

**Rye City Planning Commission Minutes**  
April 23, 2013

**MEETING ATTENDANCE:**

**Planning Commission Members:**

- Nick Everett, Chair
- Martha Monserrate, Vice-Chair
- Laura Brett
- Barbara Cummings
- Hugh Greechan
- Peter Larr
- Peter Olsen

**Other:**

- Christian K. Miller, AICP, City Planner
- Carolyn Cunningham, CC/AC Chair
- Melissa Johannessen, AICP, LEED AP
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**I. HEARINGS**

**1. 3 Phillips Lane**

- The Commission noted that the applicant for 3 Phillips Lane requested that the public hearing be postponed. There was no discussion of the matter.

**ACTION:** Martha Monserrate made a motion, seconded by Laura Brett, to continue the public hearing on Wetland Permit application number WP#352, which was carried by the following vote:

Nick Everett, Chair:	Aye
Martha Monserrate, Vice- Chair:	Aye
Laura Brett:	Aye
Barbara Cummings:	Aye
Hugh Greechan:	Aye
Peter Larr:	Aye
Peter Olsen:	Absent

**2. 50 Kirby Lane**

- Jonathan Kraut, representing the applicant, gave an overview of the application. He stated that the project is a new single-family residence with a total of 3,975 square feet on a vacant lot. He stated that the application went through multiple iterations, with changes including the preservation of tree #52, a reduction in the building footprint, a reduction in the amount of impervious surface area, and the reduction of encroachments into the wetland buffer by construction of a wall 50-feet from the wetland edge. He stated that the mitigation program also includes a conservation easement to restrict future encroachment into the portion of the property west of the proposed wall.
- Mr. Kraut stated that the site is currently overrun with invasive species in the wetland buffer, and noted that invasive species were the subject of a recent

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- Mr. Kraut noted that the project will include the use of semi-pervious materials, will not result in any actual wetland disturbance, and that the proposed stormwater management plan will reduce the rate of runoff as compared to the pre-development condition.  
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- Beth Evans (applicant's wetlands consultant) stated that the plan mitigates encroachment into the wetland buffer by restoring the buffer and improving habitat for wildlife. She noted that the wetland is part of a larger wetland system, which the applicant studied. She stated that there would be an overall net benefit to the wetland system.  
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- Daniel Richmond (attorney representing 60 & 70 Kirby Lane) commended the Commission for its efforts to get the applicant to reduce the size of the proposed residence. He stated, however, that the applicant has not sufficiently reduced wetland impacts. Mr. Richmond stated that his clients are still concerned about the placement of the entire building footprint within the wetland buffer, and stated that this is unacceptable for the largest remaining freshwater wetland system in Rye.  
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- Mr. Richmond stated that the City's Wetlands Law requires that impacts to the wetland be avoided or minimized to the maximum extent practicable, and stated that the current application is not reasonable and did not satisfy that requirement. He stated that the current owners of 50 Kirby acquired the property five years after the City's wetland law was adopted, and that courts have repeatedly upheld that owners of environmentally constrained properties do not have the same development rights as other property owners where they have purchased properties after environmental regulations have been implemented. He stated that the applicant should downsize the project significantly.  
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- Mr. Richmond stated that the current application would set an undesirable precedent to allow construction entirely within the wetland buffer. He noted previous applications reviewed by the Commission, including 160 Bradford Avenue and an application on Summit Avenue, both of which made changes to their plans to respond to the concerns of the CC/AC(Conservation Commission/Advisory Council). Mr. Richmond stated that modifications were also made to a wetland permit application at 55 Drake Smith Lane, which had had only 30% of the proposed house footprint in the wetland buffer.  
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- Mr. Richmond stated that his clients are also concerned about construction equipment staging and post-construction management of the stormwater system.  
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1 He noted comments by HydroEnvironmental Solutions (HES) regarding the  
2 maintenance required by the proposed system, including cleaning 2-3 times per  
3 year, and stated that HES also questioned the long-term viability of the system.  
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- 5 • Mr. Richmond also stated that his clients are concerned about the piping of  
6 stormwater onto the Hargraves' property, flooding, and water quality. He noted  
7 concern with the proposed front yard setback variance required for the  
8 application and its adverse impact on community character and his client's  
9 property.

