

TOWN CLERK

**Weymouth Conservation Commission**

**Council Chambers, Town Hall**

**January 11, 2012 Meeting**

**Present:** George Loring, Chairman  
Steve DeGabriele, Vice-Chairman  
Scott Dowd, Commissioner  
Laura Harbottle, Commission Clerk

**Also Present:** Mary Ellen Schloss, Administrator

**Recording Secretary:** Patricia Fitzgerald

**Cmmr. Loring called the January 11, 2012 meeting to order at 7:00 PM in the Council Chambers at Weymouth Town Hall.**

**Minutes**

Approval of minutes from Dec. 14, 2011 was tabled until additional corrections are made.

**Lower Central Interceptor -Notice of Intent – Continued Hearing  
DEP File #81-1093**

Cmmr. Harbottle moved to re-open the public hearing, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Appearing before the Commission were Jeffrey Bina, DPW Director, Ken Morse, Water and Sewer Superintendent and Eric Kelley and Steve Olson of Environmental Partners.

Mr. Bina said that comments from the Army Corps of Engineers had been received and have been reviewed by Environmental Partners.

Ms. Schloss confirmed that the Army Corps of Engineers permit had been received and a copy was sent to all Commission members.

Mr. Kelley explained that the ACOE permit is not valid until they have received a local Order of Conditions and Water Quality Certificate; he then mentioned the primary points of the permit:

- Extensive pre-progress and post-construction pictures of impacted wetlands are required.

- Due to active shellfisheries in Mill Cove, the Div. of Marine Fisheries needs to be notified of any sanitary sewer overflows related to by-pass pumping during the project, and access to shellfish sampling sites needs to be maintained.

Ms. Schloss confirmed that she sent the Division of Marine Fisheries comments to the Commissioners.

Mr. Kelley said that Richard Keller of DEP was out to the site the first week of December and it's likely that a final decision on the water quality certificate will be made within the next (30) days. He added that DEP needs to see a draft restoration plan so a meeting has been scheduled for the week of Jan. 16<sup>th</sup> with Ms. Schloss and Wetland Scientist, Steve Ivas.

Steve Olson said he will be meeting with Weymouth Harbormaster, Paul Milone regarding docks and is working with home owners to get licenses updated.

Cmmr. Harbottle asked how many docks there were; Mr. Kelley said 2 or 3.

Steve Olson said they are permanent structure docks, not removable.

Ms. Schloss said she talked to Dave Hill at Chapter 91 and he said the process takes about (4) months but the license is good for (15) years.

Mr. Kelley said the construction schedule will be the same: construction in fall 2012 with completion by fall 2013; Steve Olson added it depends upon funding. Mr. Kelley said the utilities should not take that entire period but progress will probably be slow; he hopes to have them done by spring 2013.

Mr. Bina said they are using Circle Dr. to access the construction staging area and there may be some minor park improvements involving vista pruning.

Ms. Schloss remarked that vista pruning has already been allowed in the Order of Conditions for the Newell Park improvements and can be done at any time, but needs to go through the Administrator.

Cmmr. Dowd asked about pipers and plovers; Ms. Schloss said she is not sure if there is any breeding.

Cmmr. Dowd asked if anything seasonal will be affected; Ms. Schloss responded that there are no rare or endangered species (plant or animal) and work will be done in the winter but she will talk to Steve Ivas about it.

Cmmr. DeGabriele said that even though there was an extensive conversation during the previous meeting, there has not been enough information presented to create an Order of Conditions.

Ms. Schloss stated that she is trying to develop an OOC; she met with DPW to discuss moving forward with a restoration plan and hopes that a draft will be available for the next meeting.

Cmmr. DeGabriele then asked why the restoration plan wouldn't be complete before the OOC is issued.

Mr. Kelley said that at next meeting they would present several sheets with vegetation schedules and address how phragmites will be dealt with, in accessing the sewer.

Ms. Schloss said that in the NOI, the site walk with Steve Ivas came up with a percent of existing vegetation in the area of the coastal beach.

Mr. Kelley stated he would expand upon the Army Corps of Engineers' minimum requirements; they will try to make improvements but want to restore to a similar percent of coverage.

Cmmr. DeGabriele said he is interested in seeing what it will look like "after" and, given the scale of the project, he is interested in detail.

Mr. Kelley said the contractor will make sure the vegetation survives.

Construction oversight: Mr. Bina said a resident engineer will be on site; Ms. Schloss said she wants the contractor to have a wetland scientist out there periodically; Mr. Kelley said there will be full time supervision.

Ms. Schloss stated that she wants ways to protect the coastal bank in regards to erosion and potential bank failure.

