



CITY OF HAVERHILL CONSERVATION COMMISSION MEETING MINUTES



MEETING DATE: THURSDAY, APRIL 22, 2021, AT 7:15 PM.

Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020, Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Haverhill Conservation Commission was conducted via remote participation. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting were posted on the Commission's website. For this meeting, members of the public who wished to virtually attend the meeting did so by creating an account at www.zoom.us and "joining" the meeting at the following URL: <https://us02web.zoom.us/j/85374488717> (Password: 433350). No in-person attendance of members of the public was permitted, but every effort was made to ensure that the public could adequately access the proceedings in real time, via these technological means.

Present: Chairperson Harmony Wilson (HW), Vice-Chairperson Ralph Basiliere (RB), Clerk Tom Wylie, Ed.D. (TW), Fred Clark (FC), Jen Rubera (JR) and, Neil Frasca PG (NF)

Absent: Phil LaCroix (PL)

Also Present: Robert E. Moore, Jr., Environmental Health Technician (RM) and Nicole Gray Minutes Clerk

CONTINUANCES & WITHDRAWALS

2.2 #33-1495 Boston Haverhill LLC for 1240 Boston Rd (Parcel ID: 770-779-69) Construction of a multi-family subdivision – With the consent of the applicant, grant an open continuance in accordance with HCC Policy #2000-01, Deadlines for Information Submittal.

Action: With the consent of the applicant, HW requests a motion to grant an open continuance with HCC Policy #2000-01, Deadlines for Information Submittal. RB moves, FC seconded. TW calls role- RB-yea; FC-yea; NF-yea; JR-abstain; TW-yea; HW-yea. Motion passed 5-0-1.

2.3. #33-1484 MDK Realty Trust for 111 Avco Rd (Parcel ID: 764-1-3) Expansion of outdoor operations area - With the consent of the applicant, grant an open continuance in accordance with HCC Policy #2000-01, Deadlines for Information Submittal.

Action: With the consent of the applicant, HW requests a motion to grant an open continuance with HCC Policy #2000-01, Deadlines for Information Submittal. RB moves, FC seconded. TW calls role RB-yea; FC-yea; NF-yea; JR-abstain; TW-yea; HW-yea. Motion passed 5-0-1.

PUBLIC HEARINGS

1. REQUEST FOR DETERMINATION OF APPLICABILITY

1.1. City of Haverhill for 131 Water Street (Parcel ID: 207-2-2) Permanent storage of an 8' x 40' storage container

Plans and Documents:

- Staff Meeting Notes, 04.22.21
- RDA Application Materials from Haverhill Fire Department, submitted 4.01 & 4.07.21

Summary: There is no one on the call for this item.

Action: HW reads into record notes by RM. RB Moves to issue a Negative Determination – Option #2, with the following conditions- see below: FC seconded. TW calls role RB-yea; FC-yea; NF-yea; JR-yea; TW-yea; HW-yea. Motion passed 6-0-0.

1.2. Michael Vets for 323 East Broadway (Parcel ID: 469-188-8) Installation of a seasonal dock system
Plans and Documents:

- Staff Meeting Notes, 04.22.21
- RDA Application Materials, submitted 4.06.21

Summary: Michael Vets (owner) on the call if needed.

Action: HW reads into record notes by RM. RB moves to issue a Negative Determination – Options #2 and 3, with the inclusion of Conditions #1 - 29 of the Commission's most recent dock review (2018, 501 East Broadway). FC seconded. TW calls role RB-yea; FC-yea; NF-yea; JR-yea; TW-yea; HW-yea. Motion passed 6-0-0.

2. NOTICE OF INTENT

2.1. #33-NOI Marwick Associates LLC for Creek Brook Dr (Parcel ID: 548-1-3C-2) Construction of a manufacturing facility

Plans and Documents:

- Staff Meeting Notes, 04.22.2021
- Notice of Intent Cover Letter, 04.08.21 (Beals)
- Notice of Intent Application Materials, 04.08.21 (Beals)
- Site Plan Set (26 Sheets), 04.08.21 (Beals)
- Stormwater Management Report, 04.08.21 (Beals)
- Operation and Maintenance Plan, 04.08.21 (Beals)
- CEI Peer Review Email, 04.20.21 (CEI)
- CEI Peer Review Letter, 04.22.21 (CEI)