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11 • The Commission noted that the proposed pipes on the plan were to maintain  
12 existing stormwater flows draining from the north onto the Hargraves' property.  
13 The Commission stated that the pipes were required because the proposed  
14 driveway may block existing stormwater flows and cause ponding on the  
15 adjacent 40 Kirby Lane property, which is not permitted by the City Code.  
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- 17 • Gordon Hargraves (60 Kirby Lane resident) stated that the current application is  
18 unreasonable for the lot, as it is entirely within the wetland buffer. He stated that  
19 Coleman (City's environmental consultant) noted that the plan requires significant  
20 encroachment within the buffer, and that the CC/AC noted the same thing in its  
21 seventh referral memo to the Planning Commission. Mr. Hargraves stated that  
22 the CC/AC has been tolerant of minor encroachments in the past, but one of this  
23 magnitude is unprecedented. He stated that the CC/AC continues to find the  
24 current application unacceptable and has repeatedly requested a smaller  
25 footprint. He stated that Coleman requested similar plan revisions.  
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- 27 • Mr. Hargraves stated that significant concerns remain unaddressed, including  
28 blasting and stormwater management. He questioned the enforcement of hand  
29 digging around Tree #52; post-construction enforcement, such as maintenance  
30 of the stormwater management system and the plantings within the wetland; and  
31 impacts to wildlife.  
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- 33 • Mr. Hargraves stated that he is concerned that there will be continual  
34 encroachment into the wetland in the future since the current application has no  
35 real yard and minimal lawn areas.  
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- 37 • Mr. Hargraves stated that he requested a sight distance analysis at the proposed  
38 property driveways as required by the City Code. He stated that the sight-  
39 distance report presented by the applicant is inaccurate and that vehicle sight  
40 distance is blocked by the hill/grade in Kirby Lane.  
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- 42 • Mr. Hargraves stated that there is a reasonable expectation of compliance with  
43 the zoning and wetlands laws. He stated that the property was purchased after  
44 the enactment of the wetlands law, and that the applicant acknowledged the  
45 large impact on wetlands in their first application in September 2012.

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- Mr. Hargraves stated that approval of this application would become “exhibit #1” in any future application involving construction in the wetland buffer.
  - Diane Beveridge (30 Kirby Lane resident) stated that she shares many of the concerns already raised. She discussed drainage problems she had on her property and the difficulty she experienced in correcting the problem due to wetland law restrictions. She stated the concern Mr. Nelson (50 Kirby property owner) with the corrective work she was doing near his property and wetland. She stated that residents depend upon the City to uphold laws and standards.
  - Daniel O’Day (70 Kirby Lane resident) thanked the Commission for its careful attention to this application. He stated that the Commission noted that the size and location presented serious issues that would be difficult to overcome. Mr. O’Day noted that most of the houses nearby are larger in size and on much less constrained lots.
  - Mr. O’Day stated that a major concern is the location of construction equipment and its impact on the wetland buffer. He stated that rock removal will be required and he is concerned about the impact that will have on this significant natural area. He noted that the owners of this property made a conscious choice when they bought the property and were aware of the environmental restrictions. He stated that a serious precedent will be established if the Commission approves this application, and that previous actions by the Commission were mindful of that.
  - Sue Seitz (141 Kirby Lane) handed out pictures of construction at 40 Kirby Lane in 2005. She stated she was concerned about similar issues happening at 50 Kirby. She stated that she is concerned about the house being constructed on slab because that results in mold, mildew, and water seepage in the residence.
  - Eugene McGuire (7 Kirby Lane resident) stated that the wetland system is already seriously compromised by construction of a house on Grace Church Street, where an underground stream was diverted. He stated that the water flow from the stream was pumped into the City storm sewer, so flow to the wetland system on the applicant’s property is compromised. He stated that the proposed construction would compromise this wetland further.
  - Margaretha van der Voort (134 Kirby Lane) stated that she purchased her home in 2001 and wanted to remodel it in 2006, but she was not permitted to build further into the wetland buffer. She stated that the only option was to tear down a portion of her residence and rebuild it in the same footprint, which cost her more money. She stated that the builder is motivated by profit to make a huge house even though the lot cannot support it. She stated that 65 Drake Smith is a similar project with the house in the wetland buffer.