Cmmr. Loring asked for public comments:

Saul Schrader of 192 Idlewell Blvd. stated his concerns are about the restoration of the existing bank; if the bank is not put back in the same spot he wants the OOC to state how the bank must be put back.

Mr. Kelley explained that the contractor has to have a pre-construction survey to establish his limits of work, including edge of bank, so they know where to put things back.

Mr. Bina said that contractor and site rep contact information will be given to the residents.

Cmmr. Harbottle moved to continue the public hearing to Feb. 22nd, seconded by Cmmr. DeGabriele.  
UNANIMOUSLY VOTED

**Whitman's Pond/Washington Street Culvert Repairs  
Certificate of Compliance  
DEP File #81-1080**

Ms. Schloss reported that she is comfortable issuing the Certificate of Compliance for the summer 2011 repairs done to the culvert between South Cove and Whitman's Pond.

Present before the commission were Eric Kelley and Steve Olson, Environmental Partners, Jeff Bina and Ken Morse of Weymouth DPW.

Also being discussed at this evening's meeting is the process for Condition #44 of the Order regarding the gate and fish passage; this needs to be developed prior to spring 2012.

Mr. Bina stated that Great Pond is very high at this time and does not see pumping from South Cove "right now"; ground and surface water sources of Whitman's Pond are also high. He suggested consulting with the Herring Warden and the Conservation Administrator regarding pumping and gate operation.

Ms. Schloss commented that she does not think pumping times are officially restricted, but asked if there is an understanding about pumping during in-migration and out-migration.

Mr. Bina said the 2002 Water Management Plan recommends pumping only between November and May.

Mr. Olson remarked that every time DPW has been asked to open or close the sluice gate, they have.

Cmmr. Loring stated that he did not think it had ever been asked to be closed.

Cmmr. DeGabriele offered that he thought this procedure was to be written down, to which Cmmr. Loring agreed.

Cmmr. Dowd asked if the gate had been tested.

Mr. Kelley said the gate was closed for about (15) minutes to install a new electric actuator; Swamp River was flowing, over-topping the gate within minutes. He stated the gate is sound, there was no back flow and the seals have been tightened and are intact.

Cmmr. Dowd said the main concern is in regards to the herring and the amount of water discharging and going down the ladders for the migration of the adults coming in to spawn and then the out-migration. He reminded those present of what can happen when ladders abruptly go dry and the tens of thousands of fry that died in July 2010.

Cmmr. Dowd suggested that flow rate might be a good tool for the protocol (to decide when it might be too low to pump).

Ms. Schloss recommended that Conservation and DPW work on a protocol.

Cmmr. Harbottle stated that she would like to see it as part of the cover letter.

Cmmr. DeGabriele moved to issue a Certificate of Compliance, along with a cover letter indicating that completion of Condition #44 is expected, seconded by Cmmr. Harbottle. UNANIMOUSLY VOTED

**44 Davids Island Road – Notice of Intent - Hearing**

**Michael Mulvaney**

**Map 5, Block 13, Lots 25 & 26**

**DEP File # not available**

**52 Davids Island Road – Notice of Intent - Hearing**

**Timothy Powers**

**Map 5, Block 13, Lot 27**

**DEP File # not available**

Cmmr. Harbottle moved to open the public hearing, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

Appearing before the Commission were Engineer Shawn Hardy and applicant Michael Mulvaney; Timothy Powers was also present, but not at the podium.

Documents submitted to the Commission for each property, along with the Notice of Intent were 1) the Existing Conditions plan, prepared by Hoyt Land Surveying and dated December 29, 2011, and 2) the “Site Plan of Land” showing proposed work, signed and stamped by Shawn Hardy, P.E. and dated December 19, 2011.

Mr. Hardy turned in the abutter cards. He explained that the present slope is roughly 2:1 to 3:1. At the base of the slope at # 52 is timber-type landscape and wall and at # 44 there are piles with a guard rail type support for slope protection. The proposal is to strip away the existing guard rails and debris and match the existing slope with an armor stone on filter fabric to prevent erosion. He said the project is allowed under 310 CMR 10.30 which allows this type of activity to protect a building constructed prior to 1978, given a few conditions:

- It is designed to minimize adverse effects on adjacent coastal beaches by change in wave action.
- No other method is feasible.
- Stability of bank is not compromised.
- Habitat of rare species is not adversely impacted.
- Bank doesn’t supply sediment to coastal beaches and dunes.