Summary: Larry Beals presents with Matt Costa, both of Beals and Associates. John Tremblay of Edwards Vacuum is on the call. John Sisk of Marwick Associates, owner of the property, is on the call with his business partner, Mark Reardon of Equity Industrial Partners. Most of the site is forested, there is a bordering vegetated wetland. Defined by the Wetlands Protection Act. They will be encroaching on the 100 ft buffer zone. All development will be out of the 50 ft buffer zone. There is an intermittent drainage swale that was dug years ago. They are currently in the process with the Zoning Board to extend the roadway to create frontage for Edwards Vacuum site as well as future development in this location. There is a large piece of Conservation land owned by the City of Haverhill along the property. There is a stone dust walking trail and have carried it along the tall of the slope only encroaching on the 25 ft buffer zone in some locations. They would like to install signs with dialogue about wetlands, species etc. They would like to work with RM with crafting those and open the trail on the city's land. This would be open to the public. There is a large infiltration system used to catch the runoff and infiltrate it to the ground. There is a below grade detention storm water vault to contain the storm events that flow in quickly and release slowly. Utility come in under ground and there are no conflicts with utilities. HW questions if this is all the parks in the development, and who will maintain it. John Tremblay comments Edwards Vacuum will maintain it and it will be open to the public. TW asks if the trail is just the length of building or if it connects into the conservation land. The land is Tattersall Farm. TW asks where would residents park if they use the trail. There is a public way on Creek Brook Dr. TW mentions then they would need some signage. NF asks if

they have tested to be sure you can control the flow from the glacial till down to the wetlands. Larry explains they have done extensive numbers of test pits and engaged Haley and Aldridge to advise on geotechnical matters. It is a concern if they can't adequately control the ground water the slab of the building is at risk. In addition to the surface swales, there are subdrains under the building slab proposed. They want to do the construction during the dry time of year.

Action: HW reads into record notes by RM. RB moves to continue to the May 13th meeting. FC seconded. TW calls role RB-yea; FC-yea; NF-yea; JR-yea; TW-yea; HW-yea. Motion passed 6-0-0.

2.4. #33-1490 Antonio Viola for Broadway (Parcel ID: 539-439-18) Construction of a single-family house Plans and Documents:

- Staff Meeting Notes 12.10.2020, 1.7.21
- NOI Application Materials, received 11.13.2020 (MES)
- Site Plan, dated 7.29.2020, rev 3.11.21, rev 3.24.21 (MES)
- Wetland Replication Report, dated July 2020 (Norse)
- Letter from Atty. Mark O'Connor to Clifford and Nancy Peters, 12.18.2020
- Letter from Abutter, Nancy Peters, to HCC, received 02.16.21

Summary: The Commission closed its hearing on April 8th with concerns outstanding. The vote on the project was then scheduled for this evening.

Actions: HW reads the meeting notes from RM. TW moves to issue an Order of Conditions denying this project under 310 CMR 10.05(6)(b) and 310 CMR 10.05(6)(c), as read from the meeting notes and listed below. FC seconded. TW calls role RB-yea; FC-yea; NF-yea; JR-abstain; TW-yea; HW-yea. Motion passed 5-0-1.

- 310 CMR 10.05(6)(b) – Failure to Meet Performance Standards
 - The project does not comply with either the 25'-No Disturbance or 50'-No Build Zones defined under City of Haverhill Municipal Ordinance Chapter 253. The Commission typically provides relief of the scale proposed by the applicant in instances of long-term ownership (e.g., lots that are grandfathered under zoning) or for homeowner additions to structures built prior to passage of the wetland protection ordinance. The proposal does not meet either of these instances. The Applicant has not supplied any other support information for the proposed encroachments. Alternatives, such as purchasing additional and/or alternative land from the abutter (Fortin) to construct this house and/or improve compliance with performance standards for bordering vegetated wetland replication and local ordinance offsets, were requested to be analyzed and presented to the Commission. [Assessor and Registry records show the Applicant purchased the subject parcel in 2016 from the abutting owner at 954 Broadway (Fortin) for \$13,500. The Fortins purchased this parcel in 1985 for \$30,000.] The Applicant did demonstrate his unsuccessful pursuit of an access easement from the abutter at 984 Broadway (Peters).
 - 310 CMR 10.55(4)(a) – The construction of the proposed driveway would hydrologically disconnect the northwesterly section of bordering vegetated wetland (Flags 9A through 15A) from the remainder of the wetland to the southeast. There is no culvert or other means of hydraulic connection proposed under the driveway, resulting in the additional destruction and/or impairment of approximately 5,000-10,000sf of bordering vegetated wetland.
 - 310 CMR 10.55(4)(b)2 – No grading is proposed within proposed Replication Area “Section 1” and minimal grading is proposed within “Sections 2, 3, and 4”, likely resulting in the failures of these

resource areas due to insufficient access to the groundwater table supporting the proposed wetland fill location.

