

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

January 23, 2012

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
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 4-0 to approve the December 19, 2011 minutes (with Ms. McDonald abstaining because she was not present at that meeting and Mr. Berg Powers not yet present at the meeting).

REQUESTS FOR CONTINUANCES, EXTENSIONS OF TIME, POSTPONEMENTS, WITHDRAWALS

1. **40 Walcott Street (CC-2011-047):** Ms. Zhaurova presented a letter from Crystal Carr of HS&T, representative for Polar Beverages, the applicant, requesting postponement by the applicant's representative in order to have additional time to provide a stormwater calculation report. Upon a motion by Mr. Franco and seconded by Mr. Theerman, the Commission voted 5-0 to postpone the hearing to February 6, 2012.
2. **God's Acre Parcel – Worcester Greater Land Trust's Proposal:** Ms. Zhaurova stated that Colin Novick of the Greater Worcester Land Trust has requested postponement of his presentation to February 6, 2012. The Commission postponed this item to February 6, 2012.

Mr. Berg Powers joined the meeting.

NEW BUSINESS

Public Hearing

3. **Vicinity of Burncoat Park Pond (North Service Road and I-290) (70 North Parkway, MBL 22-INX-00001) (CC-2011-046):** Alex Murray of Massachusetts Department of Transportation, presented the project. Also present for the meeting was Edward Hutchison of Tetra Tech, project engineer. Mr. Murray stated that MassDOT is seeking to mitigate impervious surfaces due to a fact

that Burncoat Park Pond has an impaired waterbody status with respect to levels of phosphorus and turbidity. Chair Wood stated that a stormwater report was missing from the application. Mr. Murray stated that no new impervious surfaces are proposed. Mr. Gervais stated that while he does not anticipate issues with the report and that many requirements will not be applicable, a stormwater report is an application requirement. Mr. Murray stated that the project is projected to start in the spring.

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

Issuance of Order of Conditions was continued to February 6, 2012 in order to allow the applicant time to submit the stormwater report and for the Commission and staff to review it.

List of Exhibits:

Exhibit A: Notice of Intent for Impaired Waters Remediation, Burncoat Park Pond; prepared by Tetra Tech; submitted December 20, 2011.

Exhibit B: Maps prepared by Tetra Tech:

- (1) Site Location Map
- (2) NHESP Map
- (3) Notice of Intent Plans; dated November 4, 2011.

4. **University of Massachusetts Medical School's Albert Sherman Center Parking Garage (0 Plantation Street, formerly 365 Plantation Street) (CC-2012-001):** Matthew Varrel of VHB, representative for University of Massachusetts Medical School, petitioner, stated that the petitioner is seeking an Amended Order of Conditions to modify previously issued Order of Conditions (DEP File # 349-1002, CC-2010-034) with regards to a minor shift of the building location, associated utilities and loading, relocation of rain garden #2, and addition of 6 at-grade parking spaces. Mr. Varrel stated that a portion of the road was discontinued triggering some changes on site.

Mr. Franco why the petitioner is proposing parking spaces next to a garage. Mr. Varrel stated that these are dedicated for short-term parking, drop-off and delivery uses.

Mr. Berg Powers stated that there is an increase of impervious surface as a result of the amendment. Mr. Varrel stated that the revised gardens are not protruding into the wetlands and that originally there was excess capacity, but that the project still meets DEP standards.

Chair Wood stated that DPW&P found that the petition meets DPW&P standards.

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

Upon a motion by Mr. Donahue and seconded by Mr. Franco, the Commission voted 4-0 (Mr. Theerman and Ms. McDonald left the meeting) to issue Amended Order of Conditions for the project that is identical to the previously issued Order of Conditions.

List of Exhibits:

Exhibit A: Letter Requesting Amended Order of Conditions from Matthew Varrell of VHB; dated January 4, 2012.

Exhibit B: 1) Layout & Materials Plan 2) Grading, Drainage & Erosion Control Plan 3) Utilities Plan; prepared by VHB; dated January 3, 2012.

Exhibit C: Figure 1: Approved & Modified Layout Overlay for ASC Parking Garage; prepared by VHB; dated January 2012.

