

**Weymouth Conservation Commission
Council Chambers, Town Hall
75 Middle Street, Weymouth
October 10, 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 October 10, 2012 meeting to order at 7:00PM in Council Chambers at Weymouth Town Hall, Weymouth, MA.

Minutes

The minutes were moved to later on the agenda.

Weathervane Certificate of Compliance Review; Peer Review Contract

As Mayor Susan Kay was present, this item was moved up in the agenda.

Cmmr. Harbottle explained that the proponents had some concerns about the costs needed to cover the consultant.

Ms. Schloss said that a proposal was received from Creative Land and Water Engineering and prior to that Ms. Schloss had prepared a scope of work which she had shared with Bristol Brothers. When the proposal was received by Bristol Brothers they were surprised at the cost and requested a meeting. The meeting was held the week of October 1st; in attendance were Commission Chairperson Laura Harbottle, Mary Ellen Schloss, Conservation Administrator, James Clarke, Planning Director, and Bristol Brothers Development. As a result, Bristol Brothers asked if their consultant could be used instead of the Peer Review.

Ms. Schloss said she offered to look at it again and to focus on the most important areas, relative to Dr. Wang's proposal:

- The encroachment areas, especially the vernal pool area, which she has been told is productive.
- Surface water sampling and location of protocol; need to revise when it is sampled.
- Wants Dr. Wang to conduct 2 site visits.

- Reporting tasks can possibly be scaled down.
- Dr. Wang may not need to attend meeting.

Ms. Schloss said she wrote a very detailed letter to the Bristol Brothers in September, listing materials needed to do the review. She said they have excellent consultants and Ms. Schloss may be able to do the internal review for the other pieces.

Cmmr. Harbottle asked how much the Peer Review would cost; Ms. Schloss replied that the total proposal came in at \$26,180.00, and with changes made the cost could possibly be reduced to \$6000.00. Ms. Schloss is not sure if it will cover all they want to do but thinks it should be sufficient.

Cmmr. Harbottle asked if there has been a discussion with Bristol Brothers; Ms. Schloss said there has not and it may be something the Commission wants to do.

Cmmr. Dowd stated that the cost is substantial but not surprising, given the scope of the project. He added it is beyond the scope of the Commission to do these reviews. He said he is not sure how he feels about scaling it back to ¼ of the original scope but prioritizing issues is the way to go about it.

Ms. Schloss asked the Commission how they felt about doing the review in phases, reviewing that phase and then deciding if more help is needed.

Cmmr. Dowd said, regarding phasing, if areas are prioritized and if 'review of the reviewer' comes back as consistent, then Cmmr. Dowd said he may have some assurance that the reviewer has been doing a good job.

Cmmr. DeGabriele stated that he doesn't have a problem scaling back the scope to those things that the Commission really needs the help with and is OK with most of the scale-back, but one area he would ask about is the stormwater management system as it is very extensive and fairly complex.

Ms. Schloss said the high cost of the consultant is a concern of Bristol Brothers (Dr. Wang is a wetland scientist, a hydrologist and a P.E.) and they asked if it is possible to give some portion of this to another reviewer for less cost (she went with Dr. Wang because of his history with the project). Perhaps some of the 'checking the checker' can be done by someone else who'll just look at the approved plan.

Cmmr. Harbottle expressed hope that some well qualified consultants can be found so, in the future, this process can be approached competitively. She said she thought the \$26,000.00 (for this project) was extremely high and asked if there is a way Dr. Wang can reduce the cost.

Ms. Schloss said she has spoken to Dr. Wang who said he responded to the proposal and that would be the cost, so now it would be a matter of cutting the tasks.

Cmmr. Loring pointed out that he is billing at 2008 costs.

Cmmr. Dowd suggested hiring him to do a limited review, but if the project has followed the Order well there should be less need to keep him.

Cmmr. DeGabriele said that he is satisfied if Dr. Wang agreed to the \$6000.00, but only if it will be provide a quality review. He commented that, as the scope has been cut, it is worth speaking to Dr. Wang to see if the costs can be reduced.

