

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

May 21, 2012

WORCESTER CITY HALL – ESTHER HOWLAND ROOM

Conservation Commission Members Present:

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

Staff Present:

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

CALL TO ORDER: The Chair called the meeting to order at 5:30 pm.

APPROVAL OF THE MINUTES: Upon a motion by Mr. Franco and seconded by Mr. Berg Powers, the Commission voted 5-0 (with Commissioner McDonald not present) to approve the 4/30/2012 meeting minutes. Approval of the March 19, 2012 minutes was held.

Commissioner McDonald joined the meeting.

OTHER BUSINESS:

1. **God's Acre Parcel – Worcester Greater Land Trust's Proposal:** Upon a motion by Mr. Theerman and seconded by Mr. Donahue, the Commission voted 6-0 to take this item out of order per staff's request.

Colin Novick of Greater Worcester Land Trust recommended that the Commission votes to accept a Conservation Restriction with the Greater Worcester Land Trust for property off of Esper Avenue. He stated that the property affords public access to God's Acre property, would protect a certified vernal pool, state-listed species habitat. He stated that the Conservation Restriction has been reviewed and approved by the state and the City's Law Department.

Chair Wood asked for clarification regarding building restriction. Mr. Novick stated that GWLT thought that in the future there might be an opportunity for an open-sided structure such as a trail kiosk, and that it is easier to put in a provision now, than to amend the restriction later.

Chair Wood asked if there will be provisions for a restroom on the property. Mr. Novick stated no, stating that the property shall remain in its rustic state and that the ledge and the wetlands do not lend well to utilities on the site.

Chair Wood expressed support for the project and stated that GWLT has been “an excellent custodian of the land”.

Mr. Franco stated that the proposal indicated that the property was actively on the market. Mr. Novick stated that the property does not have a lot of development potential and that the Planning Board has approved a subdivision for this site, but that the plans did not seem to consider the natural site constraints that would not allow for the subdivision, as approved, to be constructed. He stated that he believed this site could accommodate at most 2 lots off of Esper Avenue. He stated that the property was foreclosed on and bought by GWLT. Mr. Franco asked if there was a lot of public and private discussion prior to purchasing the land. Mr. Novick stated that his organization applied to the state for funding for this property, and that it was in front of the Commission as a public meeting. Mr. Franco stated that he believed there was still a development potential for this parcel and that he was not in favor of accepting a permanent conservation restriction on it.

Ms. Zhaurova stated that staff supports Mr. Novick’s proposal because it meets multiple goals of the City’s Open Space Plan and provides a connection to a number of open space parcels in the area for recreation.

Upon a motion by Mr. Berg Powers and seconded by Ms. McDonald, the Commission voted 5-1 (with Mr. Franco voting no, and all others voting yes), to accept the attached Conservation Restriction with the Greater Worcester Land Trust.

The Commission signed and notarized the Conservation Restriction.

List of Exhibits:

Exhibit A: A map of the property by the City of Worcester; created February 27, 2012.

Exhibit B: Tetasset Hill Habitat & Access Project Proposal by Greater Worcester Land Trust; submitted February 8, 2012.

Exhibit C: Tetasset Hill Habitat & Access Project Conservation Restriction.

Exhibit D: Memorandum from Luba Zhaurova, Senior Planner to Conservation Commission; re: Tetasset Hill Habitat & Access Project Proposal by Greater Worcester Land Trust; dated May 21 2012.

UNFINISHED BUSINESS:

Public Hearing

2. **1127 Grafton Street (CC-2012-012):** Notice of Intent: Anthony Bianco of LGN LLC, the applicant, and Daniel Leahy of D.F.L. Enterprises, project engineer, were present. The Commissioner indicated that they did a site visit after the last hearing. Chair Woods stated that at the site visit, she requested that equipment and any stockpiling is contained to the front of the site. Mr. Gervais stated that the applicant complied with this request and stated that as of today, the “site looked good”.

Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 6-0 to close the Public Hearing. Discussion regarding issuance of Order of Conditions was held to the end of the meeting.

List of the Exhibits:

Exhibit A: Notice of Intent Application for 1127 Grafton Street; prepared by Nancy Bianco of LGN LLC; received April 11, 2012.

Exhibit B: Building Plot Plan for 1127 Grafton Street; prepared by James B. Kalloch; received April 11, 2012.

Exhibit C: Memorandum from Department of Public Works to Conservation Commission; re: 1127 Grafton Street - NOI; dated April 30, 2012.

