

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

December 19, 2011

WORCESTER CITY HALL – LEVI LINCOLN ROOM

Conservation Commission Members Present:

Stefanie Wood – Chair
Jeremy Theerman – Vice Chair
Jordan Berg Powers
Paul Franco
Jack Donahue
Mia McDonald (absent)
Joseph Wanat (absent)

Staff Present:

Jonathan P. Gervais, Department of Public Works & Parks
Luba Zhaurova, Division of Planning & Regulatory Services

CALL TO ORDER – 5:30 pm

APPROVAL OF THE MINUTES – Upon a motion by Mr. Franco and seconded by Mr. Theerman, the Commission voted 3-0 to approve the November 14, 2011 minutes (Chair Wood and Mr. Berg Powers abstained because they were not present at the previous meeting).

NEW BUSINESS

Public Meeting

1. **Route 146 - Request for Determination of Applicability (CC-2011-045); Stormwater Retrofit of Route 146.** Alex Murray of Massachusetts Department of Transportation, presented the project. He stated that MassDOT is seeking to reconstruct and stabilize the outfalls within the basins at Locations 3 and 4 and rebuilding the existing inlet and outlet structures at Location 1 as shown on the plans submitted with the application, on property located along Route 146 (in the vicinity and southerly of the 25 Tobias Boland Way property, currently owned by Madison WM Holdings LLC). The proposal shall occur within the 100-ft buffer zone to Bordering Vegetated Wetland, the bank, and the riverfront area. He stated that similar work is being done at 3 locations in Millbury. He stated that work includes upgrading a detention basin at location 1, and rehabilitation of outlet structures at locations 3 and 4, with a goal of providing more water infiltration since Blackstone River was identified as “impaired water body”. Mr. Murray stated that construction is planned for early spring. Mr. Berg Power asked if there will be storage of construction materials in the vicinity of locations 3 and 4. Mr. Murray responded that storage would be small-scale, mostly for resetting rocks.

Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 5-0 to issue a negative Determination of Applicability for the proposed project.

List of Exhibits:

Exhibit A: Request for Determination of Applicability for Route 146 Stormwater Retrofit; prepared by VHB, Inc; dated November 30, 2011.

Exhibit B: Maps prepared by VHB, Inc.:

- (1) Aerial Map
- (2) NHESP Map
- (3) Marked-up excerpt from Flood Insurance Rate Map effective July 4, 2011
- (4) General Wetlands Map

Public Hearing

2. 0 Salisbury Street (MBL 50-023-00003) – Notice of Intent (CC-2011-044); Construction of 7 single-family residential dwellings: Present for the hearing were attorney Angelo Catanzaro and Patrick Healey of Thompson-Liston Associates, Inc., representatives for Capital Group Properties, LLC., the applicant. Attn. Catanzaro submitted to the Commission informational packet regarding ownership information (relationship of the applicant to the owner) and an update of the compliance action with respect to Salisbury Hills project. He stated that on September 30, 2011, William A. Depietri is the principal owner of Capital Group Properties LLC and Salisbury Holdings, LLC, acquired the right to purchase the Salisbury Hills project and the 0 Salisbury Street project. He said that his client has been aware of the federal lawsuit under Clean Water Act and that continuing compliance is important to him.

Chair Wood asked what the status is on compliance with Environmental Protection Agency's order. Mr. Healy stated that the actions directed by EPA have been completed and a report was filed last month; however, EPA has not yet responded to the report.

Mr. Healey presented the project. He stated that the lots were graded out. He stated that all the lots are within a 100-ft buffer zone and 3 proposed buildings will be within a 100-ft buffer zone, and one of the lots (Lot 4) is within a 100-ft of a catchbasin as an intersection of Salisbury Street and Whisper Drive. He stated that the proposed houses will be about 2,000 SF in size with a 2-car garage and deck in a back with some grading to allow backyards to be used.

Mr. Healey stated that in compliance with the DEP Stormwater Policy, the applicant is proposing to direct the roof drains and driveway runoff to be directed to the subsurface infiltration systems, thus having 65% of runoff from impervious areas to be thus recharged. The subsurface infiltration systems consist of chambers sat in a bed of crushed stones which allows for 80% of the total suspended solids to be removed.