Ms. Schloss indicated that he has already done some work in order to do the proposal.

At this time, Mayor Kay expressed her appreciation that other means were being explored and asked if Dr. Wang could review some of the proponent consultant reviews, as the cost seems excessive.

Ms. Schloss stated that she thinks the review could be done in phases and, after all the information needed is received from Bristol Brothers, some parts can be done in-house and their consultants can 'spoon feed us'.

Cmmr. Harbottle asked about the proposed mitigation being offered by Bristol Brothers (the path leading back to the Ralph Talbot School along a sewer easement).

Mayor Kay clarified that it was an easement that was offered because the Town has some pipes there that they can't get to.

This concluded that discussion and Ms. Schloss said she would get in touch with Dr. Wang.

Mayor Kay thanked the Commission and left at this time.

Minutes

Cmmr. DeGabriele moved to approve the minutes for Sept. 12th with corrections mentioned, seconded by Cmmr. Loring. UNANIMOUSLY VOTED

307 Middle Street, Weymouth Salvage – Continued Violation Hearing Map 22, Block 290, Lot 5

Appearing before the Commission was George Eacobacci, owner.

Ms. Schloss explained that this meeting is to review the sketch prepared by Mr. Eacobacci, relative to the Enforcement Order regarding limit of work in relation to the wetlands, and to understand the new toe of slope. She said she went out to the site and measured some of the flags as she wants to understand the 50-ft., asking if that is what is proposed. She said looking at the map, by the entrance of the facility, it is unrealistic to be able to go back (50) feet from Flags 1 or 2; the distance is more in the range of 40-ft.

Ms. Schloss told the Commission that this operation predates the Wetland Protection Act and there was car storage in these areas prior to the Order to clean up. She said she also wants to talk about erosion controls and keeping an eye on them. She added there was some off-site turbidity and it is important that there is no off-site erosion.

Mr. Eacobacci stated that Ms. Schloss had pointed out where to put the hay bales and he did.

Ms. Schloss confirmed that he had put them in the right location, but that after seeing the site in the rain, she asked them to make some adjustments. She stated that Mr. Eacobacci will keep an eye on this so the hay bales can be moved if needed.

Mr. Eacobacci said he is doing as much as he can, explaining it is a long process and very costly - so far he has dug up 1500+ tires plus miscellaneous metals. He also told the Commission that he has a 50-ton excavator and he can't move the boulder that is at the corner of the access way.

Cmmr. DeGabriele commented that the plan is a step in the right direction – the plan is to keep activity (except for the access road) out of the 50-ft. The Commissioner asked Mr. Eacobacci if *metal storage* will be outside the 100-ft. and if *car storage* will be even further – Mr. Eacobacci answered 'yes' to both questions.

Mr. Eacobacci said he is picking up another 40-50 hay bales and will be putting up a fence and signs.

Cmmr. DeGabriele said it makes sense to establish clear lines, and (place) markers to keep business outside the additional 50-feet.

Cmmr. Loring commended Mr. Eacobacci on the outstanding job he has done complying with what was asked of him.

Ms. Schloss asked Mr. Eacobacci if the toe of slope is what he had envisioned and suggested that he may want to install the fence at the end of the project.

Cmmr. Harbottle commented that the clean-up needs to be part of the Enforcement Order.

Ms. Schloss said the Enforcement Order says:

- Get a sketch plan.
- Be sure nothing is causing any erosion sedimentation to the wetland resource areas.
- Remove material without damaging wetland resource area.

Ms. Schloss said there will be clean-up done this winter when there is die back to allow access and the stream will be cleaned when it dries up. She then asked Mr. Eacobacci:

- Will there be a raised slope along the whole boundary?
- Will storm water to be contained or flowing over the boulder walls?

Mr. Eacobacci said he is working on these issues now.

Cmmr. Harbottle asked how the clean-up is going in conjunction with the DEP Order.