Exhibit D: Letter from Scott S. Sinrich of Phillips, Silver, Talman, Aframe & Sinrich to Anthony Bianco; re: 1127 Grafton Street; dated May 11, 2012.

Exhibit E: E-mail and photographs of the site taken by Paul Franco; dated May 3, 2012.

Upon a motion by Mr. Berg Powers and seconded by Mr. Donahue, the Commission voted 6-0 to change the order of agenda and to take the Enforcement Order Update - 1121 Grafton Street – (CC-2006-088) out of order.

OTHER BUSINESS

3. **Enforcement Order Update - 1121 Grafton Street – (CC-2006-088):** Mr. Leahy presented an e-mail from Graham Bryant of Hydroworks, LLC (Exhibit A) demonstrating that Mr. Bianco has ordered the stormwater treatment unit approved by the DPW&P. He stated that it will be installed within 2 weeks from delivery.

List of Exhibits:

Exhibit A: E-mail from Graham Bryant to Steve Castelli, Stephen Fitzgerald and Dan Leahy; re: Grafton St. Worcester Production; dated 5/18/2012.

NEW BUSINESS

Public Hearing

4. **Lot A-9 Sophia Drive (CC-2012-016) – Notice of Intent:** Scott Morrison of EcoTec, Inc., representative for Steven Gallo of Arboretum Village LLC, the applicant, stated that the applicant is seeking to construct a single-family residential dwelling with a driveway, installation of utilities, grading and associated work in the buffer to a Bordering Vegetated Wetland. He stated that a crossing (a driveway) of the wetland is proposed, as there appear to be no other alternative to developing the site.

Mr. Berg Powers asked what the width of the driveway pavement is. Mr. Morrison stated 10-ft. Mr. Berg Powers clarified that no parking on the grass is proposed. Mr. Morrison confirmed that. Mr. Donahue stated that given the sensitive area, the applicant should consider permeable pavers.

Mr. Morrison stated that this is part of the larger development (Arboretum Village) for which Order of Conditions was issued in 2006-2007 for road and infrastructure, but not building developments, which is the subject of this filing. He stated that nothing has changed since wetlands delineation that was done in that time period. He stated that wetland replication is proposed as shown on the plans.

Upon a motion by Mr. Franco and seconded by Mr. Donahue, the Commission voted 6-0 to close the Public Hearing. Discussion regarding issuance of Order of Conditions was held to the end of the meeting.

List of the Exhibits:

Exhibit A: Notice of Intent Application for Lot 9A Sophia Drive; prepared by Steven Gallo of Arboretum Village LLC; received April 30, 2012.

Exhibit B: Notice of Intent Plan; titled: "Arboretum Definitive Subdivision – Wetland Plan"; prepared by HS&T, Inc.; dated 4/18/2012.

Exhibit C: Memorandum from Department of Public Works & Parks to Conservation Commission; re: Lot A-9 Sophia Drive – NOI; dated May 21, 2012.

5. **Leesville Pond (CC-2012-017):** William Coyle of Town of Auburn Department of Public Works, stated that the applicant is seeking an Order of Conditions for the use of US EPA registered and state-approved herbicides/algaecides for the management of invasive and nuisance aquatic vegetation (treated as a limited project under 310 CMR 10.53) on Leesville Pond, spanning the City of Worcester and the town of Auburn. He stated that the work will take place within Leesville Pond resource area and that it is part of a 5-year Surface Water Management Program to keep water free of invasive species. He stated that Auburn Conservation Commission has recently approved this project.

Mr. Franco asked what the long-term goal of the program is. Mr. Coyle stated that it is to prevent eutrophication of Leesville Pond.

Mr. Berg Powers asked what adverse impact might result from the herbicide application. Mr. Coyle stated that they are minimal, and that the herbicide lasts 24-48 hours before disintegrating and that application levels are kept as low as possible to reach the goal but not to over-saturate the lake.

Upon a motion by Ms. McDonald and seconded by Mr. Franco, the Commission voted 6-0 to close the Public Hearing. Discussion regarding issuance of Order of Conditions was held to the end of the meeting.

List of the Exhibits:

Exhibit A: Notice of Intent for Management of Leesville Pond with attachments; prepared by William Coyle of Town of Auburn Department of Public Works; received May 1, 2012.

Exhibit B: Memorandum from Department of Public Works & Parks to Conservation Commission; re: Leesville Pond - NOI; dated May 21, 2012.

