



# CITY OF SALEM CONSERVATION COMMISSION

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## NOTICE OF MEETING

Notice is hereby given that a meeting of the Salem Conservation Commission will be held on **Tuesday, June 21, 2022 at 6:30 p.m. via remote participation, in accordance with Chapter 20 of the Acts of 2021 and as amended by Chapter 22 of the Acts of 2022.**

*Gregory St. Louis, PE, Chair*

## MEETING MINUTES

***Bart Hoskins opens the meeting at 6:29 pm***

### **I. ROLL CALL**

*In attendance:* Judith Kohn, Tom Philbin, Tom Campbell, Bart Hoskins, Dan Ricciarelli, Tyler Glode (6)

*Absent:* Greg St. Louis (1)

*Also in attendance:* Kate Kennedy, Chelsea Titchenell (2)

### **II. REGULAR AGENDA**

- A. 1 and 2 Lee Fort Terrace – DEP# 64-756 – Continuation - Public Hearing- Notice of Intent – of BC Lee Fort Terrace LLC, 2 Center Plaza, Boston MA. The purpose of this hearing is to discuss the proposed replacement of 50 apartments with 124 apartments, associated garage, surface parking, outdoor community space and new public open space at the property located at 1 and 2 Lee Fort Terrace, Map 41, Lots 242 and 249, Salem MA. The proposed work is located within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.**

*A motion to continue the public hearing to July 19, 2022 is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 6-0.*

- B. 13 Cedarcrest Road – DEP# 64-755, DEP# 64-754, DEP# 64-753 – Continuation - Public Hearing- three Notices of Intent - of Julie Dandreo, Six Progress Corporation, 6 Vernon Street, Salem MA. The purpose of this hearing is to discuss the proposed construction of 3 single family homes, associated driveways, grading, walkway, deck, stormwater management, retaining wall and sewer line, located at Map 21, Lot 59 Cedarcrest Road, Lot 1 (DEP# 64-755), Lot 2 (DEP# 64-754) and Lot 3 (DEP# 64-753), located**

within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.

- C. 2 Cedarcrest Road – Continuation** - Request for Determination of Applicability – application of Julie Dandreo, Six Progress Corporation, 6 Vernon Street, Salem MA, for the proposed construction of a walkway and grading, located at 2 Cedarcrest Road, Map 21, Parcel 82, located within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.

*A motion to continue the public hearings of 13 and 2 Cedarcrest to July 19, 2022 is made by Dan Ricciarelli, seconded by Tom Campbell, and passes 6-0.*

- D. 57 Memorial Drive – DEP# 64- ###** - Public Hearing – Notice of Intent - a Notice of Intent for Justin Mattera, 57 Memorial Drive, Salem MA, for proposed stabilization of a disturbed embankment and relative upland site work, within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance

Kate Kennedy: A DEP file number was received this afternoon. It is DEP # 064-0758.

Bart Hoskins: All of the proposed work is within the 25’ buffer zone. This is a NOI for a prior enforcement order for work done on an embankment. The site has been stabilized in the interim.

Susan St. Pierre, representing Justin Mattera, shares a presentation. Highlights include:

- Work was being done on an existing retaining wall without permits, and an Enforcement Order was put in place and the slope needed to be temporarily stabilized with a Notice of Intent for a permanent solution.
- A survey of the site has been done and the site is in the FEMA V Zone at elevation 14.
- Embankment on property is owned by the City and is within the Chapter 91 jurisdiction line and can take up to one year to obtain a license.
- Delineation of coastal bank goes onto the property on the northeastern side, heading in line with a slope decrease
- All work is in the 100’ buffer zone and 25’ no disturb buffer zone, with none being in the resource areas
- They will require a Right of Entry for the work due to area of work being City property.
- Construction of a concrete retaining wall about 1 foot in width and with 1 to 1 ½ feet of remnant boulder in front of the concrete wall is planned
- Proposing stairs installed that go parallel with the proposed retaining wall
- Import soil and salt tolerant plantings.
- Remove the raised planting bed and plant lawn in this area instead.
- A request for an emergency approval that would allow immediate action if approved

Dan Ricciarelli: Why is he not pulling the work back to the property line?

- Susan St. Pierre: If pulled back on the property line more than half of his lawn would be gone. I think there needs to be more than a Right of Entry in the future as there are other areas collapsing that he would like to improve in the future.

Judith Kohn: It looks overall that it is an improvement, but it appears that you would need to submit a waiver

request since this work is in the 25' buffer area, even if it is an already disturbed area.

