

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

August 22, 2011

WORCESTER CITY HALL – LEVI LINCOLN ROOM

Conservation Commission Members Present:

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

Staff Present:

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

CALL TO ORDER – 5:35 pm

APPROVAL OF THE MINUTES –On a motion made by Commissioner Franco and seconded by Commissioner Theerman, the Commission voted 5-0 to accept the minutes of 8/1/2011.

**REQUESTS FOR CONTINUANCES, EXTENSIONS OF TIME, POSTPONEMENTS,
WITHDRAWALS**

NEW BUSINESS

Public Hearing

1. **3 Tyson Terrace** - Notice of Intent to construct a duplex with associated site work (WCC File # 11-32): Chair Wood noted that the agenda should have stated 3 Tyson Terrace, and not 11 Tyson Terrace. William Fabrri of WJF GeoConsultants, representative for Richard Bezdegian, petitioner, stated that the site was contaminated, that the building was demolished in the spring of 2011 and soil remediation was completed successfully based on the soil and groundwater tests. Chair Wood stated that the 30-ft buffer was not marked clearly on the plan and that she would like to see revised plans, and stated that she would like to go on a site walk to confirm the delineated wetlands line. Mr. Bezdegian stated that the footprint of the new building (to be used as a duplex) will be reused with expansion toward the back of the house, not toward the wetland. Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 4-0 to continue the hearing to September 12, 2011 in order to allow the Commission time to conduct a site walk.

List of Exhibits:

Exhibit A: WPA Form 3 – Notice of Intent for 3 Tyson Terrace; prepared by Richard Bezdegian; dated 8/2/2011.

Exhibit B: Memorandum from the Department of Public Works & Parks to the Conservation Commission; re: 3 Tyson Terrace – NOI; dated 8/19/2011.

Public Meeting

2. **55 Lake Ave North** - Request for Determination of Applicability to determine jurisdiction (WCC File # 11-33): Mark Armington, Senior Director of UMass Medical School - UMMS Facilities Engineering and Construction, representative for the applicant, stated that the Route 9 / Belmont Street improvements conducted by Department of Transportation and MassHighway has affected this property. Also present was Scott Goddard of Goddard Consulting, LLC. Mr. Goddard stated that the applicant is seeking the Commission's determination on whether or not the on-site wetland area is isolated rather than Bordering Vegetated Wetland and not subject to Wetlands Protection Act or Worcester Bylaw jurisdiction. He stated that in his opinion no evidence exists that the channel leading to the culvert conducts water.

Mr. Gervais stated that he conducted a site visit, that the wetland area appears to be lower than the culvert, and that while he did not check the elevations, he agreed with the applicant's statement that the wetland on site appears to be isolated.

Commissioner Franco asked what the redevelopment plan is. Mr. Armington stated that the school has a vision to redevelop the site in quadrangles and to have a "green way" (a lawn) leading from Belmont Street to the building.

Commissioner Berg Powers asked where the 100-ft buffer would be located. Mr. Goddard stated that it would go up to the pathway. Commissioner Berg Powers stated that wetlands change over time and wondered if in this case it was due to the anthropomorphic causes. Mr. Goddard stated that wetlands are dynamic systems, and that according to the Department of Environmental Protection, once a Notice of Intent or a Determination of Applicability expire, the Commission needs to consider a wetland at its current, and not past, state.

Chair Wood stated that in the past, UMASS Medical School filings with the Commission were for Bordering Vegetative Wetlands and that she is not conformable proceeding without seeing the site first. The Commission agreed for a need for a site visit.

Upon a motion by Commission McDonald and seconded by Commissioner Berg Powers, the Commission voted 4-0 to continue the meeting to September 12, 2011 in order to allow the Commission time to conduct a site walk.

List of Exhibits:

Exhibit A: WPA Form 1 – Request for Determination of Applicability for UMASS Medical School, 55 Lake Avenue North with a cover letter dated August 1, 2011; received August 2, 2011.

Exhibit B: Plan of Land for MASS Medical School, 55 Lake Avenue North; prepared by Cullinan Engineering; dated 01/31/2011.

Exhibit C: Memorandum from the Department of Public Works & Parks to the Conservation Commission; re: 55 Lake Avenue North – NOI; dated 8/19/2011.

Exhibit D: Site Photographs distributed by the applicant to the Conservation Commission at the 8/22/2011 meeting.

3. **4-6 Meadow Lane:** Request for Determination of Applicability (WCC File # 11-34): Attn. Morris A. Bergman, representative for Brian O’Connell & Dorothy Hargrove, petitioners, stated that the petitioners are seeking a positive Determination of Applicability as they believe that “depositing of significant amounts of chemically treated/contaminated snow/ice on the embankment in the rear of 4-6 Meadow Lane.” He submitted additional information to the Board (Exhibit D). He stated that the stream is located 16-20 feet away from the sidewalk and that there is a steep embankment between the stream and the sidewalk.

Colin Novick, of Greater Worcester Land Trust, spoke on behalf of Greater Tatnuck and Blackstone Watershed Associations and stated his support for positive Determination of Applicability. He stated that the salt-treated snow creates non-point source pollution and that the watersheds enjoy active fishing stock and swimming activities.

Dorothy Hargrove, petitioner, stated that she is a former president of the Park Spirit and stated that she is in an awkward position to have to comply with the City ordinance while wanting to “protect wetlands and prevent water pollution”.