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- Ms. Van der Voort stated a recent experience with construction near her residence on Kirby Lane that involved blasting. She stated that an arborist predicted that existing trees on the property would be prone to uprooting in future storm events because of the blasting. She stated that the arborist was correct and that many trees on the property were lost in storms. She stated that she wants to make sure there is never blasting around Kirby Lane.
  - Ms. Van der Voort also stated that as a result of the construction on the adjacent property the stream on her property is now full of standing water when it previously was dry most of the time. She stated that the water issue needs to be dealt with before it gets worse.
  - Maria Hargraves (60 Kirby Lane resident) stated that the Commission has tried to be rigorous in the past at protecting the wetland buffer, and she expects a higher level of rigor with this application. She stated that the application goes well beyond a fence or addition, and that any future application will use 50 Kirby as precedent.
  - The Commission stated that the applicant did purchase the property after the wetlands law was in effect, but that the building lot was created by a subdivision before the wetlands law was adopted.
  - Ms. Hargraves stated that this wetland is one of the largest and most highly functional wetlands in Rye, and it contributes to the distinction of the community. She stated that the current application will change that. She stated that the proposed residence is too close to neighboring property lines, requires a 100% zoning variance and shows no consideration for land use. She stated that the CC/AC provided multiple review memos to the Commission objecting to the application.
  - Ms. Hargraves expressed concern about how the mitigation plan would be maintained, and stated that mitigation planting after all the disturbance to the wetland would not improve the wetland when it is functioning well now.
  - Ms. Hargraves questioned where construction materials and hazardous materials would be stored, and questioned where construction workers would park their vehicles. She also questioned whether blasting would cause trees to come down in the next storm. She stated that zoning laws are in place to protect existing residents from intrusion and that the application is an excessive intrusion.
  - Ms. Van der Voort asked the Commission to clarify the statement about the subdivision. The Commission stated that the lot was legally subdivided before the wetland law was in place. Ms. Van der Voort stated that the owner knew the lot was unbuildable because there was nowhere to put a septic system.

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- Mr. Kraut stated that the lot could have been approved because septic could have been removed. He stated that the issue Mr. Richmond raised about the title of the property is true, but the comparison is apples to oranges. He stated that the statute in the case cited by Mr. Richmond was prohibitive rather than permissive as is the case with the City's wetlands law. The applicant has the right to seek permission from the Planning Commission to construct a residence in the wetland buffer.
- Mr. Kraut stated that the construction sequencing plan is usually dealt with as part of the City's building permit process after the hearing. He also stated that the engineering comments submitted by adjacent neighbors are not totally thorough, and the CC/AC's most recent memo states that the applicant addressed most of the comments by the City's environmental consultant, Steve Coleman. He stated that the applicant acknowledges the environmental constraints on the property, but has prepared a responsible plan to address those concerns.
- Ms. Evans addressed the impacts to the buffer. She stated that changes in hydrology can have impacts to the wetland, and she conducted a functional evaluation based on scientific information, which was reviewed by the Commission's consultant. She stated that the wetland functions would be enhanced by the proposed application, and the end result would be a net benefit.
- Mr. Richmond noted that the owner purchased the lot for \$115,000 five years after to the adoption of the City's wetlands law. He suggested that the apparent low value of the sale shows that the owner understood the constraints to building on the lot.
- The Commission asked Mr. Kraut what made the owner think he could build on this lot and why the owner has a right to build anything, especially with respect to restrictions of the City's wetlands and zoning laws.
- Mr. Kraut responded that people have rights under the law to obtain approvals for reasonable and responsible applications. He noted that the Commission has approved many wetland permits and that the applicant should not be denied their permit request.
- The City Planner noted that the Commission can deny the application, approve it, or approve it with conditions. He stated that any decision must provide a supporting rationale.