- Dan Ricciarelli: Judith is correct.

Dan Ricciarelli: Was this disturbed from this applicant or previously?

- Susan: Previously, it has been like this for a long time.
- Bart Hoskins: I could imagine that with a wall crumbling, we would probably be looking at an improved condition.

Tom Campbell: Do we feel comfortable moving forward with the understanding that the waiver will be submitted?

- Judith Kohn: Because it is not just a replacement of the wall, there are stairs and other aspects of the project that could be described as new work, I think it needs to be included with the waiver request.

Tom Philbin: Has the building inspector or anyone from the City inspected it and issued any orders on this, such as the Fire Chief or Inspectional Service Offices?

- Susan St. Pierre: Not to my knowledge.
- Tom Philbin: That would be helpful for the Commission to have.

Judith Kohn: The applicant did work without a permit, and it doesn't seem like there was an emergency based on the work that was done.

- Susan St. Pierre: To do the work it does require Chapter 91, so we could wait but it might take a year.

Susan St. Pierre: In the Wetland Regulations it does state that minor activities are not subject to those standards.

- Dan Ricciarelli: That is normally for cleaning up but not something like the full repair of a retaining wall.

Bart Hoskins: If we get the waiver request, does the emergency letter mean that a Chapter 91 License is not required?

- Susan St. Pierre: No, they do require the license but you can do the work before the license is issued.
- Judith Kohn: I think we can consider the emergency letter once we have all the materials.

*A motion to continue the public hearing to July 19, 2022 is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 6-0.*

- E. 8 Dearborn Lane** - Request for Determination of Applicability - application of Steven Becroft, 69 Orchard Street, Salem MA, for proposed garage addition, located at 8 Dearborn Lane, within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.

Steve Becroft shares a presentation. Highlights include:

- Proposing to extend the house on the south side of the house by adding a two-car garage, porch, and living area over an existing portion of the driveway.
- Existing walkways and driveways will be paved brick.
- Roof runoff will go into trenches below the paved brick to capture the water.

John Dick, Wetland Scientist, continues the presentation. Highlights include:

- Notes well delineated salt marsh by the property, with the closest one being approximately 25' from the property line and the work is another 30' away from this area.
- Stone paved embankment at foot of a slope in the back yard and a new concrete wall
- Street drain discharges about 20' into a null located on the edge of the coastal bank
- Wave action and high-water events will mean the coastal bank will eventually need attention to prevent collapse
- Working in the 25' and 50' zones
- Removing slightly more hardscape than what is being proposed to put in
- Perimeter trench proposed under the walkway that would accept roof drainage to prevent it from going into the resource area.
- Looking to remove a concrete slab on the left rear

Bart Hoskins: I am uncertain about whether this can be an RDA.

- Dan Ricciarelli: It does appear that it is not in the 25' area, but there are no measurements and no delineation.

Judith Kohn: And the pervious is being increased since you are taking some of the impervious out, so it all looks like it is fairly minimal work from what I can see.

- Bart Hoskins: So the driveway will be smaller but less pavement?
- Steve Becroft: Yes, and the shed will be going away and be replaced by lawn.

Judith Kohn: As far as river front, this is a tidal river?

- John Dick: Yes, and we are reducing the surface run off from paving and making it roof runoff, which is cleaner than surface runoff which is a plus, as is the recharge trench. The house is getting bigger but the retrench is still improving.

Steve Becroft: If approved we would like to start construction soon and have it done by early to mid next year. Solar panels will be increased as well, and they will be less visible, so it will be an electric house and as close to a "Passive House" as it can be with minimal carbon output.

Dan Ricciarelli: I am unclear what the threshold for the NOI is vs the RDA.

- Kate Kennedy reads all determinations for clarification.

Dan Ricciarelli: There is quite a bit of construction so I think we can state conditions for an RDA to make sure that construction goes towards Dearborn Lane and not the water as much as possible.

*A motion to close the public hearing is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 6-0.*

*A motion to pass a -3 -6 determination, with the special conditions that the erosion control is in place with no work taking place outside of the erosion control area, is made by Tyler Glode, seconded by Dan Ricciarelli, and passes 6-0.*

### III. OLD | NEW BUSINESS

- A. 31, 33, 35; Osborne Hill Drive - Requests for Certificate of Compliance - DEP# 64-584, DEP# 64-586,

DEP# 64-583

Kate Kennedy: The other 3 adjacent lots have previously been before the Commission where Bill Manual, the Wetland scientist, presented a buffer re-vegetation plan and the 6 were originally all together, so this is the other side of the street.