Mr. Healey stated that silt fencing and hay bales are proposed along the limit of work, as well as temporary sediment basins in the rear of some lots outside the 30-ft buffer. The applicant is proposing granite bounds along 15-ft buffer on lots 6 and 7.

He stated that the proposed work is included in the Stormwater Pollution Prevention Plan (SWPPP) prepared for the Environmental Protection Agency (EPA) 's NPDES permit, which lists sequence of construction (page 11), as well as stockpiling information. He stated that per Vice Chair's comment post the site walk, he agreed to manage all the stockpiles, and not just the ones within a 100-ft buffer area, the same, as described in the SWPPP.

He stated that there will be minimal importation of fill material to the site, as there will be a balance of cuts and fills on the lots as 3 or 4 lots would be worked on at a time. Mr. Healey stated that the applicant will work with the Department of Public Works to provide 2 manholes for an existing catch-basin, installed in 2007, to divert the water further away from the proposed garage and a house. The plan is proposing splash pad and a bed of crushed stone underneath it to dissipate and better infiltrate the flow of water runoff from Salisbury Street.

In response to a Commission's request, he stated that page 4 of the NPDES Construction Stormwater Pollution Prevention Plan (SWPPP) (Exhibit A) provides contact information for the property at 0 Salisbury Street and for Salisbury Hills project.

In response to DPRS staff comments (Exhibit E):

1. That erosion and sedimentation controls are installed prior to the tree stump removal from the site;
2. That all stockpiling shall be covered and contained with sediment control barriers at all times;
3. That the entire limit of work line is clearly flagged;
4. The Commission might consider requiring a wooden stockade fence along the 15-ft wetland buffer for the lots where proposed buildings are located within 50-ft of the wetland;

Mr. Healey stated that he was amenable to 1), 2), 3), and possibly 4), though the views to the wetland would be impacted by a fence, so he suggested an open type of fence.

In response to Mr. Donahue's question about temporary sedimentation basins, Mr. Healey directed the Commission to p. 14 of the SWPPP stating that the basins are designed to handle one year's worth of run off and that "accumulated sediment will be removed and disposed of at a secured location away from wetland resources once they reach no more than 20% of the sediment capacity". Mr. Donahue asked what contingency is in place for a 100-yr plan where a basin fills up faster than anticipated. Mr. Healey agreed to amending the plan to have a contingency plan.

Mr. Donahue asked how far into the wetland buffers the grassed lawns will be extended. Mr. Healey stated that extent of work area on lots 6 and 7 will be to the 15-ft buffer. He stated that slopes in the rear will be seeded with grass to the 15-ft zone area. Mr. Gervais clarified that no structures are allowed and proposed between 15-ft and 30ft from the wetland.

Mr. Theerman thanked the applicant for being proactive and providing rip-rap next to the outlet structure connected to the existing catch basin. Mr. Healey indicated that foundation drains for southern lots will discharge to the rear of the lot, and the drains for the northern lots will discharge into an existing drain. Mr. Theerman suggested that a double row of hay bales is used to prevent fast moving run-off from seeping through. Mr. Healey responded that the lots are graded to prevent fast-moving runoff to take place and that temporary sedimentation basins will be installed prior to hay bales, designed to prevent any fast flow of water runoff on the site.

Mr. Berg Powers asked what would be the total increase in impervious surface from the proposed project. Mr. Healey directed the Commission to page 3 of Stormwater Compliance statement stating that about 0.6 acres of impervious surface will result from the proposed project and that 72% of it will be collected into infiltration systems.

Mr. Berg Powers asked what is the snow removal plan. Mr. Healey stated that it will be decided by lot owners.

Mr. Donahue asked when the project is planning to start. Attorney Catanzaro stated late spring – early summer.

James Vander Salm stated his opposition to the project and stated "it is wrong legally to presume that the burden of proof that harm is not being done to the wetlands is on the opponent." He stated that the City Ordinance stated that "the applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have an unacceptable significant effect upon the wetland values protected by this chapter." He stated that he believed the information provided by the applicant is not credible and stated that the engineer hired for this project "is responsible in part for the disaster happening across stream and it goes to his credibility". He stated that he believed the project would "destroy the buffer to the 30-ft line" and would cause damage and stated that the Commission "has the right to stop the project". He stated that he believed his property will be damaged as a result of this project including 2 ponds in its proximity. He felt that hay bales and silt fences were "constantly collapsing" at the Salisbury Hills project. He stated that the purpose of a buffer zone is to protect the wetlands, and that buffers are not a "presumptive building zone." Mr. Vander Salm encouraged the Commission to hire an independent engineer to verify the calculations of proposed petition, per City's Wetlands Protection Ordinance.