6. **965 Main Street (University Park & Crystal Pond) (CC-2012-019):** David LaPointe of Beals & Thomas, representative for City of Worcester Department of Public Works & Parks, the applicant, stated that the applicant is seeking to) Install light fixtures and security cameras; b) Create a playground area and picnic area; c) Repair the retaining wall; d) Repair the existing outlet structure; and e) Re-orient pedestrian pathways to create an alternative route adjacent to Crystal Pond. He stated that the project is a result of DPW&P conducting neighborhood hearings and that this filing is mainly concerned with increasing the 'bump out' into the northern edge of the pond to

improve safety of the walkway. He stated that lost portion of the lake will be replicated in the western end at a 1:1 ratio. Mr. Donahue asked if the trees in the walkway contribute to feeling of being unsafe. Mr. LaPointe stated that the branches of three mature trees are at a high level and do not significantly impact visibility at an eye level. Mr. Theerman stated that while the Commission usually would not approve a project that would infringe into the water, the proposed bump-out appears to improve the safety and it is a big consideration. Chair Wood concurred with Mr. Theerman.

Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 6-0 to close the Public Hearing.

List of the Exhibits:

Exhibit A: Notice of Intent for 965 Main Street with attachments; prepared by City of Worcester Department of Public Works & Parks; received May 4, 2012.

Exhibit B: University Park in Worcester, MA – Permit Plan Set; prepared by Beals & Thomas, Inc.; dated May 4, 2012.

Exhibit C: Memorandum from Department of Public Works & Parks to Conservation Commission; re: 965 Main Street (University Park) - NOI; dated May 21, 2012.

Public Meeting

7. **14 Bay Edge Drive (CC-2012-018):** Matthew Tomaiolo of Greenleaf Farms Development, representative for Nicole & George Sakhat, the applicants, stated that the applicants are seeking a Determination of Applicability regarding adding a second floor to the existing single-family dwelling. He stated that there would be no building footprint expansion as a result of this project. He stated that no large machinery will be used on the lake side of the parcel and that a crane will be used on the part of the site nearest the street. Chair Wood requested that construction fencing is used in the rear tacked to the side of the house (loose netting) to prevent construction debris from getting into the lake.

Upon a motion by Mr. Donahue and seconded by Mr. Franco, the Commission voted 6-0 to grant a negative Determination of Applicability with the conditions that: 1) Vertical debris netting is to be installed on the side of the house facing Lake Quinsigamond during construction to avoid construction debris falling into the water; and that 2) The staging area shall not be located in the rear of the lot facing Lake Quinsigamond.

List of the Exhibits:

Exhibit A: Request for Determination of Applicability for 14 Bay Edge Drive; prepared by Nicole & George Sakhat; received May 3, 2012.

Exhibit B: Plan of revised property line in Worcester, MA; prepared by Plan of Revised Property Line in Worcester, MA prep. for Jon & Mary Shakour; prep. by R.W. Hart Associates Inc.; dated 8/28/2001 rev. 5/3/2011;

Exhibit C: Sakhat Residence architectural plans; prepared by AA Design; dated 3/15/2012.

Exhibit D: Memorandum from Department of Public Works & Parks to Conservation Commission; re: 14 Bay Edge Road - RDA; dated May 21, 2012.

OTHER BUSINESS

8. **Broad Meadow Brook Conservation Center and Wildlife Sanctuary (BMBCC)** – an update by Deborah Cary, Executive Director regarding Memorandum of Understanding: Ms. Cary stated that about one third of the Broad Meadow Brook Conservation Center land is owned by the City. She stated that a 1990 Memorandum of Understanding allowed for Mass Audubon to manage City's land as the sanctuary. She showed a map of land acquisition over time for the Sanctuary and stated that it is 430 acres big now. Ms. Cary stated that BMBCC has expanded its all-access trail, and expanded parking for the visitor's center using best management practices such as porous pavement.

Ms. Cary stated that she would like to make official the current challenge the Sanctuary is facing regarding access of the trails by unauthorized ATVs and stated that she needs support from the City to deal with it. She stated that BMBCC would appreciate support from Commissioners and that she has been working with Worcester Police Department regarding signage at entry points.

Chair Wood thanked Ms. Cary for the update. Ms. Cary stated that BMBCC holds monthly Advisory Committee and that Mr. Berg Powers is on the mailing list as the City's representative. She stated that she can add other Commissioners to the list. Chair Wood stated that she would like to be on the list. Mr. Berg Powers stated that the meetings are usually held at 4pm which often conflicts with his work schedule.

