 Welch Lane and questioned the legality of an Order of Conditions written for a specific property applied to another property. He noted a habitat analysis is only required by very specific regulatory thresholds. The proposed project is a buffer zone project and does not meet the regulatory thresholds that would require a habitat analysis.

Ms. Jackson stated her concern with the wildlife habitat analysis included, and agreed upon, in the original Order of Conditions for the 6.7 acres. She questioned the legality of the Condition after subdivision.

Motion to approve the project at **644 Essex Avenue MassDEP #28-2367** made by Mr. Feener, seconded by Ms. Shaw – Kwasié. The **Motion** was **Denied** with a 2-2 vote. Ms. Jackson and Ms. Charpentier abstained.

V. Block II* NEW Projects:

- A) **New RDA: 135 Cole’s Island Road #RDA1448:** Submitted by H.A. Patrican for the installation of an in-ground pool in buffer zone to ACEC (Map 259 Lot 6).

Presenter: John Judd, Engineer - Gateway Consultants, 33 Forest Hill Avenue, Lynnfield, MA

Mr. Judd reviewed the Application for installation of an in-ground pool. He cited the allowance of converting lawn to pools under the Wetlands Protection Act providing the work is 50 feet outside of the wetland boundary. Mr. Judd noted the proposed work is over 100 feet from the ACEC and associated buffer zone. No blasting would occur.

Mr. Feener asked for clarification if the Wetlands Construction Act also states there is to be no direct impact to the abutting buffer zone.

Mr. Whittaker noted with the conversion of lawn there is a presumption of no impact, under the Wetlands Protection Act.

Mr. Feener noted his concern with the vegetation of the area below the proposed construction area. Mr. Judd replied that it is well stabilized with plantings such as juniper and blueberries, as well as natural roses.

Mr. Gulla stated there would be no allowance for use of chemicals and any drainage/pumping would need to be done upland.

Mr. Feener questioned the proximity to the 100-foot buffer. Mr. Judd replied the closest point would be 20 feet from the 100-foot buffer. Mr. Feener requested plantings be installed in the corner where the pool is closest to the buffer zone.

Conditions:

1. Applicant will install a 3 x 5 feet planting bed in the corner where the pool is closest to the buffer zone
2. There will be no allowance for use of chemicals in the pool
3. Any drainage/pumping associated with the pool will be done upland

Motion for a negative determination for the project at **135 Cole's Island Road #RDA1448** with the aforementioned conditions, made by Mr. Feener, seconded by Ms. Shaw- Kwasié, approved unanimously.

- B) **New NOI: 227 Atlantic Road MassDEP #28-....:** Submitted by Frank Tedesco to install underground conduits for electric service and extensions of existing water and sewer conduits in buffer zone to bordering vegetated wetland (Map 76 Lot 50).

Presenter: Ben Gary – Marshall Gary LLC, 200 Harvard Mills Square, Wakefield, MA

Mr. Gary, architect for the Applicant, reviewed the Application for the 13-acre property with frontage on Atlantic Road. He stated the driveway was built 10-12 years ago with conduits for water and sewer, but without a conduit for electricity.

Mr. Gary stated the conduit would be installed along the 14-foot wide, stone lined driveway. There is natural vegetation on either side that would be protected with silt socks during construction.

Mr. Gary also noted a revision needed for the 2002 Order of Conditions regarding perpetuity.

Mr. Whittaker recommended the previous certificate of compliance be approved as a combination of a partial certification and an invalid order. This would then constitute a complete final certificate of compliance be registered.

Public Comment: None

Conditions:

1. During construction any holes or trenches will be cut and filled per day
2. Approval of said project is not a representation of approval for any future projects
3. Applicant will contact the Agent immediately if a leak or breach of the erosion controls within the buffer zone occurs

Motion to approve the project at **227 Atlantic Road #28-....** with the aforementioned conditions made by Mr. Feener, seconded by Ms. Shaw-Kwasie, approved unanimously.