Joe Hart stated that she has not been to the site but that she is opposing the project based on the previous non-compliance issues with the Salisbury Hills project. She called for the City to change the definitions of "unbuildable lots" and "impervious areas" and to repurpose a definition of "environmental disaster".

Mr. Healey confirmed that no work is proposed on the westerly side of the wetland.

Mr. Healey stated that no basement sumps are proposed as floor elevations are set several feet above the wetlands.

Mr. Healey agreed to move drain on Lot 4 by rotating it 10 degrees clockwise to move it outside the 30-ft buffer.

Mr. Gervais stated that the proposed plan meets the Department of Public Works standards..

Herman Dean, an abutter, stated that he believed that parcel is "a complex piece of land" with potential flooding issues. He asked that a temporary fence is installed to protect the buffer; that a temporary fence is installed during construction to protect trees in a buffer zone; that trees that are damaged during construction are replaced; that construction takes place during usually accepted working hours; and that Order of Conditions are enforced by the City.

Mr. Vander Salm asked the Commission as to what it considered appropriate to say if someone opposes a project. Chair Wood stated that opposition can be expressed in reference to compliance with laws and

regulations that the Commission is charged with enforcing such as the Wetlands Protection Act, Wetlands Protection Ordinance, and Regulations. She stated that generally speaking engineering data is not the only information taken into consideration by the Commission, except for some types of consideration, such as impervious area and rates of water runoff information, which are based on mathematical calculations and are of “extraordinary relevance to the decisions Commission makes”. Mr. Vander Salm encouraged the Commission to hire an independent consultant to verify the information submitted by the applicant’s engineer and stated that “numbers are not necessarily objective... they may be wrong or misleading”.

Mr. Berg Powers stated that he did a site visit and that he “distrust the project” given previous non-compliance issues and on-going review by EPA. He stated that the site is steep, that it would undermine the buffer, that the snow will be shoveled onto a street and then will go into a wetland, and that “this project makes him uncomfortable in general”. Mr. Berg Powers suggested continuing the hearing until the Commission hears back from the EPA. Chair Wood stated that EPA is reviewing a different project from the one being heard by the Commission. Attorney Catanzaro stated EPA issued an order concerning the Salisbury Hills condominium project which required a submission of the Stormwater Pollution Protection Plan, that EPA is a separate jurisdiction from the Commission’s, and that compliance action items have been taken. He stated that he asked Mr. Vander Salm to provide him with expert data on what it wrong with the site but haven’t heard back from him. He stated that the property for consideration is separate from the Salisbury Hills project. Mr. Healey clarified that an Order to Comply from EPA, requesting corrective work to be done, is a separate document than the one filed by the owner for a NPDES Stormwater Notice of Intent filed with the EPA for both the Salisbury Hills project and these frontage lots. He stated that he does not expect to hear back from the EPA unless the work done was unsatisfactory. Mr. Berg Powers withdrew his suggestion to wait for the EPA comments and recommended that the limit of work is “moved closer to the actual house itself” on all lots. He stated that he believed there was “a lot of excessive use of that space” which he wanted to be used “as a buffer” and that he would like to see revised plans showing that. Chair Wood stated: “In terms of it looks like a lot of space when it is on a plot plan, when you are trying to maneuver, it really is not [a lot of space], and it is outside the 30-ft buffer. If you are trying to push the limit of work outside the 30-ft buffer when it is already largely outside the 30-ft, I don’t think it is a valid reason.” Mr. Berg Powers stated that his comment related to a reason for continuance.

Chair Wood stated that a valid reason needs to exist for a Commission to continue a hearing, such as a request for additional information from the applicant. Otherwise, the Commission needs to take action.

Upon a motion by Mr. Theerman and seconded by Mr. Donahue, the Commission voted 3-2 (with Chair Wood, Mr. Theerman and Mr. Donahue voting yes, and Mr. Berg Powers and Mr. Franco voting no) to close the Public Hearing.