OTHER BUSINESS

5. **Request for Certificate of Compliance – 853-855 West Boylston Street (CC-2002-053):** Mr. Gervais stated that due to snow he could not inspect conditions on the ground. Upon a motion by Mr. Theerman and seconded by Mr. Berg Powers, the Commission voted 6-0 to continue the item to February 6, 2012.
6. **Request for Certificate of Compliance –71 Pullman Street (CC-2003-083):** Mr. Gervais stated that due to snow he could not inspect conditions on the ground. Upon a motion by Mr. Theerman and seconded by Mr. Berg Powers, the Commission voted 6-0 to continue the item to February 6, 2012.
7. **Request for Certificate of Compliance – 266 Chandler Street (CC-2010-044):** Mr. Gervais stated that he inspected the site previously and that he recommends issuance of Certificate of Compliance. Upon a motion by Ms. McDonald and seconded by Mr. Franco, the Commission voted 6-0 to issue a Certificate of Compliance.
8. **Request for a Duplicate Order of Conditions - 666 Lincoln Street (CC-2010-020):** Per petitioner's request, and upon a motion by Ms. McDonald and seconded by Mr. Franco, the Commission voted 6-0 to issue a duplicate Certificate of Compliance.
9. **Enforcement Order Update - 1121 Grafton Street – (CC-2006-088):** Anthony Bianco of LGN, LLC, the owner, was present. Mr. Bianco stated that he was led to believe that the stormwater treatment unit he purchased (Waterborne Separator Model 458 by L & L Concrete Products of Oxford) was equivalent to the one approved by the Commission (Stormceptor Model – STC 450i). Mr. Bianco stated that L&L is working with Worcester Polytechnic Institute to test the unit in hopes of demonstrating compliance with DEP standards.

Chair Wood stated that the Commission has been waiting almost a year for the results of these tests and that an Enforcement Order was issued in October to order that a compliant unit is installed. She stated that she is concerned about the nearby brook. Mr. Theerman concurred and stated that he is not inclined to change his opinion. He stated his doubts that the installed unit is equivalent. He was doubtful that Mr. Bianco was unaware of the problem and asked why a unit different from the one approved installed.

Mr. Gervais stated that to be an approved equal testing data needs to show that it performs the same as the approved unit, and that information is lacking.

John Fresolo, State Representative, spoke in support of Mr. Bianco's project and asked that the Commission give Mr. Bianco 30-60 days to comply. He stated that he believed Mr. Bianco's statements were sincere and truthful and that he is invested in this property.

Louis Esposito of L & L asked if there was information of performance on the same unit installed at Rosewood School. Chair Wood stated that she cannot comment on this project as the

Commission as not involved and suggested he contacts School Department. She asked if Mr. Bianco is doing turbidity monitoring on site. Mr. Bianco stated yes.

Chair Wood stated that Commission can fine for noncompliance up to \$300 a day under a local Wetlands Protection Ordinance and up to \$25,000 per each violation under the state's Wetlands Protection Act. She asked that by tomorrow the testing company provides the Commission with a draft of any testing already completed on the unit. She stated that it was reasonable to fine Mr. Bianco \$100 for non-compliance on this day, January 23, 2012. She stated that in speaking with the City's Law Department, the Commission can issue tickets under Wetlands Protection Ordinance, but would need to file with District Court to fine under the state's Wetlands Protection Act.

Mr. Gervais issued a ticket to 1119-1121 Grafton Street for \$100 for non-compliance on January 23, 2012.

- 10. Enforcement Order - 187 Greenwood Street (CC-2012-001):** No representatives were present. Mr. Gervais stated that he issued an Enforcement Order on 1/4/2012 with respect to the owner altering and filling in of the regulated wetlands and associated 100-ft buffer. He stated that the owner also altered the City's drainage system and that it seemed the owner drained the wetland area by creating an extension to the wetland area from the original drainage location. He stated that he asked that the extension is plugged in to stop the flow of the water and that they complied with that. He stated that the type of fill used for the site was "questionable". Mr. Gervais stated that he only has spoken with the on-site contacts – David Bozza of Intransit Container.

Mr. Gervais submitted to the Commission photographs of the wetland being filled in on the property as well as a GIS map with DEP wetland, rivers and lakes showing what the site looked like prior to the filling. The abutting property belongs to the City.

He stated that the owner told him the wetlands were caused by blockage and the area was wet in the last 10 or so years. Mr. Gervais showed a 1988 City of Worcester topographic map showing the area as "wet" and stated that the City also has an aerial photograph from 1941 showing the area "wet" and stated that he did not think the owner's argument is correct. Mr. Gervais stated that he recommended the owner hires consultants to assist with compliance, but has not heard back yet.