Cmmr. Harbottle remarked that she went out to view the properties, stating that the guard rail is not protecting the bank and there is a lot of erosion; various efforts have not worked to hold the bank back. As far as 310 CMR 10.30, ‘use of construction for flood protection as long as there isn’t a sediment source being interfered with’ – it doesn’t look like a sediment source; the soil is not sandy, not mucky, and the bank soil is loamy - she saw no issues with it. She added that there is a drainage pipe coming out from the driveway drain and there is some possibility that it won’t protrude and drip right into the water, but will enter more gently; she asked if there’s another way to handle that so stormwater won’t get into Back River.

Cmmr. Harbottle said it sounded like both projects might not go forward; she felt perhaps the better way would be for both to be done at the same time.

Mr. Hardy said that, financially, one may be ready and one may not. As far as the pipe, the request was for the discharge to come out on stone and, with the rip-rap and armor stone, that can be accommodated.

Cmmr. DeGabriele said the he appreciates that they are trying to protect the property but he isn't sure if it meets the definition of redevelopment, that it sounds more like replacement, and asked Mr. Hardy if there is any other plan that might be less of an impact.

Mr. Hardy replied that, historically, vegetation hasn't shown to have any staying power.

Cmmr. DeGabriele asked if they were without another, less-engineered, alternative.

Mr. Hardy replied "nothing that will last as long as this plan".

Cmmr. DeGabriele commented that when a hard structure is put in place scouring happens on one side and deposition on the other; he asked if these structures have been assessed for the effect they might have on locations to the right and left of construction.

Mr. Hardy explained that to the right of #52 there exists a vertical concrete retaining wall and to right of that there is another similar wall; to the left of #44, there is a wooden dock and it flattens out in that area.

Cmmr. DeGabriele asked Mr. Hardy if at the end of the structure at #44 (where the contour abruptly ends) action would remove the material and there would be scouring; Mr. Hardy said "No, the slope is a little flatter".

Ms. Schloss stated that at #52 the bank is leaf covered (so it's hard to tell what was on the bank) and asked what vegetation has to be removed, suggesting something to mitigate that. She also stated that where the plan shows eelgrass, is really saltmarsh *Spartina alterniflora*. She commented that the area is degraded, adding that on the corner where vegetation is, she is not sure if any can be saved or if anything can be planted to mimic it.

Cmmr. Harbottle asked, if it is considered new development on a river (because of the Rivers Act), do they have to get some alternatives; Ms. Schloss said yes, but she has not had this situation before.

Cmmr. DeGabriele asked if a formal alternative analysis is needed.

Mr. Hardy said the intention is to try and maintain the vegetation and if something happened he would talk to Ms. Schloss about mitigation planting.

Ms. Schloss asked if, at #52, the timber at the toe of the structure would be removed; Mr. Hardy said it would.

Ms. Schloss asked if the larger trees are staying; Mr. Hardy said their intention is to save all the trees.

Cmmr. DeGabriele said that, as part of the Conditions, if any significant trees need to be removed, then they need to be replanted.

Ms. Schloss remarked that the DEP File #s have not been received yet so this would need to be continued and the Order of Conditions can be drafted before the next meeting and will include:

- All work to be done from upland area, no machinery on the beach.
- Erosion controls (hay bales not recommended) later adding if the work sequence was better understood, perhaps they may not be needed.
- Sequence of work narrative could help.

Ms. Schloss asked how long the work will take; Mr. Hardy stated (1) week to (10) days.

Contractor (?) Randy Johnson said wall sections will be completed each day and nothing will be left open at day's end.

Cmmr. Harbottle moved to close the public hearing and continue it to Feb. 8<sup>th</sup>, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

**190 Idlewell Boulevard**  
**Discussion re: Plan Change**  
**Map 9, Block 136, Lot 18**  
**DEP File #81-1090**

Attn. Greg Galvin and Mr. Agnitti appeared before the Commission.

Attn. Galvin said there was an Order of Conditions issued and there was an official appeal to DEP who issued a Superceding Order. Mr. Agnitti moved forward and had his engineer/architect prepare plans which he brought to the Building Inspector; he got a building permit and began construction. It was discovered that the back of the house extended (2) feet beyond what the Commission had approved. He said the Administrator spoke to DEP about it, and they are looking for the Commission to allow Mr. Agnitti to go forward with this plan change.

Cmmr. Harbottle expressed that it is never great to find projects haven't been followed but has no problem, seeing that it is just (2) feet. She then asked Ms. Schloss for her opinion as to what DEP would do.

Atty. Galvin said it wasn't done intentionally and wasn't aware of it until Ms. Schloss pointed it out.

Cmmr. DeGabriele echoed Cmmr. Harbottle's opinion.

Cmmr. Dowd asked how the error occurred; Mr. Agnitti said the plan showed a (2) ft. cantilever and the contractor build a foundation underneath it.