Issuance of Order of Conditions was postponed to the end of the meeting.

Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 4-1 (with Chair Wood, Mr. Theerman, Mr. Franco and Mr. Donahue voting yes, and Mr. Berg Powers voting no) to issue Order of Conditions.

List of Exhibits:

- Exhibit A: Notice of Intent Application; received November 3, 2011; prepared by Capital Group Properties, LLC.
- Exhibit B: Definitive Site Plan for Single-Family Lots 4-10; dated November 23, 2011; prepared by Thompson-Liston Associates, Inc.
- Exhibit C: A Letter and Definitive Site Plan – Stockpile Exhibit; dated November 23, 2011, revised December 16, 2011; prepared by Thompson-Liston Associates, Inc.
- Exhibit D: Stormwater Report and Calculations Standards Compliance Statement for Salisbury Street Lots 4-10; dated November 23, 2011; prepared by Thompson-Liston Associates, Inc.
- Exhibit E: Memorandum from the City of Worcester Department of Public Works & Parks to the Conservation Commission; re: Salisbury Street Lots 4 - 10 - NOI; dated December 19, 2011.

- Exhibit F: Letter from James Vander Salm to the Conservation Commission; re: Opposition to Capital Group Properties, LLC's development plan for Salisbury Street parcel; Request for Commissions' Engagement of Independent Consultant; dated December 12, 2011.
- Exhibit G: Information Packet submitted by Attorney Catanzaro to the Conservation Commission; re: 0 Salisbury Street; Notice of Intent; dated December 19, 2011.
- Exhibit E: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Conservation Commission; re: 0 Salisbury Street, Lots 4-10 (MBL 50-023-00003); dated December 19, 2011.

OTHER BUSINESS

3. **1121 Grafton Street – Enforcement Order (CC-2006-088):** On December 19, 2011, Luba Zhaurova distributed a letter from Quinn Engineering (Exhibit A) to the Commission. Christopher Keenan of Quinn Engineering stated that the applicant was not able to obtain information from the L & L Concrete Products of Oxford demonstrating compliance of the unit with the Massachusetts Stormwater Management Policy, such as testing data. He stated that a similar, though larger, L & L Concrete Products stormwater treatment unit was installed at the Roosevelt Magnet School on Grafton Street and that it might be expected to be comparable to the Stormceptor 450i based on the design drawings submitted by the manufacturer. Mr. Gervais stated that DPW&P has neither reviewed nor approved the unit at the School and therefore cannot comment on it. He stated that the applicant so far failed to demonstrate the unit's compliance with the Massachusetts Stormwater Management Policy standards. Chair Wood was not comfortable approving the unit without the testing data on sediment and pollutant removal.

Ms. Zhaurova offered to the Commission to review its options with respect to enforcement and present the alternatives for their review and decision. She stated that staff would need some time to advise the Commission appropriately.

Commissioner Theerman stated that he was inclined to order to remove and replace the unit with the one approved by the Commission. Chair Wood concurred and asked how long it would take to order a new unit. Mr. Keenan stated about 13 weeks. Chair Wood asked staff if the Commission can charge fines retroactively. Ms. Zhaurova stated that she doesn't believe so but will check and get back to the Commission. Chair Wood asked what the maximum fine can be. Ms. Zhaurova stated that according to the City of Worcester Wetlands Protection Ordinance, no more that \$300 per day can be fined. The Commission discussed requiring turbidity monitoring and acquiring proof of purchase of the new unit to be installed in the spring, as installation during winter months is not desirable.

Mr. Franco suggested charging \$100 fine a day effective immediately until compliance is proven. Commissioner Theerman stated that once compliant, the Commission may consider waiving a portion of the fine.

Upon a motion by Mr. Franco and seconded by Mr. Theerman, the Commission voted 5-0 to fine LGN, LLC \$100 a day starting immediately until the non-compliant stormwater treatment unit (Waterborne Separator Model 458 by L & L Concrete Products of Oxford) is removed and a compliant one (Stormceptor Model – STC 450i) is installed per approved Quinn Engineering Plans referenced in the Order of Conditions issued by the Commission on August 28, 2009 .

Exhibit A: Letter from Quinn Engineering, Inc. to Conservation Commission; re" 1119-1121 Grafton Street; dated 11/14/2011.