Mr. Eacobacci said that, in addition to the 1500+ tires he has dug up and disposed of, he is now working on the erosion controls and rain water run-off. He has to clean out the stream and will pull, by hand, the stuff on the surface.

Ms. Schloss asked about cleaning up the materials at locations marked by the blue flags by the stream; Mr. Eacobacci said he will need a small machine (for that).

Ms. Schloss confirmed for Cmmr. Harbottle that there is a meadow between the access road and the wetland.

Cmmr. DeGabriele said he wants to be assured that:

- Mr. Eacobacci has a Licensed Site Professional and asked what sort of report the LSP will prepare at the end of the project.
- An assessment will be done to assure that buried materials have been removed.
- No oil or hazardous materials remain in the resource area.

Ms. Schloss remarked that, before the winter, there needs to be a conversation about the revegetated area, adding that some seed mix will be needed at some point.

Cmmr. Harbottle said she wanted to talk about storm water; Ms. Schloss said she will include that in her letter when she is developing the response.

Cmmr. Harbottle also wanted addressed (in the letter) oil and hazardous materials and buried materials.

It was agreed that the following would be in the response to Mr. Eacobacci:

- accept the sketch plan provided to the Commission;
- request a copy of the LSP's assessment;
- request a copy of the information on stormwater management that he is providing to DEP;
- Request that the assessment contain a reasonable assurance that there are no oil or hazardous materials remaining buried within the Commission's jurisdiction; and
- Construct a fence at (or upgradient of) the 50-foot wetland buffer after the cleanup is completed.

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

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

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

Mr. Etoniru reiterated the issues raised by Cmmr. DeGabriele at the previous meeting, in particular his need to provide information rather than referring to the property as *precarious*. Mr. Etoniru said he revisited the site to assess the soil condition. He discussed the letter report provided to the Commission, dated October 4th. They used the Universal soil loss equation formula to establish soil loss and determined that the soil is primarily muck. He said the potential annual loss equals 240.5 cubic yards of material and the lateral shift and vertical settlement is, indeed, affecting the property. He said there is good exposure of the concrete posts on top of the slope and the pool is showing stresses due to movement. He said there is a real threat to the property and he hopes the Commission sees there is an urgent need for the work to be done. He finished by saying the reason for the wall location is because distance is needed for the tie-backs (so the wall will work with the earth behind it, as a unit) and because of the substrate (so they won't be digging too close to the pool).

Cmmr. DeGabriele apologized that this has been dragged out but said this is an important issue and he still had some significant questions that he was hoping would be responded to:

- Regarding the Reference Guild provided to the Commission; this is a 'method for estimating rain fall erosion soil losses on construction sites and similarly disturbed in unprotected areas in Massachusetts'. Cmmr DeGabriele remarked that pictures he has seen of this property show that it is fairly well vegetated, so why does Mr. Etoniru feel this is an appropriate analysis, given the actual conditions of this site?
- Could the wall be moved any closer to the swimming pool and building? The Commissioner said he has never been provided the manufacturer's specifications for how far the geo material needs to be.

Cmmr. Loring commented that he went out to the site and could only get down to the bottom of the slope in one small spot. He said it is very steep and very loose, with a lot of erosion, and if the pool fails then there will be a big problem.

Cmmr. Harbottle stated that she also went out and saw that the slope was a fairly, densely vegetated, to the extent she could not get down it. She said she also saw a big crack in the house foundation and, if that needed to be fixed, it would require a lot more excavation than what would be needed for the wall.

Cmmr. Harbottle said she would be interested to know, physically, what is happening with the pool and house foundation; is there is a scientifically, technically, supportable connection to the erosion of the slope? She also asked:

- Physically, what is the justification for the distance in terms of the standards for using the type of stabilization that is being used?
- Can any information be provided concerning the erosion that has taken place already, commenting that it is hard to picture the erosion that has taken place, with the vegetation that is there?

Cmmr. Loring commented that a year ago he could walk behind the fence without a problem and this year he could not (he had to hold onto the fence to keep from going down the slope). He said there are troughs of material that have been washed away.