Mr. Berg Powers asked if there is stream on site. Mr. Gervais stated that he though it was surface run-off, and not a stream.

Mr. Gervais stated he informed DEP (Joe Bellino) of this issue, who asked to be informed if the owner does not comply.

Chair Wood requested that Mr. Gervais contact the owner and schedules a site walk with the owner's consultants. She also requested that copies of documents are submitted to the Commission with a proof that clean fill was used.

List of Exhibits:

- Exhibit A: Enforcement Order issued by Jonathan Gervais to Greenwood LLC; dated 1/4/2012.
- Exhibit B: Marked-up 2003 aerial image of 187 Greenwood Street parcel labeled "Approximate Extent of Fill."

- Exhibit C: Marked-up 2005 aerial image of 187 Greenwood Street parcel labeled “Approximate Extent of Fill.”
- Exhibit D: Marked-up 2009 aerial image of 187 Greenwood Street parcel labeled “Approximate Extent of Fill.”
- Exhibit E: Map of DEP Wetland map of 187 Greenwood Street parcel.
- Exhibit F: Aerial image with DEP Mapped Wetlands; received 1/23/2012.
- Exhibit G: Topographical map of Greenwood Street area; Sheets 205 and 2011; dated March 1988.

11. Disposition / Change of Use of the historic Fire Alarm & Telegraph Building located at 230 Park Avenue: Mr. Fontane, Director of Division of Planning & Regulatory Services, and Heather Gould, Senior Project Manager from the Executive Office of Economic Development, presented the project. Mr. Fontane stated that the administration respectfully recommends that the Conservation Commission approve the proposed disposition /change of use of the historic Fire Alarm & Telegraph Building and approximately three (3) acres of park land immediately adjacent to the fire alarm building at 230 Park Avenue because a unique arrangement among the parties (the City, Spencer Savings Bank, and Preservation Worcester) would achieve four (4) stated goals within the Request for Proposals:

- The complete restoration of the Property to all applicable historic standards with great respect to its presence within Elm Park;
- Thoughtful adaptive reuse complementary to the adjacent commercial districts;
- Access by the public to the community meeting space and amenities as managed by PW; and
- A public/private partnership to achieve all this while recognizing the fiscal limitations of the City and the threat of imminent loss of the resource.

Mr. Fontane stated that a unanimous voted by the Commission is required for the project to move forward.

Ms. Gould stated that the building is historically significant and has been vacant for many years. She stated that this is the second round of RFPs and that an analysis in 2009 showed that \$1.4 million would be needed to bring the building to building code. Ms. Gould stated that in November of 2011, all parties signed a Memorandum of Agreement.

Mr. Franco asked for clarification about the parking lot near the building. Ms. Gould stated that the City has only conceptual plans right now, but that generally speaking the Bank will reuse the existing pavement and will provide additional landscaping, as well as upgrading the intersection light.

Mr. Fontane stated that the project overcomes a financial hurdle that the City faces in turning the building to a productive use, as well as providing amenities for the public.

Mr. Theerman asked who will own the building. Ms. Gould stated that the building will be owned by Spencer Savings Bank, but that the land will still owned by the City with a ground lease for 70 years to the Bank.

Deborah Packard of Preservation Worcester stated that the historic Fire Alarm & Telegraph Building is on the PW's list of most endangered buildings in Worcester and that she supports this project.

Deborah Cary of MassAudubon stated that a process of repurposing this building has been going on for a long time and that she believed the current proposal is a good balance of meeting numerous needs. She stated that conversion of park land should not be taken lightly but that given that the area is already highly disturbed and with a condition that careful review of the project during permitting process takes place, MassAudubon support this project. She stated that "it is a step in the right direction".

Mr. Fontane stated that the project will have to come in for a review by Zoning Board of Appeals, Planning Board, and the City Council for a zone change. He stated that there is a potential to come for a review by Conservation Commission if it is not located in the combined sewer overflow area and if it is within 100-ft of Elm Park Pond.

Mr. Franco had concerns about how the final development will look. He stated that he did not believe the proposed use was compatible with the neighborhood given proximity to Elm Park. Mr. Franco requested to see actual plan of development. Ms. Gould stated that the Bank provided conceptual plans only, and that the actual plans will be reviewed by the City's Boards during permitting process. Chair Wood stated that the Commission is not approving design plans.

Ms. McDonald was in favor of the project.

Mr. Theerman was in favor of the project because, as he stated, the building has been in disrepair for many years and because it would improve access to the park via parking lot that can be used after bank working hours.