Exhibit B: Letter from Quinn Engineering, Inc. to Conservation Commission; re" Stormwater Treatment 1119-1121 Grafton Street; dated 11/29/2011.

Chair Wood left the meeting. Mr. Theerman assumed the Chair.

4. **146-152 Moreland Street – Request for a Partial Certificate of Compliance (CC-2005-016):** Mr. Gervais stated that following his site visit, in his opinion the site is compliant. Upon a motion by Mr. Franco and seconded by Mr. Donahue, the Commission voted 4-0 to issue a Partial Certificate of Compliance.

Mrs. Wood returned to the meeting and assumed the Chair.

5. **14 Ada Street – Enforcement Order:** Chair Wood asked that staff requests that the owner comes back in front of the Commission with a plan of bank restoration. Mr. Gervais stated that he has had several conversations with the owner and told him that the City has no financial interest in this property as the brook's bank, subject of this enforcement order, is located on private property. Chair Wood asked Mr. Gervais to reach out to Mr. Aubin with a suggestion of a list of small reasonable alternatives in order to stabilize the bank during winter months when the water levels are down. She asked that Mr. Aubin comes to the next meeting with a punch list of actions. Ms. Zhaurova suggested the Enforcement Order is lifted. Chair Wood stated that the Commission decided not to do so in order to allow Mr. Aubin flexibility with doing the work on bank stabilization without having to apply for a Notice of Intent, as long as ongoing communication with the Commission is maintained. Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 5-0 to continue the meeting to January 23, 2012.
6. **156 Olean Street – Enforcement Order:** Upon a motion by Mr. Franco and seconded by Mr. Donahue, the Commission voted 5-0 to lift the Enforcement Order because the owner complied with the Enforcement Order.
7. **6 Quaker Road – Request for Certificate of Compliance (CC-2003, DEP File No. 349-365):** Mr. Gervais stated that following his site visit, in his opinion the site is compliant. Upon a motion by Mr. Franco and seconded by Mr. Berg Theerman, the Commission voted 5-0 to issue a Certificate of Compliance.
8. **41 Swan Avenue – Request for Certificate of Compliance (CC-2003-75, DEP File No. 349-780):** Mr. Gervais stated that following his site visit, in his opinion the site is compliant. Upon a motion by Mr. Franco and seconded by Mr. Berg Theerman, the Commission voted 5-0 to issue a Certificate of Compliance.
9. **14 Whisper Drive – Request for Certificate of Compliance (CC-2007-056):** Mr. Gervais stated that following his site visit, in his opinion the site is compliant. Upon a motion by Mr. Franco and seconded by Mr. Berg Theerman, the Commission voted 5-0 to issue a Certificate of Compliance.
10. **72 Sears Island Drive – Request for Certificate of Compliance (CC-2009-035, DEP File No. 349-976):** Mr. Gervais stated that following his site visit, in his opinion the site is compliant. Upon a motion by Mr. Franco and seconded by Mr. Berg Theerman, the Commission voted 5-0 to issue a Certificate of Compliance.
11. **Conservation Commission Budget:** Chair Wood requested that the City investigate possibilities of funding a contractor to maintain Conservation Commission properties free of debris and to clear snow from adjacent sidewalks. Mr. Gervais stated that while some of the Conservation Commission properties were maintained on a limited basis by Department of Public Works in the past, the City's current resources are out-stretched and another funding source needs to be sought. Chair Woods requested information from staff as to what to do with emergency cases in the interim.
12. **Proposed Conservation Commission Application Checklist:** Ms. Zhaurova presented a Conservation Commission Applications' draft checklist with a goal of assisting applicants with the application process. The Commission asked that a 50-ft buffer is shown on the plans. Upon a motion by Mr. Berg Powers and seconded by Mr. Franco, the Commission voted 5-0 to accept the Application Checklist, as amended, as its own.
13. **Update regarding the disposition of the historic Fire Alarm & Telegraph Building located at 230 Park Avenue:** Ms. Zhaurova stated that this is an informational item for the Commission regarding disposition of the Fire Alarm & Telegraph Building and the Lease of City land located at 230 Park Avenue.

ADJOURNMENT

Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 5-0 to adjourn the meeting at 8:55 pm.