9. **0 Salisbury Street (CC-2011-044)** - Superseding Order of Conditions issued by Department of Environmental Protection and the Appeal of this Superseding Order (received May 17, 2012): Ms. Zhaurova stated that the Commission has received a Superseding Order of Conditions issued by Department of Environmental Protection and the Appeal of this Superseding Order regarding this project. She handed out staff's memo with brief description of litigation steps and a comparison of the Commission's originally issued Order of Conditions vs. DEP's Superseding Orders of Conditions. Mr. Theerman asked if the Commission will lose jurisdiction over the matter as a result of the issuance of the Superseding Order of Conditions. Chair Wood stated that she did not believe so because the Commission also issued the Order of Conditions under Wetlands Protection Ordinance. Mr. Gervais stated that he believed it would be best to contact Department of Environmental Protection going forward in case of an enforcement issue.

List of Exhibits:

Exhibit A: Memorandum from Division of Planning & Regulatory Services to Conservation Commission with attachments; re: 0 Salisbury Street, Lots 4-10 (MBL 50-023-00003); date May 21, 2012.

10. **Request for Certificate of Compliance – Goddard Memorial Drive Lot 0 (DEP 349-329):** Mr. Gervais stated that the project was approved in 1989 and that he did not do a site visit. He stated that he believed the site is stable given the time passed since the approval. Ms. Zhaurova stated that while a letter from the engineer stated that the project was constructed as approved, no copy of the plan was submitted and staff does not have a copy of the 1989 file. She stated that this is an ongoing issue of requests for certificate of compliance for old Orders of Conditions for which records have been lost and that she was advised by the Law Department not to issue Certificates of Compliance for such projects (due to lack of evidence) but rather a letter stating the facts and explaining why the Commission cannot issue them. Chair Wood requested that Mr. Gervais does a

site visit and that Ms. Zhaurova contact the engineer regarding a copy of the plan. The item was held to the next meeting.

List of Exhibits:

Exhibit A: Request for Certificate of Compliance; re: File No. 349-329; June 6, 1989; Goddard Memorial Drive, Lot 0, Airport Industrial Park; prepared by David Asmus of Asmus Engineering; dated May 1, 2012.

11. **Request for Certificate of Compliance – 10 Egan Avenue (CC-2011-001; DEP 349-1008):** Mr. Gervais indicated that he did the site visit and that it appeared compliant with the Order of Conditions. Upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 6-0 to issue the Certificate of Compliance for 10 Egan Avenue.

List of Exhibits:

Exhibit A: Request for Certificate of Compliance; re: 10 Egan Avenue, DEP File # 349-1008/WCC File #11-01; prepared by Jeffrey Howland of JF Engineering Group, LLC; dated May 16, 2012.

12. **Enforcement Order - 187 Greenwood Street (CC-EO-2012-001):** Ms. Zhaurova stated that Scott Goddard of Goddard Consulting, LLC, representative for InTransit Container Facility, informed her that while the plans are ready for submission for a Notice of Intent, since the wetlands span 3 properties, he is in the process of collecting signatures from all three owners, which might delay the date of submission.

13. **Enforcement Order - 126 Sears Island Drive (CC-EO-2012-002):** Jayson Laboueff, the owner of the property, presented a restoration plan (Exhibit A) in response to the Enforcement Order issued by the Department of Environmental Protection (DEP) and the Commission. He stated that the bank was restored and stabilized under the direction of DEP. Mr. Gervais stated that Joseph Bellion of DEP oversaw the restoration and that restoration was completed per DEP requirements. Mr. Donahue stated that he believes it would be prudent to wait 2 growing seasons before lifting the Enforcement Order. Mr. Gervais stated that he will monitor the situation periodically.

Mr. Theerman asked if Mr. Laboueff knew he was in violation of the law when doing the work. Mr. Laboueff stated yes. Chair Wood stated that the work requested by the Enforcement Order has been completed. Mr. Laboueff stated that he is meeting with DEP on June 6th to discuss fines to be imposed by DEP for this unauthorized work.

Upon a motion by Mr. Franco and seconded by Mr. Donahue, the Commission voted 5-1, with Commissioner Theerman voting no, to lift the Enforcement Order. Mr. Theerman stated that given the owner knew he was committing a violation, he would like to wait until DEP issues the fines, before lifting the order. He stated that if DEP decides not to fine the owner, he would be in favor of the Commission fining him instead.