- 310 CMR 10.55(4)(b)3 – Wetland replication is proposed over four separate locations, where this should have been consolidated to no more than two by adding “Section 1” to “Sections 2 and 3”. As already stated with regard to replication, the purchase of additional and/or alternative land from the abutter should be vetted for the potential to create one compliant replication area.
- 310 CMR 10.55(4)(b)4 – Wetland Replication “Section 4”, which represents about half of the replication area, is connected to the section of bordering vegetated wetland that will be hydrologically isolated from the remaining bordering vegetated wetland (see 310 CMR 10.55(4)(a), above).
- 310 CMR 10.55(4)(b)7 – Wetland Replication “Section 1” and access to this area unnecessarily impacts forested Riverfront Area along the perimeter of this open bordering vegetated wetland.
- 310 CMR 10.58(4) – Grading of the 140’ and 142’-contours on the south side of the house serves no apparent purpose and proposes to unnecessarily disturb forest Riverfront Area along the perimeter of the wetland. Regrading of the Riverfront Area should be eliminated.
- 310 CMR 10.05(6)(c) – Insufficient Information
 - The application lacked a revised Site Plan to reflect the final boundaries listed in the ORAD issued under DEP File #33-1479. The current plan shows multiple floodplain lines and Riverfront Area boundaries.
 - The application claims Limited Project Status without providing sufficient support. Such status must be earned from the issuing authority; this is discussed in the 1988 DEP Policy included in the Notice of Intent application materials submitted by the Applicant. All alternatives must be exhausted. The aforementioned purchase of additional and/or alternative land has the potential to eliminate the need for the wetland crossing.
 - One access alternative the Applicant initially proposed was a driveway along the Peters property line. The Commission understands this was met with consternation by one of the gas pipeline owners. However, the related materials provided by the pipeline company to the Applicant leave this option open. Specifically, the Kinder Morgan Developers Handbook states “some encroachment activities not normally allowed may be considered under special circumstances”. The excessive wetland impacts, increased wetland footprint within the pipeline, and unnecessary costs to the Applicant should be considered a special circumstance. The Applicant has not provided any easement or utility right-of-way information pertaining to the parcel. Commission research found a Maritimes & Northeast right-of-way agreement recorded against the parcel. While there are rights reserved by both the grantor and grantee, the agreement does not prohibit the construction of a driveway and utilities within the corridor. Commission research did not find the Northeast Gas Transmission Company (Kinder Morgan) agreement that is apparently recorded against the parcel. [This is the more important of the two agreements, as following the Kinder Morgan easement would allow for the elimination of direct wetland filling.] However, the many other agreements that were recorded in Haverhill for that corridor are templates. Again, none of which prohibited a driveway and utilities. Commission staff met with representatives from both gas companies. Kinder Morgan was the more concerned party with respect to a driveway along the easement. The concern given was that a repair to the underlying pipe could result in temporary blockage of the driveway. Note this remains a possibility with the current design, which proposes to cross all three pipes owned by the two companies. This design alternative to eliminate direct wetland filling was insufficiently pursued by the applicant.

- The low point of the driveway appears to sit just 6” above the wetland grade at the proposed bend. It is likely this will cause very early failure of the driveway pavement and the need for additional permitting to remedy this failure. The Commission requested this design concern to be addressed during the hearing. No further information was submitted.
- The use of retaining walls to reduce wetland impacts was requested to be reviewed. No further information was submitted.
- During the hearing, a revised plan was submitted to reflect an area of grasscrete to be constructed near the proposed house to provide for vehicle turning. With this initial concern, the Commission had also noted the lack of a usable yard space and the likely potential for future violations at the property. The Applicant did not provide any information detailing how the wetland would be protected from future encroachments due to the lack of usable space on the parcel.
- The Commission requested an additional utility pole be set near the driveway entrance to eliminate the aerial run above the wetland and the potential for conflict with the wooded edge. No further information was submitted.

3. REQUEST TO AMEND A FINAL ORDER OF CONDITIONS

None Scheduled

OTHER BUSINESS (NON-HEARING ITEMS)

4. EXTENSIONS AND CERTIFICATES

4.1. Certificate: #33-1279 James M. Bosco, Esq. for 14 Back Nine Drive

Action: HW requests a motion. RB moves to issue a Partial Certification identifying the subject property and including Ongoing Conditions #1 – 15. FC seconded. TW calls role RB-yea; FC-yea; NF-yea; JR-yea; TW-yea; HW-yea. Motion passed 6-0-0.

5. ENFORCEMENT

5.1. Enforcement Order: John Micue for 93 Carleton Street

Plans and Documents:

- Staff Meeting Notes, 4.22.2021
- Notice of Violation, issued 11.26.2019
- Enforcement Directives, voted 12.5.2020 & 1.23.2020
- Enforcement Order, voted 3.5.2020
- Existing Conditions Plans, dated 2.29.2020, by MES
- Letter, Restoration Deadline Extension to May 28, 2020, dated 04.22.2020
- Letter, Restoration Deadline Extension (Post Emergency Order) and Mowing Cease & Desist, dated 07.08.2020

Summary: No one is on the call for this meeting.