Brian O’Connell, petitioner, stated that no one shoveled the snow prior to the enactment of the City Ordinance and that most of it melted away, and in the spring, the rest was trucked away.

Mr. Bergman stated that he believes the area and the activity fall under the jurisdiction of the Massachusetts Wetlands Protection Act and stated that the petitioners do not have a choice where to shovel the snow, but on the embankment of the stream, due to space constraints.

Chair Wood quoted from the City of Worcester’s Wetlands Protection Ordinance and Wetlands Protection Regulations, in the Definitions section, that:

“alter” - shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:...

...(8) changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water; but specifically excluding the use of de-icing materials and chemicals for roadway maintenance during the winter months...”

Mr. Gervais stated that he spoke on a phone with Philip Nadeau of Department of Environmental Protection who indicated to him that DEP considers the initial storm snow removal of the streets and sidewalks to fall under street maintenance, which is exempt under the Wetlands Protection Act, but that the follow-up removal (such as stock-piling of the snow) would fall under the DEP Snow Removal Guidance. Mr. Bergman referred to the letter to the petitioner from Mr. Nadeau (Exhibit B) which stated that the petitioner should consult the local Conservation Commission as to whether the activity is jurisdictional, but that Mr. Nadeau did not state that the activity is exempt from the Act.

Mr. Novick stated that the Conservation Commission asks the petitioners of large-scale projects, such as apartment building, to show the areas of proposed snow storage and to demonstrate that it will not have a negative impact on the adjacent wetland allowed other developments to

stockpile snow. Mr. Gervais stated that sidewalks and streets need to be cleared from the public safety perspective, but that stockpiling of snow on a parking lot is regulated under the Snow Removal Guidance by DEP.

Chair Wood felt that the Commission did not have jurisdiction over the activity. Commissioner Berg Powers wanted to issue a statement to the local City Council to ask them to resolve the issue.

Upon a request by the petitioner, and upon a motion by Commissioner Berg Powers and seconded by Commissioner Franco, the Commission voted 4-0 to continue the meeting to September 12, 2011 to request a Legal Opinion and to review the applicable laws and regulations.

List of Exhibits:

Exhibit A: WPA Form 1 – Request for Determination of Applicability for 4-6 Meadow Lane; prepared by Brian O’Connell and Dorothy Hargrove; dated August 2, 2011.

Exhibit B: Letter from Philip Nadeau, Wetlands Program Chief, Department of Environmental Protection, to Dorothy Hargrove; re: Snow Removal – Wetlands; dated February 1, 2011.

Exhibit C: Memorandum from the Department of Public Works & Parks to the Conservation Commission; re: Pleasant Street (4 & 6 Meadow Lane); dated 8/19/2011.

Exhibit D: Exhibit packet submitted by Attn. Bergman to the Conservation Commission at the August 22, 2011 meeting that includes:

1. Tatnuck Brook Watershed information
2. Picture of West Tatnuck Brook Watershed Sign in Locale
3. Picture of Embankment of Applicant(s) in Winter
4. Copy of City of Worcester Snow Removal Ordinance
5. Copy of City of Worcester “Position” re: “Buffer”
6. Copy of Mass DEP “Snow Disposal Guidance”
7. Copy of MGL Chapter 85 Section 7A (Storage of Snow/Ice Removal Agents)
8. Copy of MGL Chapter 85 Section 7B (Disposal of Snow on a State Highway)
9. Copy of Burden of Proof Standard re: Wetland Protection Act (City of Worcester Ordinance)

OTHER BUSINESS

4. **1119-1121 Grafton Street (WCC-2006-088):** Kevin Quinn of Quinn Engineering, representative for LGN LLC, petitioner, stated that in May, his client selected a catch basin insert to comply with Stormwater regulations. Since that time, his client has purchased an out-of-state storm water unit and now seeks to obtain documentation stating that the unit complies with the Massachusetts Stormwater Management. He stated that he has not received information

regarding this documentation. He stated that erosion control and plantings in the rear of the site were completed but were not yet inspected.

Chair Wood stated that the petitioner disregarded the Commission's request not to hydroseed the area, that the approved catch basin insert was not installed, thus having a sub-standard system operating since May of 2011. Chair Wood requested that the applicant submit to the Commission by its September meeting information from the vendor regarding compliance of the catch basin system and that the proposed system is installed before winter. Mr. Gervais suggested that another alternative would be to require the applicant to install the originally specified unit.

5. **304, 615, 319-321 Cambridge Street – Certificate of Compliance (WCC-2005-062):** Mr. Gervais reported to the Commission that he inspected the property and that it complies with the Order of Conditions. Upon a motion by Commissioner Theerman and seconded by Commissioner Franco, the Commission voted 4-0 to approve the Certificate of Compliance for 304, 615, 319-321 Cambridge Street.

6. **365 Plantation Street (CC-2010-034):** The Commission review the letter submitted by the applicant (Exhibit A) which stated that minor changes to entry configuration were proposed. Ms. Donovan clarified that the applicant is expanding 760 SF into the buffer zone, and not the actual wetland and that the Commission needs to make a determination as to whether or not an amended Notice of Intent is needed. Commissioner Berg Powers stated that he felt the letter is sufficient. Chair Wood requested that a larger copy of the amended plan specifying the replication area is submitted for the file as a condition.

ADJOURNMENT

Upon a motion by Commissioner Franco and seconded by Commissioner Berg Powers, the Commission voted 4-0 to adjourn the meeting at 7:17 pm.