



**MINUTES OF THE PROCEEDINGS OF THE
CONSERVATION COMMISSION OF THE CITY OF WORCESTER**

Monday May 1, 2023

Worcester City Hall - Levi Lincoln Chamber,
with remote participation options available via Webex online at
<https://cow.webex.com/meet/conservationcommissionwebex> and
call-in number 415-655-0001 (Access Code: 1609734358).

- Commissioners Present:** Devin Canton, Vice Chair
Timothy Magliaro, Commissioner
Lindsay Nystrom, Commissioner
Amanda Amory – Commissioner (*Participated remotely*)
- Commissioners Absent:** Joseph Charpentier, Chair
Miranda Hotham
- Staff Present:** Eric Flint, Division of Planning & Regulatory Services (DPRS)

Call to Order

Vice Chair Canton called the meeting to order at approximately 5:45 p.m.

Requests for Continuances, Postponements and Withdrawals

- 4) **82 Salisbury Street (aka Institute Park) – Request for Determination of Applicability (CC-2023-026)**
Request to for leave to withdraw without prejudice.
- 6) **25 & 35R Tobias Boland Way, 0 McKeon Road, and 0 Millbury Street – Notice of Intent (CC-2022-069 & DEP#349-13XX)**
Request to Postpone to 5/22/2023
Request to Extend the Constructive Grant Deadline to 6/13/2023
- 7) **Salisbury Street Right-of-Way and 633 & 646 Salisbury Street – Notice of Intent (CC-2023-002 & DEP#349-1350)**
Request to Postpone to 5/22/2023
Request to Extend the Constructive Grant Deadline to 6/13/2023
- 8) **1511 Main Street – Notice of Intent (CC-2023-017 & DEP#349-1360)**
Request to Postpone to 5/22/2023
Request to Extend the Constructive Grant Deadline to 6/13/2023

- 9) **34-38 Blackstone River Road – Notice of Intent (CC-2023-020)**
Request to Postpone to 5/22/2023
Request to Extend the Constructive Grant Deadline to 6/13/2023
- 11) **88 Webster Street – Notice of Intent (CC-2023-025 & DEP#349-13XX)**
Request to Postpone to 5/22/2023
Request to Extend the Constructive Grant Deadline to 6/13/2023
- 13) **69 Sever Street – Notice of Intent (CC-2023-028)**
Request to Postpone to 5/22/2023
Request to Extend the Constructive Grant Deadline to 6/13/2023
- 14) **249 Lake Avenue – Notice of Intent (CC-2023-029 & DEP#349-1359)**
Request to Postpone to 5/22/2023
Request to Extend the Constructive Grant Deadline to 6/13/2023

Mr. Flint read the requests for withdrawal and postponement into the record.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to grant leave to withdraw for Item 4, and postpone the public hearings and extend the constructive grant deadlines to the dates noted for the other items.

New Business

1) **124 Malden Street - Request for Determination of Applicability (CC-2023-022)**

Erin & Sean Lyons, the applicants, reviewed the proposed work to construct an above ground pool in their backyard, around 79' away from a stream at the rear of their property. Mr. Flint noted that the construction of pools over 50' away from a wetland in existing yard is exempt as a minor buffer zone activity under the Wetlands Protection Act, but that the local ordinance does not recognize that exemption. He noted that for similar projects in the past, applicants have been asked to direct any pool water away from the wetland when draining the pool.

There were no comments from the public.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to issue negative determination of applicability.

2) **A53 & B54 Transmission Lines (located between the Cook Pond Substation on Tory Fort Lane and the Holden Town Line) - Request for Determination of Applicability (CC-2023-023)**

Hana Isihara and Sammy Walker, from BSC Group, on behalf of National Grid, the applicant, presented the proposed maintenance work on transmission line poles, some of which are located within BVW, BLSF, and the buffer zone. Ms. Isihara noted that the work is exempt as maintenance work under the Wetlands Protection Act, but not exempt under the local ordinance. The work involves digging approximately 18" down at each pole to check for damage and making any repairs as necessary. Access to structures in wetland resource areas is to be by foot only.