Mr. Etoniru remarked that their concerns were not unfounded. He said there used to be a (5) ft. area around the fence and that is why they are before the Commission now. He said there is a significant amount of erosion because there is a lot of vertical movement. He then explained the methodology: he said he checked with the Soil Conservation Service and told them about the slope he was dealing with "and he (man on the phone) could almost hear the drop off". Mr. Etoniru said, for the wall itself, (7) ft. is needed to provide support and for wall protection and, 'looking at the unstable nature of the material that is there, so I wanted to start excavation at least no closer than (10) ft. from the pool so I don't disrupt the pool'. He is also looking at the amount of space needed to do the excavation to do the tie-backs, without disrupting the pool and the apron.

Cmmr. DeGabriele again asked why it is considered 'unprotected'.

Mr. Etoniru said what makes it unprotected is: "If the vegetation that they have there was effective, then I wouldn't have the wash out that I'm having." "It is unprotected in the sense that that vegetation is not supporting, or keeping the erosion from occurring."

Mr. Sheridan explained that photos taken in 2007 show rocks at the bottom of the fence where now a child can easily get under the fence and this summer his wife fell down the slope. He said the area looks vegetated but he has to hold onto the fence.

Ms. Schloss said that she received a revised restoration plan from Ms. Monroe, the environmental consultant (Buffer Zone Restoration Plan for Proposed Retaining Wall, 21 Weyfair Path, revised October 9, 2012).

Ms. Monroe spoke about the revised plan:

- The proposed restoration area on the southwest side (near where the sand box was) will be planted and seeded.
- She will seed and use herbaceous and shrub plantings in the (10) ft. strip along the back by the temporary disturbance.
- Trees: all will be saved except the double oak.

Ms. Schloss added:

- The dead maple trunk can be cut.
- Erosion controls need to be talked about.
- Can invasive buckthorn saplings be removed?
- Debris (old cement pieces) to be removed.

Ms. Schloss said she and Ms. Monroe will meet with the contractor and the area will be flagged.

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

Specials Conditions:

- Limit of work – maximum (10) ft. from the base of the wall.
- Stake out line for on-site review before installation of erosion controls.
- Prior to work, provide a plan for review showing limit of work and erosion controls.
- Erosion control line needs to be staked and location needs to be certified with a surveyor stamp to make sure it's in the right place and there is no encroachment beyond that.
- Use silt sock (with straw wattle) and trench silt fence.
- Review installation.
- Restoration Plan:
 - Monitoring - 2-years is typical.
 - All trees to be saved except the (36)" oak.
 - Flag other trees to be saved.
 - If the slope is greater than 3:1, erosion control blanket must be staked.

Ms. Schloss commented on the progress reports:

- Plan is work is to be done this fall and winter, and plant in the spring.
- Plan is to have 75% cover by spring of 2014.
- Seed the disturbed and restoration areas in the spring of 2013.
- Monitoring in the fall of 2014.
- Any area disturbed within the 25-ft. needs to be revegetated.
- Wall needs Building Permit.

- Machinery on slopes that cause disturbance will require soil, seed mix and erosion control blanket.

Cmmr. Harbottle asked about the erosion controls going onto the adjacent property; Mrs. Sheridan said it is OK with neighbors and they have an agreement with them.

Invasives were discussed; Ms. Schloss recommended the buckthorn be removed before any machinery was brought in; Ms. Monroe said she would add 'invasives' to the restoration plan.

Ms. Schloss stated she will need to be made aware of any unforeseen circumstances that come up.

Cmmr. Loring moved to approve the Notice of Intent, under the Wetland Protections Act and local Wetland Ordinance, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

**93 Grant Street – Violation Hearing
Map 19, Block 261, Lot 5**

Ms. Schloss reported that the home owners have done all the grading and the plants have gone in. She said she is very pleased and they won't need to come in this evening since they are now in compliance.

**186 Main Street – Issue Order of Conditions (Local Ordinance Only) – Closed Hearing
Map 29, Block 375, Lot 2**

Appearing before the Commission was David Kelly, Kelly Engineering.