Chanelle DiBiase, on behalf of Osborne Hills Realty Trust: In between 33 and 35 there was a requirement for a swale, but after construction was complete there was a natural slope due to the grading of the two lots that went towards the driveway and roadway, so the swale was not included since it was no longer needed

Judith Kohn: Were any run off calculations for the water that went into the driveway and measures put into place like that, such as catch basins, or was it all natural runoff?

- Chanelle DiBiase: It was just natural runoff. The area has been established for a long time now and there has never been any presence of excess water that wasn't able to flow toward the road.

*A motion to issue the Certificate of Compliance is made by Dan Ricciarlli, seconded by Tom Campbell, and passes 6-0.*

**B. 435 Lafayette Street – DEP#64-730 – Salt Marsh Planting – Modification**

Susan St. Pierre shares a presentation. Highlights include:

- The bottom portion of the house is on piles due to steep sloping.
- Originally requested the construction of a pier, with some conditions that modified the plan
- A plan for **phragmites** eradication plan and invasive species removal with Bill Manual
- A letter for a Water Quality Certification is needed to plant salt marsh above High Annual Tide due to Army Corp permitting requirements.
- The original plan was to cut the phragmites and do supplemental salt marsh plugs, but due to the additional permitting that would be needed through the Army Corp, the request to return to the original plan is now in place.

Tom Philbin: I think the critically important thing is to eliminate the phragmites and do continued treatment since they can easily come back. If we stay under 100 square feet you can plant the salt marsh plugs without the additional permits?

- Susan St. Pierre: Yes, but we won't know what we need until a couple of seasons go by.
- Tom Philbin: Can you do seeds instead?
- Susan St. Pierre: Under the regulations? I don't know.

Judith Kohn: Can you show me where the jurisdiction for this is?

- Susan St. Pierre: It is where many of the phragmites are.
- Judith Kohn: Salt marsh is incredibly hard to grow, perhaps there is a salt marsh restoration taking place in that area.
- Bart Hoskins: There is one in Collins Cove and another one by the new pool at Forest River pool I believe. I am not aware of any active ones at this time.

Judith Kohn: Is there something else that can be planted or does the planting of anything trigger the need for the Army Corp permit?

- Susan St. Pierre: It says salt marsh specifically and temporary fill, but I am not sure.
- Judith Kohn: Perhaps, instead of placing the burden on this applicant for a single-family home, we put a condition to relieve the need for salt marsh but ask them to monitor the phragmites vigilantly.

Susan St. Pierre: I know what your intent was, even if not clearly articulated in the condition, so perhaps we clarify the condition?

- Bart Hoskins: I don't think we need to change anything in this instance due to that. We would still like to see the phragmites control and reporting, as per the original order, but we are not requiring that the area be planted with salt marsh plants.

### C. Hazard Tree Removal Request – Pioneer Village Ratification

Tom Campbell removes himself due conflict of interest, as the presenter is a family member.

Charity Lezama, Salem YMCA, shares an update. Highlights include:

- Salem YMCA does not own the property but has a 5-year lease to run summer camps at this location.
- 4 trees were identified as being in imminent danger of falling, with three being Norway Maples and one Redwood Maple and were then removed due to safety concerns.
- Agreement to plant new trees in fall is in place, and we are working with Bob LeBlanc to identify the best areas and types of trees to plant and they are awaiting recommendations.
- A tennis court previously existed in the area, which does lead to some issues with tree growth and may have led to issues with one of the tree's stability.

Dan Ricciarelli: I do want it on record that the YMCA is one of my clients, but that does not relate to this work.

Judith Kohn: Is this in a resource area?

- Kate Kennedy: It is in a flood zone right along there and last year there were quite a few trees falling. They City removed some Norway Maples in Forest River as well.

Tom Philbin: Is this something that the City Arborist could write a letter saying that these are hazards for informational purposes before doing this?

- Dan Ricciarelli: I think this is a good idea but Bob's limitations as far as being the Arborist for the City and the jurisdiction might be the issue.
- Kate Kennedy: If we want to identify a process for tree removal we could specify it so that the review makes more sense and is faster in the future. It also depends on the resource area and jurisdiction.

Judith Kohn: I don't think we can make a decision about this since it is after the fact.

- Kate Kennedy: In the letter I said I would bring this before the Commission so that we can ratify the letter, vote, and acknowledge that they were removed.
- Bart Hoskins: I don't think there is anything that needs to be voted on per say.

