

**CONSERVATION COMMISSION
RECORD OF MINUTES AND PROCEEDINGS
WEYMOUTH TOWN HALL COUNCIL CHAMBERS**

March 24, 2010

PRESENT: George Loring, Chairperson
Steven DeGabriele, Vice-Chairperson
Laura Harbottle, Clerk
Adrienne Gowen, Commissioner
Scott Dowd, Commissioner

ALSO PRESENT: Mary Ellen Schloss, Conservation Administrator

Chairman Loring called the Conservation Commission meeting to order at 7:05 PM in the Council Chambers of Weymouth Town Hall.

Minutes for approval and signature

There are no minutes to approve or sign.

**81-1066 West Lake Drive/Essex Street Replication Project
Continued Hearing**

Cmmr. Dowd made a MOTION to OPEN the public hearing and was seconded by Cmmr. Gowen and UNANIMOUSLY VOTED.

Ms. Schloss stated that the applicant is not present. She noted that this had been continued in order to resolve remaining property issues. She noted that information was sent to each of the commissioners with suggested conditions. This is a replication project that is being done to compensate for wetland loss due to a sewer project. This involves three different parcels.

This hearing was continued from February 24th.

Ms. Schloss stated that the outstanding issues have been resolved. She noted that dewatering is not anticipated. Stockpiling would be at 25 feet from the resource area instead of 50 feet to properly maintained by erosion control. Equipment should be stored on a tarp to prevent any leakage of fluid, at least 25 feet from the resource area – as far as possible.

Ms. Schloss stated that this is a permanent wetland replication, no changes are to be made without approval from the Commission.

Cmmr. DeGabriele asked if the issues that caused the continuance have been resolved. Ms. Schloss stated that the town now has the deeds per the Legal Department. The town will own two of the parcels and the third will be through a deed restriction on the parcel.

Cmmr. Harbottle asked if DPW has a wetland scientist that they use. Ms. Schloss stated that the company that has done the plan, Weston and Sampson, has a wetland scientist.

Cmmr. Loring asked if there was anyone who wanted to speak. There was no public comment.

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Cmmr. DeGabriele made a MOTION to CLOSE the public hearing and was seconded by Cmmr. Harbottle and was UNANIMOUSLY VOTED.

Cmmr. Harbottle made a MOTION to issue a standard Order of Conditions with Special Conditions as amended tonight and was seconded by Cmmr. Dowd and was UNANIMOUSLY VOTED.

81-1046 Alexan at Arbor Hill
Remand Hearing
Order of Conditions
Condition #33

Cmmr. Loring recognized Mr. James Lampke, the Town's Special Counsel, who gave an overview of tonight's proceedings. Mr. Lampke stated that the Superior Court has remanded this matter back to the Conservation Commission specifically on Condition #33. He stated that this condition was in regard to the amount of the bond. He pointed out that the amount of the bond must reflect the value of the work not the value of the project.

The Weymouth Conservation Commission issued an Order of Conditions to Trammel Crow Residential in April 2009 for construction of a 242-unit multi-family residential complex

Rob Hewitt of Trammel Crow Residential stated that he submitted a letter to the Commission which documented his attempts to obtain a \$7.5 million bond. He noted that he had checked with three companies and the bond market would cover 100% up to 150% of the cost of the work.

Mr. Hewitt stated that the estimated cost of the work to create the wetland area and cover the three years of monitoring as required by the Order of Condition is between \$300,000 and \$400,000. He noted that when he goes to the bonding companies he estimates the work at up to \$500,000.

Cmmr. DeGabriele stated that the bond should be in place until the certificate of compliance is in place.

Cmmr. Loring stated that this is a public hearing and asked if anyone in the audience would like to comment. He reminded those present that the discussion is limited to Condition #33. He received the following response.

Council President Arthur Mathews stated that he is in opposition to changing the amount of the required bond. As a point of information, he asked how this particular Commission can deliberate on a remand from the Superior Court when four of the five members were not present at any of the public hearings nor at the vote. He also asked who in the town agreed to the remand on behalf of the town.

