

Town Clerk

**Weymouth Conservation Commission
Council Chambers, Town Hall
75 Middle Street, Weymouth
September 26, 2012 Meeting**

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

Not Present: Greg Shanahan, Commissioner

Also Present: Mary Ellen Schloss, Administrator

Recording Secretary: Patricia Fitzgerald

Cmmr. Harbottle called the September 26, 2012 meeting to order at 7:00PM, in Council Chambers at Weymouth Town Hall, Weymouth, MA.

Minutes

Cmmr. Dowd moved to approve the minutes for Aug. 15th with corrections mentioned, seconded by Cmmr. Loring. UNANIMOUSLY VOTED

95 Norton St. – Request for Determination of Applicability - Hearing

Allan Nichols

Map 10, Block 28, Lot 20

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

Appearing before the Commission was Mr. Allan Nichols, owner. Abutter cards were submitted. Mr. Nichols told the Commission he wants to add a 16' x 24' deck to the rear of his house.

Cmmr. Harbottle said the sketch of the new deck is showing that it is approximately (52) ft. to the wetlands, which looked to be the edge of the phragmites, so it is within 100-ft. of wetland.

Cmmr. DeGabriele said the sketch showed, on the left, that the deck was 25-ft. from phragmites and asked if it was 25-ft. from the wetland line.

Ms. Schloss responded that she went out to the property and Mr. Nichols included her field notes in his application. She explained that, looking at the field notes, a drainage ditch on the left is (25) ft. from the proposed deck. She said that area takes some upstream flow that would probably be considered a regulated resource (definitely not a pristine stream and it only runs after precipitation); the other (52) ft. is facing the back of the property and is measuring from the foundation to the approximate edge of wetlands. She added it's about (30) ft. from the edge of the foundation to top of the bank.

Cmmr. Harbottle asked how many Sonotubes will be used; Mr. Nichols said he'll be using about (8).

Ms. Schloss stated that as long as he is excavating and back filling the same day, and the dirt from the holes will be brought forward and used at the front of the house, it should be okay.

Cmmr. DeGabriele asked if all Sonotubes will be placed in one day; Mr. Nichols said yes.

No public comments/questions.

Cmmr. Loring moved to close the public hearing, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

Cmmr. Loring moved to approve the Negative 3 Determination with conditions mentioned, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

35 Fieldstone Lane - Request for Determination of Applicability – Hearing

Denise Le

Map 22, Block 289, Lot 59

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

Appearing before the Commission were owner, Denise Le, and Jennifer Ty.

Ms. Le stated that she wanted to convert a deck to a sunroom 15' x 18'.

Ms. Schloss explained the property and the project:

- Fenced in yard.
- Approximately (48) ft. from the foundation to the fence.
- Wetlands are behind the fence within (10) feet of fence.
- Most of the work for the sunroom is encompassed by the existing deck.
- 2nd floor addition is above garage.
- 2nd floor addition will be on the other side of the house.
- Sunroom is on Sonotube footings.
- No erosion controls will be needed, as no major excavation or stockpiling is anticipated.

Cmmr. Harbottle asked how many footings will be use; Ms. Ty said possibly (3) more footings will be added to the (6) that are there.

Cmmr. DeGabriele said he was OK with the project as long as construction materials are kept near the house.

Ms. Schloss said they could be asked to use a construction fence (even rope and string would be OK).

Cmmr. DeGabriele stated that excavated material can be used or disposed of, but it can't end up in the resource.

Cmmr. Harbottle asked where they will put the material that is dug up for the fence, adding that they can put it by the front of the house, but not by the fence; Ms. Ty confirmed that is what they plan to do.

Cmmr. DeGabriele asked if the work was being done by a contractor, Ms. Ty said yes.

There were no public comments or questions.

Cmmr. Dowd moved to close the public hearing, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

Cmmr. Loring moved to approve a Negative 3 Determination with conditions mentioned, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

186 Main Street – Notice of Intent – Continued Hearing

Local Ordinance Only

Cmmr. Loring moved to re-open the public hearing, seconded by Cmmr. DeGabriele. UNANIMOUSLY VOTED

Appearing before the Commission were David Kelly, Kelly Engineering, and Mike Gardner, Jr. on behalf of his father, Michael Gardner, Sr.