- Commission voted to issue the EO on March 5, 2020, for the following activities:
 1. Cutting and mowing of scrub shrub and herbaceous vegetation in a bordering vegetated wetland
 2. Excavation and commencement of construction of a barn/garage foundation in a BVW
 3. Installation of two underdrain systems in a BVW to dewater the wetland and drain water towards an intermittent stream channel
 4. Clearing of vegetation along an intermittent stream channel
 5. Regrading of an intermittent stream channel

6. Construction of an animal enclosure and housing structures and the keeping of animals in a BVW
- The EO requires Mr. Micue to take the following actions:
 1. By March 26, 2020, remove the animal enclosure and related structures from the wetland. The enclosure and structures may be relocated to another position on the property that is outside the delineated wetland.
 2. By April 16, 2020, remove all stone and pipes installed as drains within the wetland and restore the loam layer with the existing loam material currently stockpile on the property.
 3. By April 16, 2020, remove all stone placed within the wetland for the barn/garage and restore the loam layer with the existing loam material currently stockpile on the property.
 4. By April 16, 2020, all surplus loam shall be relocated outside the boundary of the delineated wetland.
 5. All wetland areas shall be allowed to naturally revegetate. That is to say, no restoration plantings are required within the wetland; however, any areas of disturbance associated with the aforementioned removals shall be seeded with a native New England wetland seed mix to provide stabilization.
 6. Revegetation shall occur up to the “mowing line” that is evident in the reviewed 2008-2015 aerial photos. That is to say, you may continue to mow the western edge of the wet meadow (nearest your home), following the 2008-2015 mowing line.
 7. Plantings are not required along the first 100’ of stream channel, measured upstream from the roadside culvert. By April 16, 2020, from that 100’ mark upstream to the 200’ mark, plant a row of shrubs along each side of the channel to replace removed vegetation. Shrubs shall be planted every 10’, with each side alternated from the other. Shrubs shall be native New England wetland species and shall be a minimum of 36” in height. A minimum of 3 different species shall be planted.
 8. By April 16, 2020, install buffer zone protection measures to prevent future wetland encroachments. These measures shall consist of durable posts, such as a cedar fence post, placed every 50’ along the entire delineated wetland edge. Affixed to the posts shall be signage identifying the areas beyond these posts as “Protected Resource Areas”.
 - At its April 2nd meeting, the Commission extended these deadlines to May 28, 2020.
 - At its May 28th meeting, the Commission granted additional time due to the early stages of the pandemic. The Commission noted that mowing of the wetland must be ceased.
 - Commissioners walked the site with Mr. Micue on March 16, 2021.
 - This item was scheduled for discussion at the April 8, 2021, meeting. It was continued to tonight’s agenda at my request and with Mr. Micue’s consent.
 - As Commissioners witnessed and Mr. Micue confirmed at the March 16, 2021, site walk, Mr. Micue continued to mow the wet meadow delineated by his consultant for months following the July 8th issuance of the Commission’s extension of time and mowing stoppage letter. I have consulted with MassDEP enforcement staff on this matter. The Commission may view this intentional and continued violation of the MA Wetlands Protection Act and the City’s wetlands ordinance as cause for voiding the good faith extension of time granted to Mr. Micue in the July 8th letter.

Actions: HW reads into record notes by RM, above. FC moves to issue an Amended Enforcement Order requiring the original eight items to be completed by June 3, 2021, with the following amendments to #6 - all mowing of the delineated wetland resource area shall cease and the entire resource area shall be allowed to naturally revegetate and to #8 – in lieu of posts, a post-and-rail fence with signage at 50’-intervals shall be installed along the entire delineated wetland edge. The Amended EO should clearly state that it supersedes all previously issued Notices of Violations, Enforcement Directives, Enforcement Orders, and Extensions of Time, especially that granted under the July 8, 2020, letter. The Amended EO shall also

clearly inform the applicant that failure to comply with all the requirements of the EO by the June 3rd deadline shall be cause for the Commission to refer this matter to MassDEP for further enforcement action. Amended by FC to also include how Mr. Micue needs to remove and transplant the trees he planted in the wet meadow resource area. RB seconded. TW calls role RB-yea; FC-yea; NF-yea; JR-abstain; TW-yea; HW-yea. Motion passed 5-0-1.

6. MISCELLANEOUS

None Scheduled

7. ACCEPTANCE OF MINUTES

None Scheduled

8. ADJOURN

Meeting adjourned at 8:18pm