Councilor Mathews stated that he believed that this condition was a key element during Order of Conditions as insurance for the neighbors if something happened downstream, \$300,000

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wouldn't cover one house. He also stated that it is not the Commission's responsibility to lower the bond amount because applicant cannot get a bond.

Mr. Lampke stated that his contacts in the town are the Conservation Administrator and the Director of Planning.

Mr. Lampke stated that the Commission is not reconsidering any other issues of the application so the change in membership of the Commission does not impair reconsideration as this is the legally constituted body for the Town of Weymouth. He also pointed out that this is an administrative type of issue as opposed to an issue of the merits of the project or conditions of the project.

Cmmr. DeGabriele pointed out that this condition is to assure that the work is done; it is not an insurance policy. Residents would have recourse against the company's insurance policy if damage is done to their property.

Councilor Mathews asked the Commissioners to look back at the tapes and minutes because the commissioner's intent for this condition was to cover possible damage done to the other's property.

Cmmr. Gowen asked if there would be blasting during this project.

Ms. Schloss stated that there would be blasting and a peer review was done to look at potential wetland impacts.

District 5 Town Councilor Harrington stated that it was very clear to him that the \$7.5 million bond was not a performance bond but was intended to give abutters access to money if the system failed and caused property damage. He also suggested that the commissioners go back and look at tapes and minutes of previous hearings.

Mr. Lampke stated that it is beyond the authority of the Commission to impose insurance requirements relative to the work being done by licensed contractors who have insurance. This condition specifically refers to a bond guarantee.

Councilor Conlon reiterated that the commissioners go back and look at the tapes and minutes of the previous hearings because it was clear that the former commissioners' intent was to protect the people.

Barbara Potkin, Tall Oaks Drive, stated that she has been to the majority of the previous hearings and it was clear that the commission's intent was to assure the protection of the neighbors. She pointed out that school system will not be able to hand the influx of students, the sewerage system will be unable to handle the additional sewerage and there will be more traffic. She asked if the Commission is saying that the company does not have to insure property from damage.

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The resident of 144G Burkhall Street asked the Commission to read the minutes from previous hearings. She pointed out that unforeseen things happen that could cost more.

A resident of 118 Tall Oaks Drive asked if the amount of the bond will change if the cost of the work changes.

Mr. Lampke stated that this bond can only relate to the work being done under the Order of Conditions. When the work goes out to bid the figure will be reviewed by the town and the amount of the bond is based on those figures. He expected that the town will use standardized due diligence to be sure that the figure is appropriate and verify the value determined for the work being done under the Order of Conditions.

Ms. Schloss noted that a specific dollar amount is not listed as there is a formula in the Order of Conditions.

Kathy Boomer, Burkhall Street, stated that in the past the residents thought that they were protected when previous work was done but ended up being financially responsible for repairs.

Councilor Harrington asked if the town will require the proponent to provide proof of insurance to a sufficient dollar amount to cover potential damages from a system failure.

Mr. Lampke stated that the town cannot mandate a certain amount or type of insurance. The contractor and developer have insurance. He stated that the blasting contractor must be licensed by the state because of the nature of the blasting activity.

Mr. Lampke stated that proof of Worker's Compensation is required by State law. He stated that he was not aware that the developer could be required to disclose this information.

Mary Lou Hobston, 55 Tall Oaks Drive, asked where the blasting fits in this bond.

Mr. Lampke stated that the bond is to ensure that the work is completed. He also stated that the blasting contractors are required to have insurance.

Mr. Hewitt stated that a condition of the application is a pre-blast survey. He stated that the Commission required a larger than usual pre-blast radius.

Mr. Lampke asked Mr. Hewitt if he could verify that the company has insurance and if the company would submit evidence of insurance.

Mr. Hewitt stated that this is typically done during the building permit process.

A resident of 55 Tall Oaks Drive commented that the company could be contracted to have more insurance.

Councilor Conlon stated that if this is just a performance guarantee, would the applicant, in good faith to the community, consider having an escrow account. The applicant declined.