Mr. Kelly explained that this project began in 2005 (it's the old Mass. Electric building). Mr. Kelly stated that it was determined that the small pond on the property is more than likely a vernal pool. He said that he had explained during the last meeting that this has been a difficult property to market because of the vernal pool, which carried with it a lot of questions.

Mr. Kelly said he has been working on the issues the Commission raised at their last meeting:

- He hopes the limit of work can be determined to allow the Gardners to market the property and redevelop it.
- They want to improve the property plus protect the resource and enhance it with mitigation.
- They previously offered construction, within the limit of the pool area, as mitigation.
- The wooded area is not in good shape; they hope to develop the most valuable area, to the right of that.
- The package they have offered includes upgrades to the stormwater management system to comply with DEP standards.
- They have offered to do permanent conservation restriction at the limit of work to protect against future development.
- Bob Gray of Sabatia, Inc., the applicant's biologist, explained in previous submittals that the pool has very little ecology or biology associated with it and their hope was to restore the area and bring the pool back.

Mr. Kelly stated that the types of mitigation shown on the original Notice of Intent include:

1. The current vegetated area surrounding the pool.
2. Proposal to remove a (25) ft. strip of pavement close to the area of the vernal pool.

Mr. Kelly recapped points brought up in previous Con Comm meetings:

- Could the limit of work be pulled further from the resource area, from inside? The new plan shows the elimination of (1) row of parking and therefore the limit of work has been pulled about (20) ft. further back from the vernal pool.
- They have agreed to the Peer Review, particularly regarding storm management.
- Ms. Schloss asked the Town Engineering Dept. to review the stormwater management system. They responded to the number of comments that were in the report received in mid-August and in a letter sent to the Commission late last week, they agreed to comply with the final comment in the letter, should this proposal be approved.

Addressing these comments, Mr. Kelly said:

- This plan, because of the way it evolved, is not on Town of Weymouth datum; as they go forward they have agreed to do that.
- They have agreed to provide soil data from on-site test pits.
- There is a small decrease in impervious area that is offset by a subsurface recharge system. They have agreed to provide 1.2" (maximum practicable compliance, but twice what DEP requires) of run-off over the roof areas. He said he thinks it will provide additional benefits to the community and the vernal pool area.
- They agree to clean out the clogged leaching catch basin in the northwest part of the site.
- The last question dealt with 21E and whether there was contamination. Mr. Kelly stated that they thought there was a DEP outstanding case but it actually was related to a development further south (an ongoing clean-up project from years ago). Ms. Schloss researched it and, though it was identified as 186 Main St, it was determined that this was a PCB-laden soil clean-up issue prior to the property being listed for sale. The website shows that the case is closed and the final Conoco report to DEP in 2004 explained that "all PCBs have been removed". Mr. Kelly stated he doesn't think it impacts this property.

Mr. Kelly said that after the last meeting they thought about some practical mitigation and they now have offered to put in a (4) ft. high chain link fence at the limit of work line, all around the car wash site. He said this will serve to protect the resources and it will make it easier to keep the slopes clean. He added that when Ms. Schloss and Jay Donovan, DPW, walked the site they noticed some dumping (construction debris) had occurred; it has been cleaned up, as a picture provided shows.

As a final note, Mr. Kelly said he really hopes the Commission balances protection of the resource with allowing development, adding that the only other choice is to reutilize the site as it is, and he doesn't think that's good for the Town or Mr. Gardner.

Ms. Schloss asked about the location of the stormwater discharge into the pool.

Mr. Kelly replied that the Aug. 12th plan shows an outfall discharge from a portion of the site into the edge of the resource. He said there is pretty good elevation, but water does rise up to there, occasionally. He said, as it is at the edge of resource, it can be pulled back.

Ms. Schloss asked if there is a recommended location for it.

Mr. Kelly said that the rip rap starts at the edge of the theoretical water (the 101.9) elevation at the 1-yr. storm and he thinks they want to get as close as they can.

Mr. Schloss asked if a rip rap pad will go up to that outfall location; Mr. Kelly said yes.

Ms. Schloss asked how long the pad is; Mr. Kelly said it is (6) ft. the diameter of the pipe, which would be (9) ft. wide with a (9) ft. long rip rap channel (Mass. DOT outfall standards).