**ACTION:** Peter Larr made a motion, seconded by Martha Monserrate, to close the public hearing on Wetland Permit application number WP#343, which was carried by the following vote:

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1	Nick Everett, Chair:	Aye
2	Martha Monserrate, Vice- Chair:	Aye
3	Laura Brett:	Aye
4	Barbara Cummings:	Aye
5	Hugh Greechan:	Aye
6	Peter Larr:	Aye
7	Peter Olsen:	Absent

8  
9 **3. 65 Drake Smith Lane**

- 10  
11 • Jonathan Kraut (applicant's attorney) stated that the project would provide a  
12 wetland mitigation ratio of 3.73:1, exceeding the requirement of the City's  
13 wetland law. He stated that the proposed plan would provide an overall benefit  
14 to the wetland. He noted that the applicant agreed to provide a deed restriction to  
15 prevent future encroachment into the wetland.  
16  
17 • Beth Evans (applicant's wetlands consultant) noted that the majority of the area  
18 within the wetland buffer is currently maintained lawn. She stated that this area  
19 will be planted with native species. She noted that the deed-restricted area on  
20 the applicant's property will be contiguous with the deed-restricted area on the  
21 adjacent property to the north. Ms. Evans stated that they considered the wetland  
22 system as a whole, even though mitigation could only be done on the portion of  
23 the wetland on the applicant's property.  
24  
25 • Margaretha van der Voort (134 Kirby Lane) stated a concern that there might be  
26 blasting, which is detrimental to the wetland and jeopardizes tree health.  
27  
28 • The Planning Commission questioned why only the area within the wall was  
29 placed in the conservation easement. Ms. Evans responded that this protects a  
30 steeply sloping area adjacent to the wetland and that the deed restriction would  
31 follow the proposed wall protecting the wetland.  
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33 • Mr. Kraut clarified that blasting is not proposed with this application.

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35 **ACTION:** Peter Larr made a motion, seconded by Barbara Cummings, to close the  
36 public hearing on Wetland Permit application number WP#353, which was  
37 carried by the following vote:

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39	Nick Everett, Chair:	Aye
40	Martha Monserrate, Vice- Chair:	Aye
41	Laura Brett:	Aye
42	Barbara Cummings:	Aye
43	Hugh Greechan:	Aye
44	Peter Larr:	Aye
45	Peter Olsen:	Absent

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**4. Purchase Street Mixed-Use Building**

- Rex Gedney (applicant’s architect), stated that the applicant is seeking site plan approval for a two-story mixed-use building on Purchase Street. He stated that at the previous Planning Commission meeting, the applicant was asked to address several issues. He noted that the refuse area had been expanded to hold two, two-yard containers and redesigned to include an overhead door. He also noted that the sidewalk had been widened to 6 feet on First Street and that the applicant will reconstruct the sidewalk along Purchase Street.
- A resident of 5 Purdy Avenue stated that the area around the site is already congested and she is concerned about the lack of parking. She suggested that the City buy the lot and making it a parking lot. She also expressed concern that too many trees will be cut down and they will never be replaced. She noted that large trees are beautiful, provide shade, and mitigate pollution. She also stated that there are already a lot of restaurants in the area and questioned whether there would be enough demand for another restaurant. She said that she is the sole voice for people who live in her building. She stated that this is the first she had heard about the plans and didn’t know there were such solid plans for the site.
- The Commission noted that there was an approval several years ago for this site but it was not built. The Commission also noted that the tree on Purchase Street needs to be removed because it is causing a hazard in the sidewalk.
- Mr. Gedney clarified that the previously approved application was SP#309.

