

Town Clerk

Weymouth Conservation Commission

Council Chambers, Town Hall

November 10, 2010 Meeting

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

Not Present: Adrienne Gowen, Commissioner

Also Present: Mary Ellen Schloss, Administrator

Recording Secretary: Patricia Fitzgerald

Cmmr. Loring called the November 10th, 2010 meeting to order at 7:00 PM in the Council Chambers at Weymouth Town Hall.

Minutes of September 22, 2010:

Cmmr. Harbottle moved to accept the Sept. 22, 2010 minutes as written, seconded by Cmmr. Dowd.
UNANIMOUSLY VOTED

**Notice of Intent
17 & 21 Woodbine Road
Continued Hearing
DEP File #81-1078**

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

Present were George Collins, P.E. and Mr. Henry Williams.

Mr. Collins stated that they had been using an unendorsed plan which has now been enhanced, stamped and signed.

At this time Cmmr. Dowd declared he signed an affidavit that he has listened to the previous hearing; this certification was added as part of the hearing as Exhibit 6.

Mr. Collins addressed the following issues:

- There are (2) trees Mr. Williams and an abutter are concerned about, one of which is a 60" oak; both trees have been marked with green ribbon.
- Dr. Walter Hewitson, PhD (botanist/soil scientist) visited the site to offer his opinion on where the wetland resource line is located. Dr. Hewitson evaluated the site and determined that the mean high water mark was the limit of the resource and it actually brought the delineation closer to the pond. Dr. Hewitson has determined that the wetland new high water mark is shown as wetland flags 1WH through 3WH and Mr. Collins has adjusted the 25/50/100 ft. buffer zones accordingly.
- Mr. Collins met with the contractor (3) weeks ago to discuss the construction sequence and time lines: Day 1-installation of erosion control, Day 2-remove existing wall, Day 3-construct new wall system and Day 9-fill, loam and seed.
- Filling Wetland Resource – as a result of Dr. Hewitson's assessment, Mr. Collins has adjusted everything outside of the mean high water mark so there will be no filling at all; it will be completely out of the resource area and he will be pulling the wall closer to the house.
- P.E. stamp and signature has been provided and, as seen on the plan, Mr. Collins has created Existing (L) and Proposed (R) conditions. Also, after meeting with the contractor, he has devised how the wall will be constructed.
- There was a request for elevations and finished grades to be shown.
- After a conversation with Ms. Schloss, he has provided some soundings in the water.

Where the proposed retaining wall is going, they will be using (2) rows of (2) ft. blocks which will result in a 4-4 ½ ft. change in elevation from the ground at the water and, ultimately, the wall will be 8-10" above existing grade.

Mr. Collins and Cmmr. DeGabriele discussed the wall height.

Mr. Collins stated there would be a 6-10" change in elevation.

Cmmr. DeGabriele commented that the wall to be replaced will be constructed with substantial blocks, a base and a cap and wondered if there were other alternatives.

Mr. Collins said a flush base will be in line with the top course, which will actually expose more of a sandy bottom area.

Ms. Schloss stated the stakes show the vertical mark where the top of the wall will be; she measured 12-18" higher than the existing surface with the eastern edge being 17-18" and the western corner is 11-12".

Cmmr. DeGabriele asked Mr. Collins to explain how the block wall will be tied into the existing wall.

Mr. Collins explained they will have a few blocks on the tip of the peninsula (they might even start further back) and they will have a transitional cast-in-place concrete base, doweled into the proposed block wall with #4 rebar at each connection. The intent is to put (1) more row of block. The transition will be from 2 ft. to zero and will sit on ledge. They will prepare the area, place the blocks where they can while maintaining the elevation and transition to cast-in-place concrete. He said the main reason they are before the Commission is to have a safe wall system for children.

Cmmr. DeGabriele asked if there would be any planting. Mr. Collins answered that the vegetation that has been cut back will come back on its own according to Dr. Hewitson and, as there will be no wetland filling, there is no planting being proposed.

Cmmr. DeGabriele told them the overall project needs to be looked at and determined if it provides appropriate protection of the resource area.

Mr. Collins continued, saying the whole thing will be pulled back and will expose some sandy bottom that is not there now, saying "there is some mitigation with that".

Cmmr. Harbottle stated she is sympathetic to the need to protect the children but the Commission's purpose is to protect the natural resource; this is the edge of a great pond and has habitat value and natural vegetation. The wall hasn't recently fallen and needs repair; it has been like that for some time and nature has come back a bit.

Mr. Collins responded by saying Mr. Williams bought the property (2) years ago but didn't have the money to tackle the problem. He would like to address it now that he's seen kids going through the yard and fishing; this is a new problem for him. He told the Commission that at the end of the project there will be more of a sandy bottom with a flat wall rather than a rambling wall with chunks of concrete.

Cmmr. Harbottle said her concern is if they put a wall there, it changes things to something other than what nature has intended. She then asked if the wall will be constructed with filter fabric to prevent soil from going out through cracks in the wall.