Mr. Theerman was in favor of the project because he felt it is the best alternative short of the City finding money to renovate the building. He stated that the project will improve people's access to the park by providing additional parking. Mr. Franco stated that he was amenable to the project.

Upon a motion by Mr. Theerman and seconded by Ms. McDonald, the Commission voted 6-0 to approve the proposed disposition/change of use of the historic Fire Alarm & Telegraph Building and the approximately three (3) acres of park land immediately adjacent to the Fire Alarm & Telegraph Building at 230 Park Avenue, for the following reasons:

- (1) The City, through a public disposition process (Request for Proposals), sought qualified developers for the restoration, historic preservation, and adaptive reuse of the Fire Alarm & Telegraph Building within a public park setting;
- (2) Said RFP for the Property, and its terms and conditions, were discussed publicly by the City Council prior to its release;
- (3) Spencer Savings Bank submitted the most advantageous proposal and was selected by the City as the Preferred Developer for the Property;
- (4) The Bank's proposed adaptive reuse for the Property is a retail banking location with public accessibility on a portion of the first level for a community meeting room and other amenities;
- (5) Preservation Worcester also submitted a proposal for restoration of the Property to include among other things, accommodation for public meeting space including a community meeting room, and other amenities for public use;

- (6) The City recognized the unique potential of an agreement providing for the disposition of the Building to the Bank with contemplation of a relationship with PW for its periodic use and management of a portion of the first level of the facility for community space;
- (7) The City has reached agreement with the Bank, in principle, to pursue this unique public/private project; and
- (8) This unique arrangement among the parties would achieve four (4) stated goals within the RFP:
 - o The complete restoration of the Property to all applicable historic standards with great respect to its presence within Elm Park;
 - o Thoughtful adaptive reuse complementary to the adjacent commercial districts;
 - o Access by the public to the community meeting space and amenities as managed by PW; and
 - o A public/private partnership to achieve all this while recognizing the fiscal limitations of the City and the threat of imminent loss of the resource.

Mr. Theerman left the meeting.

12. Enforcement Order Update - 14 Ada Street: Gerard Aubin, the owner, was present and stated that no work has been done so far due to lack of funds and time. Mr. Gervais stated that the City has no right or authority to do the work on Mr. Aubin's property. He stated that the brook's meandering is a natural occurrence. Chair Wood noted that there is a dried brook channel at the abutting 446 Mill Street parcel, owned by the Office of the City Manager according to the Assessor's records. She requested that Ms. Zhaurova requests a response from the City Manager's office to a question as to whether or not Mr. Aubin can have a permission to go on the 446 Mill Street property and clear the brush in a dried channel of the Tatnuck Brook, thus allowing for feeding some of the flowing water into the old channel again and thus alleviating the water flow on his property. Chair Wood stated that Mr. Aubin would not use heavy machinery, but some electrical hand tools might be used (e.g. to cut up a fallen tree). She also suggested that this project is listed as one of the potential Earth Day projects.

13. Potential for an Enforcement Order - Weasel Brook's culvert (in the vicinity and north of the point where the culvert crosses under Brooks Street near the Boston & Maine railroad bridge): Mr. Gervais stated that the culvert spans an old train trestle and appears to be partially collapsed and blocked by debris. He stated that in 2009 Kathleen Donovan sent a letter to the two direct abutters encouraging them to work together to repair it, and that it appears nothing has been done so far. Chair Wood asked if he thought the situation warranted an enforcement order in 2009. Mr. Gervais said yes but that there was confusion as to the ownership of the culvert. He suggested that the enforcement order is issued to both parties.

Ms. McDonald suggested that Mr. Gervais inspects the property to ascertain its current conditions before the Commission takes further action. Upon a motion by Mr. Franco and seconded by Mr. Berg Power, the Commission voted 5-0 to request Mr. Gervais to inspect the culvert, take pictures and present findings to the Commission on February 6, 2012.

Ms. McDonald left the meeting.

NEW BUSINESS

Public Meeting

14. **2 Sears Island Drive (CC-2012-002):** The applicant was not present. Upon a motion by Mr. Berg Powers and seconded by Mr. Franco, the Commission voted 4-0 to postpone the hearing to February 6, 2012. Chair Wood asked Ms. Zhaurova to contact the applicant.

ADJOURNMENT

Upon a motion by Mr. Franco and seconded by Mr. Donahue, the Commission voted 4-0 to adjourn the meeting at 7:55 pm.