Judith Kohn: I spoke with Darlene Melis, the chair of the Tree Commission, and she did ask me if we could consider adding some language to our regulations to direct applicants to their standards. This piece is interesting since, if you are planning on planting new trees in the flood plain, I would steer you to the Tree Commission and what they would recommend for these plantings.

- Charity Lezama: From the YMCA's perspective, we are tenants but are not a part of the larger plan. We

do have the option to renew, but the larger camp property plan that is being worked on does not include the Y.

**D. Lot 2 Salem Footprint Power – DEP#64-552 – Notice of Project Change**

Matthew Moyen, on behalf of Footprint Power, shares a presentation. Highlights include:

- The power plant is in the central portion of the site, noted as Lot 1 and the remaining area is in the southern portion, noted as Lot 2, with primary focus being on the southern portion of the site.
- There were previously many unknowns for Lot 2 but the intent was to capture storm water runoff to protect the street and the Salem Harbor.
- There is now a public/private partnership to create an offshore wind terminal project.
- Seeking a waiver that does not require standard 2.
- Maintain protection for Derby Street right away through barriers and ultimately discharge to the harbor
- A Notice of Intent for borings in the Lot 2 property as well at the July 2022 meeting and it wouldn't be reasonable to construct this prior to activity taking place for the upcoming development.

Dan Ricciarelli: So, this is a temporary condition until the project is proposed?

- Matthew Moyen: Yes, it is a relatively level site now with some pockets. So, it is status quo for a couple of months but the project is fast tracked and the project is looking to undergo construction in 2024, so it is imminent.

Judith Kohn: Even if the order is valid, if you haven't done anything and it is 10 years old, I am not sure you need to do anything. What is in play for the current order of conditions?

- Matthew Moyen: It was in place for the entire project. There has been work ongoing over the past 9 years with a significant slow down over the past 3 years. In February 2019 there was an amended NOI for some palp valve reconstruction work. Since the pandemic it has been quiet but we have been trying to work at a solution for about 2 years now but only within the past 6 months has it become clear that the offshore wind terminal project is happening.
- Judith Kohn: Have you had partial Certificates of Compliance for the rest of the work if the order covers the entire site?
- Matthew Moyen: I am not sure, as that would have been applied for by the applicant and we were not involved in that
- Judith Kohn: If the order covers the entire footprint, we don't want to issue a certificate for all of that work. I think we would need more information about what this condition covers.
- Dan Ricciarelli: For clarification, Lot 2 depression was a solution in case something was not popping on the site but now that it is we are keeping things status quo until you come forward with the real project, which we are hoping is a short window.

Judith Kohn: I thought the state had to issue a statement to assign this project. Has that been done?

- Matthew Moyen: There are a lot of permits that will be required, I do not know the list, but it is early in that process and they are working on pre-design.

Judith Kohn: It would be helpful to have clarification about the DEP file number. Is that for the whole site or the area that you are coming in for?

- Matthew Moyen: It is for the entire site.

- Judith Kohn: It would be helpful to know if you have an Issue of Compliance for all of the work done.
- Matthew Moyer: Until we know whether or not these changes are acceptable, we can't file for a Certificate of Compliance. If we got approval tonight the notice would change and I would go back to the Footprint team and file for a partial Certificate of Compliance. If not, the Certificate of Compliance would be for the entire site.

Dan Ricciarelli: Would this be land of two different owners?

Matthew Moyer: Yes, Lot 1 is owned by Footprint Power and for Lot 2 it is unclear who will own that, but it is not Footprint Power. The original filing is under Footprint Power and could get complicated if there are two DEP filings. We are trying to get Footprints Notice of Intent wrapped up and then file a new Notice of Intent to avoid having two items on file.

Bart Hoskins: I remember the original filing for this project. I do not believe there have been any interim Certificate of Compliance. I could be wrong, but if I understand it correctly, if we were to approve this it would be a short-term housekeeping thing to have drainage move in the right direction. It would make sense to close out the existing conditions as anything moving forward could be under discrete filings.

- Judith Kohn: Can we approve the Notice of Project Change subject to receiving sufficient information regarding the entire project in order to close out the DEP file number?
- Bart Hoskins: They would have to come before us anyways with a presentation, site visit, and so forth.
- Judith Kohn: I am okay with it assuming we get more information about the Order of Conditions for the rest of the property because they would have had to extend the order after this long. They may have partials but it would be helpful to have this information so we can move along properly.