A resident asked if the Commission was represented by counsel at the previous hearings.

Ms. Schloss stated that they were. She noted that she had drafted the Order of Conditions presented to the Commission at that time with a performance bond amount of \$400,000. She stated that the amount was change from \$400,000 to \$7.5 million at the meeting.

A MOTION was made by Cmmr. DeGabriele to CLOSE the public hearing and was seconded by Cmmr. Dowd and UNANIMOUSLY VOTED.

Cmmr. DeGabriele stated that many citizens believed that the \$7.5 million bond was meant to protect residents; he pointed out that the Superior Court remanded the case back to the Conservation Commission stating that the \$7.5 million bond is much in excess of the cost of the work.

Cmmr. Dowd noted that the Order of Conditions states that the performance bond is to insure the quality and success of the project. It is his position that in order to do this a much larger bond is required. He stated that he did not support changing the bond amount.

Cmmr. Harbottle stated that it does seem that representations were made that this bond would cover damages. She stated that the Commission is bound by the Wetland Protections Act, local wetland bylaws, and certain legal constraints.

Cmmr. Harbottle stated that the storm water system is complex and that she would like to see monitoring, on-site supervision by a P.E. during construction and would like to see a detailed estimate of how the bond is estimated.

Ms. Schloss stated that there is no number at this time. The number will be estimated and discussed at a future meeting.

Mr. Lampke stated that when the appeal was filed, it was decided that the condition was inappropriate. He noted that there was no trial or evidentiary hearing.

A MOTION was made by Cmmr. DeGabriele to ISSUE an amended condition as written by Ms. Schloss with the inclusion of the words "to ensure the quality and success" and was seconded by Cmmr. Gowen. The MOTION PASSED on a 4-1 vote with Cmmr. Dowd opposed.

81-1070
190 Idlewell Boulevard
Continued Hearing

A MOTION was made by Cmmr. Harbottle to OPEN the public hearing and was seconded by Cmmr. DeGabriele and was UNANIMOUSLY VOTED.

Cmmr. Dowd stated that he was not present at the first hearing and did not have the opportunity to read the minutes or listen to the recording. Ms. Schloss noted that if the hearing is closed this

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evening, he would not be able to vote. She noted that there is a quorum present even without Mr. Dowd's vote.

Attorney Gregory Galvin appeared before the Commission regarding this application. He stated that additional material has been furnished by the applicant. He noted that the plan has been updated to include a cross section of the proposed swale and that the pilings for the deck have been removed. A planting scheme for plantings in the buffer zone was also submitted.

Mr. Arnold has done work on the site and has contacted National Oceanic and Atmospheric Agency (NOAA) regarding the mean annual high water. He stated that the change over 19 years is two cm or approximately one inch. Based on this, he increased the mean high water elevation from the 10.41 typically used by the town to 10.5.

Mr. Arnold stated that there were not too many trees larger than 6" in diameter in the area of the new sewer connection. He did state that an 8" cherry tree may be lost.

Mr. Arnold pointed out the swale that will be between the proposed house and the existing house at 192 Idlewell. The swale will be two feet wide and nine inches deep.

Mr. Arnold stated that the plans show the detail of the driveway with the proposed grade.

Cmmr. DeGabriele asked if the plan shown this evening is just more detailed or if it is changed.

Mr. Arnold stated that this plan brings out the details of the proposal.

Cmmr. DeGabriele asked if there is a one to one replacement plan for trees that are lost.

Attorney Galvin stated that it is not practical to replace an eight inch tree. He noted that new trees will be planted.

Cmmr. Harbottle pointed out that the draft maps show the house in the V zone.

Attorney Galvin stated that the current map shows the property as A 4.

Saul Schrader, 192 Idlewell Blvd., stated that the elevation has changed from 10 to 10.5. He asked the commissioners to look at the previous plan – 6" elevation change from what was on the previous plan.

Ms. Schloss stated that there is a slight change on the map.

Mr. Schrader stated that the recent rainfall has resulted in an extreme amount of groundwater come in through slab into basement. He stated that the amount of water in his basement will increase especially with the increase in impervious surface.