Ms. Schloss said she put together a draft OOC earlier in the day.

Mr. Kelly said he had some minor comments to make and remarked that Ms. Schloss did a 'super job'.

Cmmr. Dowd asked if, procedurally, the property is sold and the new owner wants to develop it, will they have to come before the Commission, or do they just follow these guidelines?

Ms. Schloss said (the Order) commits the owner, and any substantial changes would require them to come before the Commission.

Cmmr. Harbottle remarked that #24, '90 days prior to construction' may be hard to implement.

Ms. Schloss said she wanted enough time, if needed, to review it, call the applicant in to respond or send it out to a peer reviewer.

Cmmr. DeGabriele stated that he thinks what needs to be clear is:

- Construction can't commence until Commission approvals are obtained for each item.
- Con Comm doesn't control issuance of the Building Permit.

Cmmr. Harbottle asked if every Building Permit is signed off by Ms. Schloss; Ms. Schloss said no, just those permits for exterior work.

Mr. Kelly said he thought they were a good set of conditions and said there is no plan to sell the property, but they have not been able to market it. He said they will work with the Commission but would never get it done in less than (90) days.

Cmmr. DeGabriele suggested that:

- Condition #27 (Contamination Assessment) should read: 'applicant shall submit contamination information to both the Board of Health and the Conservation Commission'.
- Condition #28 (30 days prior to construction sequencing plan...) doesn't say 'for review and approval'; Ms. Schloss said it was just missed and she will add it.

Mr. Kelly noted that they may only need to provide documentation to show the 21E site has been closed (Condition #57); Ms. Schloss said she will reword the condition.

There was further discussion of the conditions, as well as the fence; Ms. Schloss said she would revise the OOC in regards to the fence.

Ms. Schloss asked Mr. Kelly about his comments on the OOC; he said to ignore them but did want to discuss 'wetland' as opposed to 'vernal pool'.

Ms. Schloss said a wetland resource can be anything that falls under the Ordinance.

Ms. Schloss then mentioned that the applicants had offered a conservation restriction on the area, but wasn't sure if it was worth pursuing.

Cmmr. Dowd remarked that it is redundant, unless the Ordinance is taken away.

Ms. Schloss stated that a formal Conservation Restriction has to be approved by the Secretary of Environmental Affairs and that it's pretty elaborate, and a long process, and requires annual monitoring.

Cmmr. DeGabriele suggested 'a deed restriction in perpetuity'.

Mr. Kelly said it could be added to #24, suggesting that Con Comm may want to keep it open.

Cmmr. Dowd moved to approve the Order of Conditions Proposed Development Plan, seconded by Cmmr. Loring. UNANIMOUSLY VOTED

Other Business/Conservation Report

See Weymouth Conservation Administrator's Report for Oct. 10, 2012.

- Cmmr. DeGabriele reported that 72 Randolph Street looks good and the stuff was moved but now they're parking on the other side of the driveway, right next to the stream. He said they're parking all over the front of the property and they still have their trash can structure next to the stream.

- Ms. Schloss was out to look at a home on Commercial Street where additional room is required to accommodate the needs of their handicapped grandchild; it would be 15-20 ft. from the wetland area and doesn't require any trees to be cut. As there are extenuating circumstances, Ms. Schloss wanted to know how the Commission felt about the situation before the homeowners hired any professionals.
- Ms. Schloss got a monitoring report on Tirrell Woods; invasives that were there have been pulled out.
- Ms. Schloss said there is a new filing from Clean Harbors – they want to extend the sewer line further.

Adjournment

Cmmr. Loring moved to adjourn the meeting at 10:30 PM and to meet again on Oct. 24, 2012 in Room 12 of the McCulloch Building in Weymouth, MA, seconded by Cmmr. Dowd. UNANIMOUSLY VOTED

Respectfully submitted,

Patricia Fitzgerald

Approved:

Scott Dowd, Conservation Clerk

Date