Mr. Collins answered "yes" and added that the most vulnerable time for any environmental impact will be during the concrete pouring. He thinks the increase in sandy bottom will enhance the pond and the improvements will make things safer. He wants to do the work in late July/early August (during dry weather) or, if really wet, they'll wait until the following Spring.

Cmmr. Dowd asked if Mr. Collins received the material on bio-engineering options.

Mr. Collins replied he did and is concerned about an organic system and heavy duty wave action. He also received the links for bio-engineered walls that Ms. Schloss sent. They took a close look at the bio-engineered walls but he is not comfortable enough with it to propose its use.

Cmmr. Dowd said the structure has lots of nooks and crannies (which is much better for fish than an open, sandy bottom and sheer wall) but for him to approve the project the environment needs to be improved and protected and the habitat for fish needs to be considered.

Ms. Schloss entered into the record, as Exhibit 3, a plan received in the mail on Oct. 27, 2010 and also entered, as Exhibit 4, a revised plan dated Nov. 9th which was received on Nov. 10, 2010.

Ms. Schloss added, as far as wetland resource area and delineation, there are a few resource areas (bordering vegetated wetland, banks, land under water and a flood plain a little further out) but where did the mean high water mark come from?

Mr. Collins said the flags correspond to elevation and that there are (3) flags where Dr. Hewitson believes the mean high water mark to be, based upon visual observation of staining.

Ms. Schloss continued by stating, looking at wetland regulations on bank, the top of the bank would be from the first observable break in slope (or the mean annual flood level which would be mean high water). It seems flag 3 is lower down on the bank than the other (2) flags on bank and she needs to understand whether there is any impact to bank. She also commented that by meeting up the edge of the concrete wall with the existing block wall there may be some impact to bank and the Notice of Intent and Order of Conditions needs to specify if that is the case. She surmised that Dr. Hewitson is saying that the flags he placed are the mean annual flood level (so that would be the edge of the bank) and the wetland is contiguous with that.

Ms. Schloss said that when she looks at the site to determine impact, she sees a distinction between where there is a wall now and where there is no wall (from wetland flag 3 to wetland flag 1). In terms of the impact, hardening that bank is an impact and she suggested the Commission needs to think about what interests this bank is significant to and what can/can't be allowed, assuming a bank protects 7 of the 8 interests of the Wetland Protection Act. Regarding performance standards under 10.54(4), she explained that if work on a bank is greater than (50) ft., and found to be significant to the protection of wildlife habitat, a wildlife habitat evaluation would need to be done. This bank alteration is greater than (50) ft. so the Commission will need to decide if this evaluation needs to be done and to determine if there may be another way to repair the wall that isn't right on the bank.

Mr. Williams said all the water comes off his roof and washes the bank into the pond and all he is trying to do is stop it. He commented that over (54) years a lot of land has washed into the pond.

Cmmr. Dowd commented that a lot of vegetation has been cut back in recent photos.

Mr. Williams responded saying he cuts back bank vegetation each year; Ms. Schloss told him he is not supposed to do any cutting in a wetland resource area.

Cmmr. Dowd explained that is what prevents bank erosion.

Mr. Williams said he is willing to plant berry bushes.

Ms. Schloss then asked if he is removing only (1) of the trees along the shore line, how would anyone get in there to construct the wall if there are other trees in the way.

Mr. Collins commented they could cast the block over the pond and swing it back onto the land, but they may need to take down some additional trees to get the wall in, but he doesn't want to take them down.

Ms. Schloss asked if the wall can be rebuilt and leave the natural bank as is.

Mr. Williams said the other reason the work is being done is because he has been flooded out (4) times.

Ms. Schloss asked if it is known why the water is coming up and how to prevent it; is it ground water, surface water or is it coming up from the pond or cracks in the bedrock?

Mr. Collins said it wouldn't help ground water but would help wave action.

Cmmr. DeGabriele added that the current bank is steep enough for wave action.

Cmmr. Loring asked Mr. Williams if his cellar floor was below the level of pond.

Mr. Williams said no and added he is not in a flood zone.

Mr. Collins said it is all ledge out there and is very unpredictable.

Ms. Schloss said she is trying to understand the purpose of the wall and asked if the wall will help flooding or if it can be reconfigured and pushed further inland to avoid working in the bank.

Cmmr. Harbottle asked if it's not in a flood zone, are there other improvements that could be made to help with the flooding.

Mr. Collins explained that tying the walls in together was a primary objective of Mr. Williams but it may not prevent water from coming into the house as much as he thinks it might. He said he works with Dr. Jahoda, a wildlife habitat specialist and retired Bridgewater State College professor, and thinks it makes sense to meet with Dr. Hewitson, and maybe Dr. Jahoda, to identify if it is a viable habitat and to see if we can reuse what's there from this unusual wall base.

Cmmr. DeGabriele commented he does not think the project has benefit to the resource and maybe they shouldn't go with a wall and do plantings instead. He added it would be difficult for him to go

forward with this plan and he thinks it would be worthwhile to at least evaluate the potential advantage of keeping this without a wall.

Mr. Williams interjected "I want a wall there, so are you letting me put in a wall or not?"