Ms. Isihara noted that no stockpiling would occur overnight, any holes would be backfilled with the dug-up material at the end of each day. All disturbed areas are to be restored to existing conditions and grades at the conclusion of the work.

Glenn Krevowsky, EBT Environmental, asked for confirmation that the Riverfront Area depicted on the plan reflected the 25' area applicable to Worcester rather than the 200' area in many other communities, Ms. Walker confirmed this to be the case.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to issue negative determination of applicability.

3) 40 Mann Street - Request for Determination of Applicability (CC-2023-024)

Aaron Perna, the applicant, reviewed the proposed work to construct a deck at the rear of the house, which is an area located within the mapped floodplain. Mr. Flint noted that the Commission has typically required NOIs for any work within BLSF, but that DEP had recently advised that most communities permit decks in the floodplain with negative determinations, and that the fill associated with the deck footings is typically treated as de minimis.

There were no comments from the public.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to issue negative determination of applicability.

Old Business

5) 25 Eskow Road – Notice of Intent (CC-2023-011 & DEP#349-1355)

Barry Yaceshyn, WDA Design Group reviewed that this was a hearing continued from the prior meeting and noted that plan revisions had been provided. Mr. Flint provided an overview of the responses to DPW and DEP comments, noting that they had been satisfied at this point.

There were no comments from the public.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to close the public hearing.

Mr. Flint described staff recommended conditions which included a discretionary allowance from performance standard 4.2.4 for a small portion of pavement within the 30' buffer zone, Conditions #24, #25, #26, #46, #49, #52, #53, #58, #64, #65, & #66.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to issue an Order of Conditions as discussed.

New Business

10) 21 Westwood Drive – Notice of Intent (CC-2023-021)

Mark Elbag, M.A. Elbag Engineering, Inc., and Mark Borenstein, Bowditch & Dewey, present on behalf of Laurian Banciulescu, the applicant. Mr. Elbag reviewed the proposed work to construct a single-family house, patio, driveway, garage, along with the associated site work.

Commissioners Canton and Amory asked questions related to potential sheet flow off the back side of the property towards abutting properties, Mr. Elbag responded, noting that the roof drain would be connected to the surface drainage system, which he anticipated would lessen the overall runoff from the site.

In response to questions from Commissioner Canton, Mr. Elbag provided additional information regarding erosion & sedimentation control measures and anticipated construction timing.

Mr. Flint reviewed staff comments regarding erosion & sedimentation control and noted that a revised plan had been provided addressing these. Staff comments also included a request for infiltration or detention measures on site to provide runoff and recharge mitigation, which is required under the ordinance for new impervious coverage of over 5,000 SF. Mr. Elbag had responded that infiltration was not feasible at the site given the steepness of the slopes and poor soils.

Mr. Flint also reviewed several letters received from abutters or their representatives in opposition to the proposed work, noting that some of the concerns raised were within the Commission's purview, such as stormwater management and erosion control, while others appeared to be outside of the Commission's purview, such as property rights and general opposition to the work.

Discussion ensued between the Commission and the applicant's representatives regarding additional items that could be added to the plan, including infiltration measures and the seeding of the 2:1 slope to the rear of the proposed house with wildflower mix in lieu of grass.

Steve Gordon, a resident in the development where the work is proposed, reviewed several concerns he had related to the project, which included runoff from the site, loss of trees, property rights, and utility connections.

Glenn Krevowksy, EBT Environmental, on behalf of the homeowner's association within the development, noted that his concerns related to erosion & sedimentation control had been addressed on a revised plan, but that he still had concerns regarding the runoff from the site and the lack of infiltration proposed.

Moira Moynihan-Manoog, president of the Westwood Hills Improvement Association, raised concerns related to association rules and regulations, loss of trees, property rights, and noted an overall opposition to the project.

Discussion ensued between the Commission, applicant's representatives, and members of the public regarding the Commission's purview and the concerns raised. Mr. Borenstein requested that the Commission act on the application at the current meeting rather than continuing the hearing.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 2-2 (with Commissioners Amory and Canton voting no) to close the public hearing, given that the vote failed, the hearing remained open.