Cmmr. Harbottle asked if there is any treatment before the discharge reached that point.

Mr. Kelly replied there will be full treatment and they will demonstrate that it will remove 80% of TSS.

Ms. Schloss also mentioned:

- There's a proposal to do the 1.2" of recharge (the engineers will need soil tests to know if it's feasible).
- Operation and maintenance: there has to be a location for snow storage.
- Restoration plan from Bob Gray: doesn't have a post-planting monitoring period or removal of invasives (and there's a lot of Japanese knotweed).
- Hazardous materials: (2) issues, according to the web site, pentachlorophenol in the soils and PCBs in the building. She said it stated that a permanent solution had been achieved, but contamination has not been reduced to background levels. She stated she'll need more information and she isn't sure if it falls under Con Comm jurisdiction.

Mr. Kelly said they also want to locate the areas to avoid.

Cmmr. Dowd asked for an explanation of the west side parking change; Mr. Kelly said in Feb. 2012, the Commission said a wall was not the right solution to separate the resource and asked him to move it further back – in response he took out (10) parking spaces.

Cmmr. Dowd said he appreciated the wetland scientist's attempt to protect the resource (with the chain link fence) but feels it reduces the vernal pool to a nuisance and a burden. He said he would like to see it integrated gracefully, while enhancing the property. He stated that he doesn't expect clients to appreciate it, but he would like the resource celebrated and lessen impact to the resource, while adding value to the property.

Mr. Kelly said that, immediately, the issue is windblown debris, adding that Mr. Gardner and the staff go out, regularly, to clean it; Cmmr. Dowd suggested that the dumping happened because the area looks unoccupied.

Cmmr. DeGabriele first commented on the positives (the stormwater treatment and pulling back the parking lot) and then mentioned that he agreed with Ms. Schloss on 21E, saying that pentachlorophenol is "nasty stuff" and he wants assurances that "where the stormwater recharge is going to happen that it doesn't happen with the chemicals". He also said, regarding the planting plan, that he wants a (2) year monitoring period, they need to be clearer on the plantings, and better assurance is needed for Operation and Maintenance (adding that contracts may be needed).

Mr. Kelly said that there is an O&M plan in the NOI and they could accept a condition for annual reporting, or whatever is needed.

Cmmr. Loring stated that he feels the limit of work is a nice compromise and moving back the discharge is great and he feels good about getting rid of the fence.

Cmmr. Harbottle said she actually likes the fence, as the topography lends itself to debris accumulation, and it looks difficult to keep clean; she would like to see this area protected. She also recommended:

- Signage explaining the vernal pool and its value as a natural resource, and positively no dumping.
- A (2) year monitoring period (or longer).
- Remove invasives.
- Post-planting monitoring.
- If conservation restriction is wanted, they could include the area of restoration where they are pulling out the pavement north of the pool.

Discussion about the fence continued:

- Mr. Kelly said they could do a (2) ft. high, combo-guard rail, with chain link connection.
- Cmmr. Dowd said he wants more barrier options considered - perhaps they could look into what National Parks use to highlight a feature, while protecting it.
- Cmmr. Loring said he wants an area of escapement, at the bottom or elsewhere, for wildlife movement; Cmmr. Dowd agreed.

No public questions or comments.

Cmmr. DeGabriele moved to close the public hearing, seconded by Cmmr. Loring. UNANIMOUSLY VOTED

**21 Weyfair Path – Notice of Intent – Continued Hearing (Local Ordinance and WPA)
DEP File # 81-1104**

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

Azu Etoniru, ET Engineering, Brooke Monroe, Pinebrook Consulting, and owners Kathleen and Peter Sheridan, appeared before the Commission to discuss the retaining wall.

Mr. Etoniru explained the details of the Sept. 24th letter regarding the procedure for installing the wall and the equipment that will be used. He said Ms. Monroe put together a restoration and buffer zone enhancement plan. He said the wall height varies from (2) feet to (8.2 – 8.3) feet. He presented a picture of an existing, similar wall and explained the wall's design:

- No weep holes.
- No grout.
- No foundation (only needs an (18)" sand bed).
- Most complex part is the first couple of rows.
- Every (3) courses have tie backs with geogrid and deadman.
- No casting of material on wetland side of the wall.
- No concrete.