- C) **New RDA: 691 Western Avenue #RDA1449:** Submitted by Marie Sauve to install an advanced sewage disposal system in buffer zone to bordering vegetated wetland (Map 193, Lot 12).

Presenter: John Judd, Engineer - Gateway Consultants, 33 Forest Hill Avenue, Lynnfield, MA

Mr. Judd reviewed the Application for replacement of a sewer system that has been approved by the Health Department. He noted the wetland is off-site as it is a very small lot. The proposed plan meets requirements of Title V. An erosion barrier would be placed during construction.

Mr. Feener stated his concern with soil compaction affecting trees in the area.

Public Comment: None

Condition:

1. Applicant will install a fence around the drip line of trees to combat soil compaction from heavy machinery.

Motion for a negative determination for the project at **691 Western Avenue #RDA1449**, with the aforementioned condition, made by Mr. Gradwohl, seconded by Ms. Jackson, approved unanimously.

- D) **New NOI: 12 Beachland Avenue MassDEP #28-2397:** Submitted by Donna Vilian to remove and rebuild a dwelling in buffer zone to bordering vegetated wetland and barrier beach area (Map 178 Lot 24).

Presenter: Bill Manuel – Wetlands and Land Management Inc., 100 Conifer Hill Dr # 516, Danvers, MA

Mr. Manuel reviewed the Application to tear down an existing home that sits on brick constructed piers, and re-build in more-or-less the same footprint. The proposed project would be moved over a few inches to be zoning compliant with the side yard of the property, but would not encroach further toward the wetland. The proposed new home would be constructed on helical piles. Mr. Manuel noted an erosion barrier would be placed during construction to limit work to the street side.

Mr. Manuel noted the impervious area would increase by 135 square feet. He stated 300 square feet of buffer zone mitigation is proposed.

Mr. Feener and Mr. Gulla noted the planting area is to be maintained, not allowing invasive species to take over.

Public Comment: None

Mr. Whittaker noted the Applicant would replace a tree that is to be removed with two trees.

Motion to approve the project at **12 Beachland Avenue MassDEP #28-2397** made by Ms. Charpentier, seconded by Mr. Gradwohl, approved unanimously.

- E) **New NOI: 6 Samuel Riggs Circle MassDEP #28-.....:** Submitted by Paul Cardinale and Beth McCarthy to construct a garage addition in riverfront area (Map 112 Lot 17).

Presenter: Bill Zwemke – 4 Samuel Riggs Circle, Gloucester, MA

Mr. Zwemke reviewed the Application to construct an attached 20 x 22 ½ foot garage as well as a 10 x 20 foot rear deck by an existing doorway. He noted the garage would replace an existing stone parking area.

Mr. Gulla reviewed the filed alternatives analysis with the Commission.

Mr. Whittaker noted it is a better alternative for cars to be contained/covered in a resource area.

Motion to approve the alternatives analysis for the project at **6 Samuel Riggs Circle MassDEP#28-....** as provided, made by Mr. Gradwohl, seconded by Ms. Jackson, approved unanimously.

Mr. Zwemke stated the Applicant proposed a 1:1 mitigation with three planting areas to deal with roof run-off, as well as a stone apron.

Mr. Feener expressed concern with roof run-off flowing toward the retaining wall, causing failure.

Public Comment: None

Condition:

1. 1:1 ratio of mitigation is due to the semi-pervious nature of the existing parking area
2. The planting bed behind the garage will double as a retention pond

Motion to approve the project at **6 Samuel Riggs Circle #28-....** with the aforementioned conditions made by Ms. Jackson, seconded by Mr. Gradwohl, approved unanimously.

- F) **New RDA: 363 Concord Street #RDA1447:** Submitted by James and Ann Albertson to upgrade a sanitary disposal system in buffer zone to bordering vegetated wetland (Map 239 Lot 26).

Presenter: William Holt, 83 West Main Street, Merrimac, MA

Mr. Holt reviewed the Application to replace a failed septic system within 100-feet of the buffer zone. He noted the proposed system would be in front of the Board of Health for Approval August 6, 2015.