**ACTION:** Laura Brett made a motion, seconded by Peter Larr, to close the public hearing on Site Plan application number SP#342, which was carried by the following vote:

Nick Everett, Chair:	Aye
Martha Monserrate, Vice- Chair:	Aye
Laura Brett:	Aye
Barbara Cummings:	Aye
Hugh Greechan:	Aye
Peter Larr:	Aye
Peter Olsen:	Absent

**5. 6 Phillips Lane**

- Jonathan Kraut, representing the applicant, noted that there is an existing residence and patio within the wetland buffer and the current application represents a 78-sf reduction in impervious surface area. He stated that there will



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- 1       • The applicant is requesting approval for three outdoor dining tables. It was noted  
2 that the Planning Commission agenda stated that the applicant was seeking  
3 approval for five tables, but the applicant clarified that only three tables were  
4 being requested. The Commission asked if there had been any reported  
5 complaints associated with outdoor dining last year. The City Planner replied that  
6 no complaints had been received.  
7

8 **ACTION:** Barbara Cummings made a motion, seconded by Peter Larr, to approve  
9 Outdoor Dining permit application number OD #07-2013, which was  
10 carried by the following vote:  
11

12	Nick Everett, Chair:	Aye
13	Martha Monserrate, Vice-Chair:	Aye
14	Laura Brett:	Aye
15	Barbara Cummings:	Aye
16	Hugh Greechan:	Aye
17	Peter Larr:	Aye
18	Peter Olsen:	Absent

### 20 4. Aurora

- 21  
22       • The applicant is requesting approval for four outdoor dining tables. The  
23 Commission noted that this is the same request as last year and asked if there  
24 had been any reported complaints associated with outdoor dining last year. The  
25 City Planner replied that no complaints had been received.  
26

27 **ACTION:** Martha Monserrate made a motion, seconded by Barbara Cummings, to  
28 approve Outdoor Dining permit application number OD #05-2013, which  
29 was carried by the following vote:  
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31	Nick Everett, Chair:	Aye
32	Martha Monserrate, Vice-Chair:	Aye
33	Laura Brett:	Aye
34	Barbara Cummings:	Aye
35	Hugh Greechan:	Aye
36	Peter Larr:	Aye
37	Peter Olsen:	Absent

### 39 5. 50 Kirby Lane

- 40  
41       • The Commission noted that they have a responsibility to minimize impacts within  
42 the wetland buffer to the maximum extent possible, and does not feel that this  
43 application does that. The Commission also expressed concern that there would  
44 ultimately be a new family living in the house, with all of the activities that a family  
45 would typically be involved in, such as pets, fertilizer, outdoor activities, etc.,

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1 which is different from expanding a house into the buffer where you already have  
2 a family living.  
3

- 4 • The Commission noted that house size was mentioned repeatedly by speakers in  
5 the hearing was too high. The Commission stated that there is no overwhelming  
6 public benefit to justify an intrusion into the wetland buffer of this magnitude and  
7 that the reasonable needs of the applicant could be satisfied with a smaller  
8 residence and a plan with less impervious area.  
9

- 10 • The Commission requested that the City Planner prepare a resolution for its next  
11 meeting denying the current application. Mr. Kraut questioned whether the  
12 applicant could submit a revised plan in advance of the next meeting. The  
13 Commission did not object to the applicant's request.  
14