Ms. Schloss said she talked to Jim Mahalla at DEP who spoke to his supervisor and he said they were comfortable with it and would be able to issue a Certificate of Compliance when the project is complete. Ms. Schloss said she is comfortable with it: it's within the erosion control boundary, that would have been disturbed anyway, and it won't impact the flood zone.

Ms. Schloss suggested mitigation plantings, saying there is some space between the coastal seawall and the easement to put in some salt-tolerant seed mix, adding they have already planted more than was required. She said she does not feel strongly about it, adding that lawn is not allowed, and per the Standard Order of Conditions, "no herbicides and low nitrogen fertilizer, in moderation".

Cmmr. Harbottle said it would be nice to have something planted before the new owner moved in.

Cmmr. Dowd asked if they were familiar with 'Steppables'; grasses and ground covers that are hardy and can be walked upon.

Mr. Agnitti said he had no ideas and was not sure what he would be allowed to plant.

Ms. Schloss said there are commercially available seed mixes and she offered to get further information.

Cmmr. Harbottle moved to approve the minor modifications, seconded by Cmmr. DeGabriele.  
UNANIMOUSLY VOTED

**93 Grant Street - Violation Hearing**  
**Timothy MacLeod**  
**Map 19, Block 261, Lot 5**

Mr. MacLeod did not appear for the hearing and, because this had happened before, and Town Solicitor George Lane had previously approved it, the hearing was held without him.

Cmmr. Harbottle moved to open the violation hearing, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

Ms. Schloss told the members that she needed to issue another enforcement order; the first was issued in October, 2001. She explained that she had met with Mr. MacLeod in 2005, after a neighbor asked about the enforcement order, but the Commission didn't hold a hearing and the owner didn't do what he was asked to do.

Ms. Schloss stated that:

- Mr. MacLeod needs to provide a plan.
- There are aerial photos, but it is inconclusive where the wetland line is.
- As nothing has been done, Mr. MacLeod can be fined \$50.00 per day.



Cmmr. DeGabriele countered that, as he's ignored requests to come before the Commission, he can ignore the imposed fines as well. He suggested that, as this is a pretty significant wetland filling, DEP be asked if the case could be referred to them.

Ms. Schloss recommended that the Enforcement Order include the following:

- He needs to come in Feb 8th to provide a progress report.
- The hearing will be continued until Feb. 8<sup>th</sup>.
- Restoration plan must be filed by March 2<sup>nd</sup>.
- Restoration needs to be done before May 1, 2012.
- He will need to come in March 14<sup>th</sup> with his wetland scientist.
- Equipment needs to be removed immediately; area must not be used to store equipment.

Cmmr. DeGabriele recommended that:

- Permission be requested to enter the property to take pictures
- Add to the cover letter "including but not limited to" to reserve the right to add additional actions to be taken.
- Expressly list additional actions, fines and possible referral to DEP.

Cmmr. Dowd moved to issue an Enforcement Order, seconded by Cmmr. Harbottle. UNANIMOUSLY VOTED

### **Other Business/Conservation Report**

National Grid is starting major utility ("actual poles are falling down") replacement work from Mill Cove through Great Esker Park and to saltmarsh adjacent to the Back River. A filing was done and permit received from the Army Corps of Engineers. Swamp mats will be used and poles will be about (50) ft. tall. Ms. Schloss is meeting with them, tentatively, Jan. 20<sup>th</sup>.

Cmmr. Dowd mentioned a device that discourages bird crashes, for use on transmission lines.

Mass. Electric Property, 186 Main Street: Super Shine Car Wash engineer wants to come back before the Committee to discuss his plan. His idea was to fill a portion of the potential vernal pool to create a slope up to where they're building; Ms. Schloss said she would rather see a vertical retaining wall and no fill. This can be put at the end of the 2/8 or 2/22 agenda.

Executive Office of Administration & Finance, Grant: Paul Milone, Harbor Master and Shellfish Warden, is applying for this grant; Hingham, Hull and Weymouth will, together, buy small seed clams to plant in the tidal flats. Mr. Milone is looking for Commission support. The Commission agreed to write a support letter.

Iron Hill dam: Weymouth DPW consultants are working on the plans for the dam repair; they are looking for feedback and will be submitting an NOI in the near future.

RFP, Whitman's Pond Vegetation Plan: final revisions are being made.

Future meetings: Cmmr. DeGabriele won't be present for 2/8; Cmmr. Dowd won't be present for 2/22.

**Adjournment:**

Cmmr. Harbottle moved to adjourn the meeting at 9:50 PM and to meet again on Feb. 8, 2012 at Town Hall in Council Chambers, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

Respectfully submitted,

Patricia Fitzgerald

Approved:

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Laura Harbottle, Conservation Clerk

Date