Mr. Etoniru said that the blocks to be used will be stockpiled on the east side of the existing deck and sandbox, and there will be very little stockpiling of dirt. A mini excavator with a half-yard bucket, (18" wide, with an 8-10 ft. reach) will be used to do the trenching and a Bobcat will haul the blocks.

Mr. Etoniru offered as Conditions:

- No refueling near the wetlands; do on top of slope.
- Expects work to take no more than (10) days; would like to start before ground is frozen.

He also said:

- He would replace the dead vegetation and provide (2) years of monitoring.
- He recommended monitoring by a qualified engineer and a qualified botanist.

A discussion included:

- Need to remove the fence from the current location.
- Would have lawn area on the other side of the pool.
- Could plant shrubs in the 10-ft. restoration area, no taller than 10-ft.
- Removal of the (36) inch tree.
- Erosion control will be straw wattle with silt fence.
- Ms. Schloss will want to review the restoration areas.
- Wetland impact: 1) he thinks he can avoid, and 2) he will put plants back where there is wetland impact.

Mr. Etoniru told the Commission:

- He needs space for the geogrid.
- Tiebacks are 12-15'.
- Fence is about 14–15 ft. from the decking.

Cmmr. DeGabriele told Mr. Etoniru that he needs a statement, from a technical point of view, that this wall is necessary and asked him:

- What does he mean by 'precarious'?
- What could happen to the slope? If it is eroding, what is the rate of erosion?

After further discussion, Cmmr. DeGabriele asked Mr. Etoniru to make an effort to better explain his position.

Mr. Sheridan said he used to have (2) ft. between the fence and the slope on the wetland side, and now he can barely walk out there. He added that a child could fall underneath the fence and now the rebar (that was previously covered by the slope) is exposed.

No public questions or comments.

Mr. Etoniru concluded by asking if a machine could be brought out to the site; Ms. Schloss said 'yes', but she'll need to be notified first.

Cmmr. Loring moved to continue the discussion to Oct. 10th, seconded by Cmmr. Dowd.

UNANIMOUSLY VOTED

**Perkins Road – Minor Modification Request
DEP File # 81-1097**

Mr. Wayne Fitzgerald, owner, came before the Commission. He explained that, after looking at the topography of the site, he wants to add an 18-20" wall, (1) ft. outside of the deck area, to help create a natural boundary for the buffer zone. He said this will also provide for a more level egress from the basement, and it will benefit the pond as it will stop any run-off.

Ms. Schloss said the Sonotubes are in and the plants are in on the down-gradient side of the silt fence, and some restoration may be needed on the up side of the fence. She thinks the wall is a good idea (for demarcation between the deck and the no-disturb zone) and there is more restoration on the other side of the wall but that would be better than just lawn.

Ms. Schloss explained that there is about (8) ft. from the silt fence to top of bank and there's (11.5) ft. between the Sonotubes and the silt fence.

Ms. Schloss asked about the (2) river birch that were still in pots; Mr. Fitzgerald said one will go by the front of the house and one will go by the slope.

At this point there was a discussion about the lawn area shown on the original plan.

Ms. Schloss asked him if the lawn had been approved; Cmmr. Dowd offered that it had not.

Mr. Fitzgerald commented that the lawn isn't large and it helps to provide stabilization.

Cmmr. Harbottle asked if the plan (with the lawn) is what was approved; Ms. Schloss said yes.

Pat left at 10:00.

Cmmr. Loring said he was OK with the wall as long as it stays within the confines of the deck, but he said the wall needs to be pulled back between the Sonotubes and the deck.

Mr. Fitzgerald admitted it was partly his mistake, but the plan brought before the Planning Commission had the grades on it and the poured footings were put in at, what was thought would be, finished grade. Now, if he can't have the wall "outside of them", the Sonotubes will have to be removed and dug deeper.

Cmmr. DeGabriele said he envisioned no lawn and all natural plantings in the no-disturb area and doesn't understand how the retaining wall helps.