Mr. Flint noted that if the applicant was unwilling to continue the hearing, the Commission should vote to close the hearing and discuss the issuance of an Order of Conditions, and that a vote to approve or deny the work could follow that discussion. Mr. Borenstein then stated that the applicant was willing to continue the hearing to the 6/12/2023 meeting.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to continue the public hearing to the 6/12/2023 meeting.

12) 48 Mason Street – Notice of Intent (CC-2023-027)

Mark Borenstein and Kristin LaBrie, on behalf of the applicant, presented the proposed work to construct a multi-family residential building. Ms. LaBrie reviewed the proposed erosion & sedimentation controls and reviewed the proposed stormwater management system.

Mr. Flint reviewed staff comments and asked for confirmation of the separation from the bottom of the units to seasonal high groundwater, which Ms. LaBrie provided.

Mr. Borenstein directed questions to staff regarding conditions of approval to staff through the Chair. Discussion ensued.

There were no comments from the public.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to close the public hearing.

Mr. Flint described staff recommended conditions which included conditions #25, #26, #45, #52, #55, #65, #66, and additional conditions related to contamination on site, which Mr. Flint read into the record verbatim.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro the Commission voted 4-0 to issue an Order of Conditions as discussed.

Other Business

15a) Request for Certificate of Compliance – 2 Quaker Road (DEP#349-0365)

Mr. Flint reviewed that this was a request for a partial Certificate of Compliance for a lot within a subdivision permitted under an Order of Conditions in 1990. Mr. Flint noted that the applicant had requested a waiver from the requirement to provide written certification from an engineer or surveyor, citing the lack of any wetlands, buffer zones, or stormwater infrastructure on site.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro, the Commission voted 4-0 to issue a partial Certificate of Compliance.

15b) Request for Certificate of Compliance – 500 Salisbury Street (aka Marois Field, Assumption University) (CC-2021-049 & DEP#349-1308)

Mr. Flint noted that an area which had previously been proposed as grass was left as gravel, but that this area was mostly outside of the 50' buffer and fully outside of the 30' buffer. Staff had requested updated runoff calculations to confirm Standard 2 was still met given the change in surface treatment, which the applicant had provided.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro, the Commission voted 4-0 to issue a Certificate of Compliance.

16) Enforcement Order and Violation Updates

- a. **217 Lake Avenue (CC-EO-2020-004)**
- b. **449 Massasoit Road (CC-EO-2020-006)**
- c. **Across from 133 North Lake Avenue – East side of Lake Avenue North Right-of-Way (between Dominion Road & Belcourt Road) and Lake Quinsigamond (CC-EO-2020-007)**
- d. **Across from 175 North Lake Avenue – East side of Lake Avenue North Right-of-Way (between Belcourt Road & Sonoma Drive) and Lake Quinsigamond (CC-EO-2020-008)**
- e. **99 Wildwood Avenue (CC-EO-2020-009)**
- f. **166 Moreland Street (CC-EO-2020-011)**
- g. **522 Grove Street (CC-EO-2020-014)**
- h. **0 Myrick Avenue (CC-EO-2020-015)**
- i. **75 Harrington (CC-EO-2021-003)**
- j. **40 June Street Terrace (CC-EO-2021-004)**
- k. **12 AKA 0 Balis Avenue (CC-EO-2021-005)**
- l. **269 James Street (CC-EO-2021-007)**
- m. **90 AKA 100 Camelot Street AKA Farber Field (CC-EO-2021-008)**
- n. **0 McKeon Road, 0 Millbury Street & 25 & 35R Tobias Boland Way (CC-EO-2021-009)**
- o. **Providence & Worcester Railroad (0 Tobias Boland Way)**
- p. **70 North Parkway AKA Burncoat Park (CC-EO-2022-002)**
- q. **3 Aster Place (CC-EO-2022-005)**
- r. **Hospital Drive ROW (CC-EO-2022-006)**
- s. **215 Lake Avenue (CC-EO-2022-007)**
- t. **88 Randolph Road (CC-EO-2022-008)**
- u. **4 Tiffany Avenue (CC-EO-2023-001)**