Cmmr. Loring explained to him that the Commission needs to take into account Mr. Williams' interests and those of the Wetland Protection Act, which the Commission is bound by; there are a lot of unusual issues with this project and they need to make sure things are done right and that Mr. Williams is also protected.

Mr. Collins added that with a lack of information they can't go forward; clarification is needed as to the value of bank and thinks if nothing is done the bank will continue to erode. He thinks a wildlife habitat evaluation is needed and it would make sense to have Dr. Hewitson and Dr. Jahoda come out. He would also like to meet with Ms. Schloss at the site.

Ms. Schloss responded they can meet at the site to look at the flags to make sure where the bank and wetlands are.

Mr. Collins added that with the wildlife evaluation it can be determined if it is critical or not. The best they can hope for (to do this work) is the middle of next summer or the following summer. He can deliver "something" in (3) weeks for the Dec. 8th meeting and requested a continuation if needed.

Cmmr. Harbottle told Mr. Collins that there are a couple of issues besides the habitat values:

- New section of the wall – she's concerned if there are deposits that happen there, as well as erosion, that some of the sediment (when the waves come in) will be changed somehow and she doesn't think there will be any benefit to the natural environment.
- Wildlife evaluation – she's interested in what the impact will be; is there anything there (e.g. shellfish) that will be affected.

She explained they would not have as much of a problem if the wall was to be same height, then asked if there was any lip on the inside of wall to prevent yard soil from washing over the wall. She also asked what would be the impact of the equipment that would be brought in to construct the wall.

Ms. Schloss said a construction sequence will be needed along with a narrative of how access will be obtained.

Cmmr. Dowd added cutting of plants and feeding of ducks needs to be discouraged.

Cmmr. Harbottle moved to continue the public hearing until Dec. 8th, Cmmr. Dowd seconded.

UNANIMOUSLY VOTED

Certificate of Compliance**219 Sheri Lane****DEP File #81-1022**

Applicants are not ready. This has been tabled and will be resubmitted at an unknown date.

Discussion – Enforcement

- 65 Park Ave. West – Grading has been completed; it has been seeded and graded up to the hillside and will be loamed and seeded in the Spring. The seed in the buffer to the wetland is not great. Erosion controls could be put at the top of the buffer area to prevent washing away, if kept at the base until it's stabilized. Ms. Schloss will ensure erosion controls are kept until the area is stabilized.
- 328 North St. – This property has been split up into (2) families; only one of the families allowed the dumping. The survey plan will be done to see if the neighboring property was also dumped onto. This survey and clean up will be costly and the homeowners, not the Town, have to go after the landscape company (Benson).
- Other cases needing more inspections: 1420 Main Street, Brewster Road, Grant Street, Neck Street and 186 Main Street (vernal pool and car wash) which had an enforcement order issued, that was not followed up, regarding stabilized slope with sand.
- Ms. Schloss is sending a letter to the homeowners who built a set of stairs on a coastal bank, who were told repeatedly that stairs could not be built without a filing. She will inform them that an after-the-fact filing carries a double filing fee. An inspection needs to be done to see if it can be allowed.
- 93 Grant Street - They were never sent an official Notice of Violation, or cease and desist letter. The former administrator spoke to this homeowner but, looking at the wetlands map changes, she thinks there was some fill pushed into the wetland and buffer zone and there are some downstream flooding problems. This is something the Commission may want to look at.
- A house on St. Margaret Street was sold that had an Enforcement Order for some fill to be removed and it was never done. In the interest of full disclosure, Ms Schloss told the Commission she may know the owner.

Other Business

- 186 Main St. (Car Wash) - Request for Determination was presented, asking if a body of water was/wasn't a vernal pool. The owner is trying to sell the property and is conveying to the

potential buyer that the Commission negotiated it as 50 ft. buffer (and not a 100 ft. buffer); Ms. Schloss told the buyer that is not recorded in the minutes.

Cmmr. Harbottle asked if the Enforcement Order is on record; Ms. Schloss answered 'no'.

Ms. Schloss mentioned the Open Space Forum was held Nov. 9, 2010 and that the Town is in the process of updating the Open Space and Recreation plan.

Conservation Report

- There was a volunteer clean up at Herring Run Park. Cmmr. Loring worked very hard along with 22-23 kids; Ms. Schloss is sending them a note of thanks.
- Big Projects – Ms. Schloss met with Eric Kelley, from DPW's consultant Environmental Partners. An NOI will be submitted next month for the repair of the South Cove sluice gate.
- A major sewer upgrade is still months away; it will involve salt marsh impact in the Fore River Area, where there have been serious overflows.
- A free training program on sediment and erosion control is set for 11/19/10 and there will be a Coastal Zone Management workshop on 11/17/10.

Adjournment

Cmmr. DeGabriele moved to adjourn the meeting at 9:00 PM and to meet again on December 8, 2010 at Town Hall in Council Chambers, seconded by Cmmr. Harbottle. UNANIMOUSLY VOTED

Respectfully submitted,

Patricia Fitzgerald

Approved:

Laura Harbottle, Conservation Clerk

Date