Mr. Holt pointed out the locations of various components of the proposed system on filed photographs.

Mr. Gulla questioned if any trees would be removed.

Mr. Feener pointed out four trees to Mr. Holt that wouldn't survive long term after being impacted by construction. Mr. Feener and Mr. Gulla requested the Applicant remove the trees and replace them with four trees of their selection closer to the wetland buffer.

Public Comment: None

Condition:

1. Applicant will provide 1:1 mitigation to replace four trees to be removed

Motion for a negative determination for the project at **363 Concord Street #RDA1447** with the aforementioned condition made by Mr. Gradwohl, seconded by Mr. Feener, approved unanimously.

G) **New NOI: 30 Western Avenue MassDEP #28-....**: Submitted by Kevin Talty of Tavern Management to reconstruct and expand a deck adjacent to coastal beach (Map 2 Lot 24).

Presenter: Kevin Talty – representing Tavern Management, 30 Western Avenue, Gloucester, MA

Mr. Talty reviewed the Application to remove an existing deck and paving and construct an expanded pervious deck over an impervious surface. He noted the paving would be removed and replaced with stone. Fifteen sonotubes would be installed, an increase of seven from what exists.

Mr. Gulla noted pervious area becoming impervious is always a better alternative in a resource area.

Mr. Feener noted his concern with potential for impact in regard to trash blowing off of the deck into the resource. He proposed installation of netting around the bottom edge of the deck to reduce potential impact.

Public Comment: None

Condition:

1. Applicant will file a plan to protect the bottom four inches of the railing system to reduce potential impacts

Motion to approve the project at **30 Western Avenue MassDEP #28-....** with the aforementioned condition made by Ms. Charpentier, seconded by Mr. Gradwohl, approved unanimously.

I) **New NOI: 243 East Main Street MassDEP #28-....**: Submitted by Andrew Campbell to repair an existing seawall in Smith Cove area (Map 79, Lot 10).

Presenter: Andrew Campbell, 243 East Main Street, Gloucester, MA

Mr. Campbell reviewed his Application to repair an existing seawall on his property. He noted the seawall is deteriorating rapidly. Repairs done five years ago did not work. The proposed project would remove the top four or five feet of the wall, pin the lower stones in place with stainless steel rods, and replace the top stones. He stated an Engineer has signed off on the project.

Mr. Gradwohl noted to the Applicant to make sure not to exceed the existing height.

Mr. Feener proposed an area of low planting to help absorb water and stabilize the bank.

Public Comment: None

Condition:

1. Applicant will install an 18-inch vegetated buffer along the top of the bank with plant material of mature height not to exceed 2-3 feet

Motion to approve the project at **243 East Main Street MassDEP #28-....** with the aforementioned condition made by Ms. Charpentier, seconded by Mr. Gradwohl, approved unanimously.

VII. OTHER COMMISSION BUSINESS - Requests for Letter Permits/Modifications, etc.

- **Commission Vote on Lane's Cove Fish Shack Project #28-2396**

Mr. Whittaker stated he received comments from DEP and any issues have been resolved.

Motion to approve the project at **Lane's Cove Fish Shack Project #28-2396** made by Mr. Gradwohl, seconded by Ms. Shaw-Kwasie, approved unanimously.

Signature Pages for (previously approved):

- 6 Plum Court - RDA
- 14 Samuel Riggs - COC
- 227 Atlantic Avenue - COC
- 16 Cambridge Ave. COC

V. AGENT'S REPORT ON VIOLATIONS: None

VIII. CERTIFICATES OF COMPLIANCE

- 648 Essex Street
- 50 Atlantic Street
- 144 Wheeler Street
- 19 Essex Street

Motion to approve the Certificates of Compliance for **648 Essex Street, 50 Atlantic Street, 144 Wheeler Street,** and **19 Essex Street** made by Ms. Jackson, seconded by Mr. Gradwohl, approved unanimously.

There being no further business the Chair adjourned the meeting at 9:53 PM