Cmmr. Harbottle said the area could be vegetated to control the erosion and, seeing the steps off the retaining wall, she doesn't see (the wall) as a real barrier. As far as the catch basins, someone needs to call DPW to get them cleaned out.

Mr. Fitzgerald said that, because of the road design, "water doesn't go to the catch basins", adding that "we asked that it not be paved; we asked that it stay a dirt road".

Cmmr. Harbottle said if he has storm water going across his lot he has every reason to ask DPW to do something about it.

Ms. Schloss said it was a DPW project that had an Order of Conditions, but they haven't come in for a Certificate of Compliance; she will go out during a rain event to see what happens.

Mr. Fitzgerald became upset and began making statements regarding the condition of the pond and his wife's desire to leave Weymouth.

Cmmr. DeGabriele told him that under the Ordinance, a no-disturb zone means (the Commission) is not allowed to have activity in that area – that's what the bylaw says.

Ms. Schloss said there is a difference of opinion as to whether the lawn was allowed or not. Ms. Schloss said she never envision it as lawn or saw the word 'lawn' on the plan. She said she would feel comfortable allowing the wall if:

- There is no access on the other side of the wall.
- There is restoration on the other side of the wall.
- Native plantings and native seed mix is used.
- The additional foot will provide an absolute demarcation.

Mr. Fitzgerald said that if they get the wall, he would be okay with letting it go back to its natural state. He said it would be a drainable wall with gravel fill.

Cmmr. Dowd asked what was the purpose of the foot offset from the Sonotube to the wall; Mr. Fitzgerald said he has to be able to have enough room to use a hand tamp with a 10" x 10" plate.

Cmmr. Dowd said he sees the benefit to the wall and sees the adjustments being talked about as a net benefit in the long term. To go with the original plan there would be a lawn with erosion going on and the Commissioner feels that the area under the deck is of low environmental value, adding that changing the lawn to native plantings is a good thing. He said it was previously determined that there is a difference between 'no-disturb' and 'no-enter' and feels it is not illegal to walk on that part of Mr. Fitzgerald's property. He commented that to plant with appropriate native vegetation is a lot better than doing nothing, which would lead to loosestrife and other invasives, and native plants would lead to more linear feet of healthy pond embankment.

Cmmr. Dowd told Mr. Fitzgerald that the pond is getting a lot of attention, and it's unfortunate that he is unaware of it, but he should be encouraged. The Commissioner ended by expressing appreciation for Mr. Fitzgerald's passion as a pond abutter.

Mr. Fitzgerald said he would like to know what is going on with the pond; Ms. Schloss and Cmmr. Harbottle said they need to do that.

Cmmr. Harbottle said she wants the steps taken out but, otherwise, she is OK with the wall.

Cmmr. Dowd moved to approve minor modifications: (1) Native seed mix between wall and existing silt fence and (2) Incorporate monitoring of the area below the wall into existing monitoring for other plants, seconded by Cmmr. Loring.

VOTED 3 TO 1 with Cmmr. DeGabriele opposed.

Mr. Fitzgerald said the seed mix may not go in until after the growing season; it may need to be vegetated in the spring.

Finnell Drive/Weymouth Club – Order of Conditions (Closed Hearing)

DEP File # 81-1103

Cmmr. Loring moved to approve the general conditions with special conditions as provided to the Commission, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Weathervane – Peer Review Cost Proposal (Certificate of Compliance)

Dr. Desheng Wang's proposal was reviewed:

- Review at 50% of expenditure.
- No work until money is in account.
- Do a contract or is a letter OK?

Weymouth Salvage

Ms. Schloss provided copies of the Enforcement Order. She will be meeting with Mr. Eacobacci on Sept. 28th to look at in-stream removal; Cmmrs. Loring and Harbottle will try to go as well.

Cmmr. DeGabriele still believes the Commission should have a conversation with the Regional Administrator;

- Can they require assessment in the resource area?
- The Commission is concerned that there could be buried materials and oil or hazardous material.
- There is also concern that the Commission can't otherwise protect the resource area.

Adjournment

Cmmr. Loring moved to adjourn the meeting at 10:55 PM and to meet again on Oct. 10, 2012 in Town Hall Council Chambers, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Respectfully submitted,

Patricia Fitzgerald

Approved:

Scott Dowd, Conservation Clerk

Date