Bart Hoskins: Can we do it that if we were to approve this Notice of Project Change with the condition that within a specified time frame we have an agenda item for the status of the original filing and what is expected going forward?

- Judith Kohn: They are coming in for borings at the next meeting they can give us an overview. Would that be acceptable to the applicant?
- Matthew Moyer: Footprint won't be involved in the project coming forward on Lot 2, so the team won't have the history of the Footprint project.
- Dan Ricciarelli: Yes, I think someone from the Footprint Project should be there to present the information.
- Bart Hoskins: It doesn't have to be a request for a Certificate of Compliance but can be a preview so that when the request does come we are oriented to what is going on. I think within the next two meetings someone from Footprint runs through the current status of the original Order of Conditions and might be original deviations and so forth.

Tom Philbin: So, this Commission issued an Order of Conditions and they haven't been back since the power plant has been built?

- Kate Kennedy: It looks like there was an amendment in 2019 but I have not come across any partial Certificates of Compliance.
- Matthew Moyer: Our plan is to file for a Certificate of Compliance. Ultimately, we need this approval to set the stage, otherwise we would be coming in for a Certificate of Compliance for a plan that did not comply.

Judith Kohn: Would the next request be coming in July?

- Matthew Moyen: I don't know. The part that I am most uncertain about is the northern portion of Lot 2 for what they have and how long it will take if it is not on file. That will be the governing fact for how quickly we can get the final request in.
- Bart Hoskins: That does sound like it could take a few months.

Bart Hoskins: The motion would essentially be a project change to control and adjust the drainage?

- Dan Ricciarelli: No, it would be to keep it as it is today. They would not be making the bowl.
- Matthew Moyen: Yes, ultimately, we would clean it up the best we can. Because of the way the project originally submitted and the Order of Conditions as written it would really be a waiver from Standard 2 of the Massachusetts Stone Water Standards. That would be the result of keeping the site status quo on the Southern portion.

Tom Philbin: Can we grant a waiver with a timeline in case the project doesn't go forward?

- Dan Ricciarelli: Yes. We wouldn't want the project to be constructed as designed initially in the order if it goes past 2 or 3 months.
- Judith Kohn: I think that can get complicated as it might take longer to get this back in front of us than what is being predicted so I am not sure it is necessary to put a timeline on it if it has been that way for 10 years and nothing has really happened.
- Matthew Moyen: If we put a timeline on it, I suggest it be associated with the filing of the new project to show that there is progression towards the development of Lot 2.
- Dan Ricciarelli: I am happy with 6 months, so that would give until the end of the year.

Kate: We do not vote on Old New Business, but if we can have a show of hands that there is a quorum of the Commission that agrees with this?

- A show of hands shows an agreement of 6-0.

#### E. 0 Story Street – DEP#64-727 – Relocation Request

Stephen Lovely shares a presentation. Highlights include:

- We have an order of conditions that it would be 40' to the left
- Approximately a dozen trees that are advantageous to the lot.
- Looking to move it to the right, which would move it further from the resource area
- Original approval was about 27' from the left-hand corner
- Proposed location is now 35'.

Dan Ricciarelli: You would be extending towards the road?

- Stephen Lovely: Yes.

Judith Kohn: So, it would be moved further away from the resource area?

- Stephen Lovely: Correct. When we had a meeting onsite there was concern about the trees so we think this is a better position. We will be further from the slope and won't be concerned about digging and will give more room to operate.

Judith Kohn: When was the Order of Condition issued?

- Stephen Lovely: Last fall.

Dan Ricciarelli: Nothing would be planned for the northern side of the building?

- Stephen: No.

Judith Kohn: Is there a written description that accompanies this for the amendment?

- Stephen Lovely: I would be happy to submit something that would satisfy the Board if you need something more. I can speak with Kate.

#### **IV. APPROVAL of MINUTES**

April, May 2022

*A motion to approve the May 17, 2022 meeting minutes is made by Judith Kohn, seconded by Dan Ricciarelli, and passes 6-0.*

Kate Kennedy: There are minor grammatical revisions for April and an address of a public comment made at that meeting. Once approved the revised minutes would be posted.

*A motion to approve the revised April 19, 2022 meeting minutes is made by Judith Kohn, seconded by Dan Ricciarelli, and passes 6-0.*

**V. Commission Updates – Monthly meetings**  
Other

#### **VI. ADJOURNMENT**

*A motion to adjourn the meeting is made by Dan Ricciarelli, seconded by Tom Philbin, and passes 6-0.*

**The meeting adjourns at 9:02 pm.**