Mr. Flint described the wetland assessment conducted by staff. The BVW boundary was confirmed to be right up to the edge of existing lawn based on soils and vegetation observed on-site. Mr. Flint noted that there appeared to be at least 1,200 SF of fill within the BVW associated with the access road, and that 15 tree stumps with diameters between 10"-24" were counted. Mr. Flint suggested that the Commission require replacement plantings including 15 trees (at least 1" diameter) and 15 shrubs (at least 2-gallon pot) as well as seeding of any disturbed areas with native wetland seed mix. The species of trees and shrubs were to be native, and classified as either FAC, FACW, or OBL, to be confirmed between the property owner and staff.

Mr. Flint discussed other remedial work, which included manually pulling out the fill and miscellaneous debris from within the BVW. Mr. Flint suggested a deadline of the Fall 2023 planting season for completion of the required action items.

Commissioner Magliaro noted that the replacement plantings described did not seem adequate to mitigate the alteration that had occurred and suggested requiring 30 trees (at least 1" diameter) instead of 15 – the other Commissioners concurred.

Upon a motion by Commissioner Magliaro, Seconded by Commissioner Nystrom, the Commission voted 4-0 to amend the Enforcement Order to revise the required actions as discussed.

The property owner requested the opportunity to speak about hazardous trees on their property. Mr. Flint reviewed an email received by staff noting two trees within the BVW that are now leaning next to the adjacent lawn. Mr. Flint noted this as a separate issue from the Enforcement Order, and reviewed the typical procedure in cases like this, which include either filing an RDA or requesting an Emergency Certification to remove hazardous trees. Commissioner Canton indicated a preference to proceed with an Emergency Certification, the other Commissioners concurred.

v. 115 McKeon Road (CC-EO-2023-002)

w. 0 Mcavey Way & 1393 Grafton Street (CC-EO-2023-003)

Mr. Flint described the history of the violation. A site visit was conducted on 4/13/23 at which point unpermitted work within the 100' buffer zone was noted. A cease and desist was issued for all work within jurisdictional areas and a Notice of Intent was required. A subsequent visit on 4/25/23 revealed additional work within the buffer zone had occurred. Staff issued an Enforcement Order in response to this. Mr. Flint noted that the property owner had been in contact, and that there had appeared to be a misunderstanding regarding the extent of the jurisdictional area, and that a Notice of Intent would be filed with the Commission as required.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro, the Commission voted 4-0 to ratify the Enforcement Order.

x. 173 Grove Street (CC-EO-2023-004)

Mr. Flint described the request from the property owner to plant 6 native shrub species in lieu of 3 trees as originally required.

Upon a motion by Commissioner Nystrom, Seconded by Commissioner Magliaro, the Commission voted 4-0 to amend the Enforcement Order to require shrub plantings in lieu of trees.

There was no discussion of items 16. a-t, or v.

17) Communications

- a. 2023 Yearly Operational Plan; from PanAm Railways; dated 3/31/2023
- b. 2023 Yearly Operational Plan; P&W Railroad; received 4/10/2023
- c. Water Quality Certification of the 2023 USACE General Permit; from MassDEP; dated 4/21/2023
- d. Maintenance Notification; from Massachusetts Electric Company; dated 5/1/2023

There was no discussion of Item 17.

18) Approval of Minutes – 1/25/2021; 4/12/2021; 1/3/2022; 6/6/2022; 6/27/2022; 7/18/2022; 8/8/2022; 8/29/2022; 9/19/2022; 10/17/2022; 4/10/2023

There was no discussion of Item 18.

19) Open Space Discussion

There was no discussion of Item 19.

20) Policies and Procedures

There was no discussion of Item 20.

Adjournment

Upon a motion by Commissioner Nystrom, the Commission unanimously voted to adjourn at approximately 8:01PM.