Upon a motion by Mr. Theerman and seconded by Mr. Donahue, the Board voted 4-2 (with Mr. Franco and Mr. Berg Powers voting no) to reconsider the previous vote.

Chair Wood suggested continuing the item to June 11, 2012, after DEP's meeting with the owner. She requested that Ms. Zhaurova to seek determination from the Law Determination as to whether or not the Commission can pursue a fine for a violation after lifting an Enforcement Order.

Upon a motion by Mr. Theerman and seconded by Mr. Donahue, the Board voted 4-1-1 (with Mr. Berg Powers voting no, and Mr. Franco abstaining) to continue the item to June 11, 2012.

List of Exhibits:

Exhibit A: "Compiled Existing Conditions – Restoration Plan for 126-128 Sears Island Drive"; prepared by Waterman Design Associates, Inc.; dated May 4, 2012.

14. **Enforcement Order - 2 Woodcliffe Ave (CC-EO-2012-003):** Mr. Gervais stated that staff issued the Enforcement Order on May 9, 2012 due to "alteration and filling within 100 buffer and potentially within resource area." He stated that he spoke with the owner's daughter who informed him that the owner is in Alaska through Augusts and that the owner cleared some vegetation and did slight grading in order to plant fruit trees. Mr. Gervais stated that the daughter has given him permission to do a site visit to determine if a portion of the wetland was filled. He stated that he will do a site visit in the next couple of days.

15. **Enforcement Order – 25 Ellis Drive (CC-EO-2012-004):** Ms. Zhaurova informed the Commission that 30 days from delivery by Constable of the Enforcement Order will toll on June 6, 2012, and that staff will provide the Commission with enforcement alternatives to pursue if the owner does not comply with the Order by then.

16. **Enforcement Order – 20 Jasmine Drive (CC-EO-2012-005):** Mr. Gervais stated that staff issued the Enforcement Order on May 9, 2012 due to "alteration and filling within 100 buffer and potentially within resource area." He stated that following the issuance of the order, he received the plans and did measurements showing wetland locations which showed that no resource area was filled and that filling appears to be outside the 30-ft buffer zone, though still inside the 100-ft buffer zone.

17. Received Communication:
 - a. **From Pan Am Railways, Inc.; re: 2012 Post-Emergent Vegetation Management; dated April 15, 2012.** The Commission did not have any comments.
 - b. **Quinn Engineering, Inc; re: 722 Plantation Street – DEP #349-0917 and Erosion Repair Plan to re-stabilize the slope at the rear of the site; dated May 3, 2012.** Mr. Gervais stated that this is a project with current Order of Conditions and that the contractor did not follow the plan for constructing a rear bank, which consequently failed. He stated that the revised plan corrects the situation.

List of Exhibits:

Exhibit A: Cover letter from Quinn Engineering to Conservation Commission; re: 722 Plantation Street – DEP #349-0917; dated May 3, 2012.

Exhibit B: Erosion Repair Plan to restabilize the slope at the rear of the site; prepared by Quinn Engineering; dated May 2, 2012.

18. Discussion & Issuance of Orders of Conditions as relevant to a hearing closed 5/21/2012:

After a discussions, and upon a motion by Mr. Berg Powers and seconded by Mr. Franco, the Commission voted 6-0 to issue Order of Conditions for 1127 Grafton Street (CC-2012-012).

After a discussions, and upon a motion by Mr. Franco and seconded by Mr. Donahue, the Commission voted 4-2 (with Mr. Theerman and Mr. Berg Powers voting no) to issue Order of Conditions for Lot A-9 Sophia Drive (CC-2012-016). Mr. Berg Powers stated that he believed the area was too sensitive to be developed. Mr. Theerman stated that he did not believe this was a buildable lot, and that a limited project should not be a “free-for-all”.

After a discussions, and upon a motion by Mr. Berg Powers and seconded by Ms. McDonald, the Commission voted 6-0 to issue Order of Conditions for Leesville Pond (CC-2012-017)

After a discussions, and upon a motion by Mr. Theerman and seconded by Mr. Franco, the Commission voted 6-0 to issue Order of Conditions for 965 Main Street (University Park & Crystal Pond) (CC-2012-019).

ADJOURNMENT

Upon a motion by Mr. Franco and seconded by Mr. Theerman, the Commission voted 6-0 to adjourn the meeting at 7:55 PM.