Mr. Schrader stated that the swale is permeable and water will absorb into ground next to his house.

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Debra Tier, 196 Idlewell Blvd., expressed concern about drainage.

A MOTION was made by Cmmr. Harbottle to CLOSE the public hearing and was seconded by Cmmr. Gowen. The MOTION passed on a 4-1 vote.

Ms. Schloss noted that there was an issue with the amount of time needed to get the Order of Conditions written. She asked the applicant for an extra week and the applicant agreed.

119 Fort Point Road

Hearing

Pamela Duprez

Map 2, Block 7, Lot 2

DEP File #81-1070

Notice of Intent

Ms. Duprez submitted the abutter certificates to Ms. Schloss.

A MOTION was made by Cmmr. DeGabriele to OPEN the public hearing and was seconded by Cmmr. Harbottle and UNANIMOUSLY VOTED.

Pamela Duprez and Kevin Harris appeared before the Commission. Ms. Duprez stated that she had been before the Planning Commission (sic) and received a variance.

The property is in a Resource Area and needs review by the Conservation Commission.

The two story garage is to be joined to the two story home. It is located 95 feet from the water/seawall. It is located within the flood zone and Land Subject to Coastal Storm Flowage.

Cmmr. Harbottle stated that the project is located in a velocity zone, subject to wave action. The addition is on the other side of the house, away from the water.

Cmmr. DeGabriele asked what type of foundation will be built.

Mr. Harris stated that he was advised by the building inspectors to use pilings. He stated that he has hired an architect to work with the inspectors to insure the work is done correctly.

A MOTION was made by Cmmr. Harbottle to CLOSE the public hearing and was seconded by Cmmr. Gowen and UNANIMOUSLY VOTED.

A MOTION was made by Cmmr. DeGabriele to issue an Order of Conditions with special conditions mentioned this evening and was seconded by Cmmr. Harbottle and UNANIMOUSLY VOTED.

81-987 100 Circuit Avenue

Certificate of Compliance

Conservation Commission

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Ms. Schloss noted that this was a simple addition and is 60 feet from the resource area. She stated that she has inspected the site. She did note that she has instructed the property owner not to throw grass clippings over the steep bank.

A MOTION was made by Cmmr. Harbottle to issue a Certificate of Compliance and was seconded by Cmmr. Dowd and UNANIMOUSLY VOTED.

Other Business

Ms. Schloss stated that the Norfolk County Mosquito Control will be doing work in town of Weymouth for larvaecide treatments. She noted that they will be doing hand and mechanical clearing where there is inadequate flow of water to minimize the amount of mosquito breeding. The work to be done is on town conservation property behind Gale Road off Broad Street.

Conservation Report

Open Space Plan

Ms. Schloss stated that she has met with the Planning Department and this plan is moving forward. She noted that they would be looking for input from the Conservation Commission.

Sewer Overflow Report

Ms. Schloss noted that after the recent rains there have been many overflows

Great Esker Salt Marsh Restoration Project

Ms. Schloss stated that there was a meeting last week and this project will restore tidal flow.

Back River Ecological Study

Ms. Schloss noted that this is ongoing with UMASS Dartmouth School of Marine Sciences.

Route 3A Bridge

Ms. Schloss stated that the consultants have agreed to come in with a report. She noted that bridges are exempt from filing.

Aquatic Vegetation Management

Ms. Schloss stated that she met with DPW and a request for proposal to do the treatment has been sent out. A consultant will be selected. There should be a time of year restriction.

Herring Committee

Cmmr. Dowd noted that this committee/commission is not in code of ordinances. Ms. Schloss stated that a change to an ordinance needs to be brought to the Mayor, Solicitor Lane, and the Town Council's Ordinance Committee

The April 14, 2010, Meeting will begin at 7:00 P. M. at the Weymouth Town Hall.

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Cmmr. Harbottle moved to adjourn at 10:10 pm. Cmmr. Dowd seconded. UNANIMOUSLY VOTED.

APPROVED:_____

Laura Harbottle, Conservation Commission Clerk