### 15 **6. 65 Drake Smith Lane** 16

- 17 • The Commission expressed concern about how this application is distinguishable  
18 from other applications. The Commission is still concerned about segmentation  
19 of building the residence first then before the construction is completed seeking a  
20 wetland permit requesting to build a swimming pool in the wetland buffer. The  
21 Commission noted that had the plan been presented at the same time the  
22 residence could have been shifted forward and impacts to the wetland buffer  
23 reduced.  
24

- 25 • The Commission stated that the deed restriction only restricts what is not  
26 buildable anyway and questioned what is gained by the deed restriction. The  
27 City Planner explained that the deed restriction is somewhat redundant of the  
28 wetland law restrictions, but that it represents an expansion of the same  
29 restriction on the adjacent property.  
30

- 31 • The Commission noted that the pool is a minimal obstruction and although it is  
32 not necessary for the residence, it appears to be a reasonable intrusion into the  
33 wetland. It was noted that the area where the pool is to be located was previously  
34 disturbed.  
35

- 36 • The Commission noted that the resolution needs to provide the rationale for how  
37 this application differs from other similar applications in the area.  
38

- 39 • Ms. Evans (applicant's consultant) noted that the patio is composed of porous  
40 materials but no credit was taken for that in the design of the stormwater system.  
41

- 42 • The City Planner asked if the stormwater system will reduce both volume and  
43 rate of flow. Mr. Pilch (applicant's engineer) stated that it will affect volume but

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1           they only measured the reduction in rate of flow because that is what is required  
2           by the City code.

3

4   **7. Purchase Street**

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6           • The Commission asked the applicant’s representative to state the size of the  
7           redesigned refuse enclosure. Mr. Gedney stated that it previously was 7’7” by  
8           8’7” and it is now 8’4” by 9’4”. It has the capacity to hold two, two-yard containers  
9           with slant tops side by side, with a space of approximately two feet in front.

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11           • The Commission questioned the space for recyclables. Mr. Gedney stated that  
12           there would be room for them. He stated that there could be a number of different  
13           configurations of trash receptacles within the enclosure, such as a two-yard for  
14           trash and two one-yard containers for recyclables, etc.

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16           • The Commission discussed the door type for the overhead door. Mr. Gedney  
17           stated that a decorative door in the style of a garage door would be possible, but  
18           the only style available in the roll-down type is a steel door. Ultimately, the Board  
19           of Architectural Review would review the door style and decide which type.

20

21           • The Commission asked if the applicant had determined how much it would cost  
22           to widen the sidewalk along Purchase Street. Mr. Gedney responded that it  
23           would be in the ballpark of \$50,000.

24

25           • Mr. Gedney clarified that the roof units would be placed at the midpoint of the  
26           building, both side-to-side and front-to-back.

27

28           • The Commission noted that parking will have to be restricted to allow for garbage  
29           pick-up. The City Planner stated that the restriction can be imposed at a later  
30           time, once the building is up and running.

31

32   **ACTION:**    Laura Brett made a motion, seconded by Martha Monserrate, to approve  
33                   Site Plan application number SP#342, which was carried by the following  
34                   vote:

35

36                   Nick Everett, Chair:                                   Aye

37                   Martha Monserrate, Vice-Chair:                           Aye

38                   Laura Brett:    Aye

39                   Barbara Cummings:                                        Aye

40                   Hugh Greechan:   Aye

41                   Peter Larr:    Aye

42                   Peter Olsen:   Absent

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1 **8. 6 Phillips Lane**

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- 3 • The Commission stated that they felt the applicant has addressed the  
4 Commission's previous concerns about drainage and that they had no other  
5 concerns.

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7 **ACTION:** Martha Monserrate made a motion, seconded by Laura Brett, to approve  
8 Wetland Permit application number WP#354, which was carried by the  
9 following vote:

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11	Nick Everett, Chair:	Aye
12	Martha Monserrate, Vice-Chair:	Aye
13	Laura Brett:	Aye
14	Barbara Cummings:	Aye
15	Hugh Greechan:	Aye
16	Peter Larr:	Aye
17	Peter Olsen:	Absent