

WEYMOUTH CONSERVATION COMMISSION
McCulloch Building
April 8th, 2009 Meeting

PRESENT: John Thompson/Chairman, Cmmr. Gerald Murphy/Vice Chairman, Cmmr. Scott Coven/Clerk, Cmmr. Adrienne Gowen and Cmmr. Jeff Kent

ALSO PRESENT: Conservation Administrator, Mary Ellen Schloss

Chairman Thompson called the April 8th, 2009 meeting of the Conservation Commission to order at 7:38 PM.

Alexan at Arbor Hill

Order of Conditions

DEP File #81-1046

Chairman Thompson informed those present that the public hearing for Alexan at Arbor Hill had been closed so no further testimony would be taken this evening - and that the agenda for this evening called for the members to make a decision on the project and if approved to issue an Order of Conditions.

Ms. Schloss stated for the record that Cmmr. Kent has been certified to vote on the project because even though he had missed the February 11th, 2009 hearing, he had listened to the videotape of that meeting and has now met the requirements of the regulation.

Members were in receipt an 18-page handout that included a section on "Findings" as well as a large number of proposed Conditions (Ms. Schloss noted that they were numbered incorrectly and would be renumbered). Ms. Schloss next noted that the applicant had requested (3) Waivers that were in relation to the impact to the resource area and proposed mitigation measures, under the Weymouth Protection Ordinance, and the members would need to vote on this request. The three waivers involved (1) areas "D" and "E", which pertained to the local ordinance only; (2) referred to work within 100 ft. of the locally regulated vernal pool resource area and (3) filling the locally regulated stream channel.

Ms. Schloss further explained that the peer reviewers (Richard Sweeney and Rich Albano) reviewed the waiver requests quite carefully and based on their comments, the applicant made changes to their proposal. Further the peer reviewers agreed that approval of the waivers were in order. She explained to the members that they would now need to vote on each of the (3) Waivers, as well as the project. She noted that most of the points brought up by the peer review team had been enumerated/addressed.

Chairman Thompson asked Ms. Schloss for her recommendation, reminding her that she previously stated the applicant had met all requirements for the waivers under the Weymouth Protection Ordinance.

The Administrator acknowledged this.

Cmmr. Kent was concerned about the extent of the waiver - referring to the distance of work proposed within the vernal pool, asking if it was within 25 ft., 50 ft., or 100 ft.

Ms. Schloss replied that the pocket wetland Storm Water Management System is on one-side of the vernal pool and on the other side is where the parking lot is located, also within 100 ft. She went on to say that the proposed preservation area encompasses 12.7 acres, minus the Storm Water Management Replication Area, which would be permanent - presently noted as Open Space. In summary there would be 2-sides untouched.

Cmmr. Kent asked if hay bales would protect it and Ms. Schloss confirmed that there would be erosion controls in place. She noted that the storm water output would be 40 ft.; the parking lot would be within 100 ft., which she commented was noted on the applicant's plan. She emphasized that they can't go beyond what is shown on the plans.

Cmmr. Coven referred to filling the wetland, commenting that he was not a fan of doing this, but based on the facts it appeared to be diminutive use - further there would be replication of the area plus benefits.

Cmmr. Kent moved to approve the (3) waiver requests as presented based on the recommendation of the peer reviewers and the Administrator.

Cmmr. Gowen seconded.

UNANIMOUSLY VOTED

Chairman Thompson then asked Ms. Schloss if it was her recommendation to approve or deny the project.

Ms. Schloss wanted to point out that they all have spent 6-8 months reviewing the project, which included much-detailed information from all involved parties, commenting that the peer reviewers did a great job. At this point she was confident that the project meets the guidelines of the Weymouth Protection Ordinance as well as the Wetlands Protection Act, adding that it actually goes beyond what is required, with 12+ acres of Open Space.

Chairman Thompson wanted to reconfirm the Administrator's recommendation, noting that based upon the letter of the law and cumulative information from the peer reviewers, verifying that what she was recommending was that the project be approved.

Ms. Schloss responded, "I believe we have to, because the applicant met the Performance Standards".

Cmmr. Coven moved to approve Alexan at Arbor Hill, File 81-1046.

Cmmr. Kent seconded.

UNANIMOUSLY VOTED

Chairman Thompson next wanted to address the conditions for the project, commenting that he felt the most controversial condition would be the amount of the Performance Bond. He felt a bond would be necessary to insure that the standards of the Wetland Protection Act and the Weymouth Conservation Bylaw/Regulations (one of the most important being the Storm Water Management Act) would be met - emphasizing they were designed to keep people from being flooded. He went on to say that they need to be clear that the bond is for conservation related matters only. Included was Storm Water Management; i. e., replication area/protection of the resources. He stated, "again, by law we are limited to this". He then noted that at the last hearing Cmmr. Murphy suggested a Performance Bond in the \$5 million dollar range. He realized it sounded like a huge amount of money, but explained that once you reach a certain dollar amount, the increase and cost to the proponent does not increase proportionately. He then explained - if you go from \$100,000 to \$300,000 to \$500,000 on a homeowner's policy, the cost of insurance does not increase 5 x \$100,000.

Chairman Thompson wanted to emphasize to the residents present that it is important to the Weymouth Conservation Commission that they protect the townspeople under the law - clarifying that matters under the Conservation Commission's jurisdiction are protected and handled properly for the future.

Cmmr. Murphy spoke next stating that he has looked into the cost of a bond - based on the location and what is required, emphasizing that his primary concern is for the Town. He commented that he has heard too many comments of late on the subject; i. e., one being that it was an illegal amount (\$5,000,000), but he stated, "I will not break from that amount". He noted that a bond for \$5 million costs about \$5,000 annually. He felt that with a project of this magnitude the amount was not unduly burdensome. He added if there is no problem with the project, then the applicant has nothing to fear. He then referred to the bond amount cited in the draft conditions; i. e., \$200,000-\$300,000, emphasizing he would not accept less than \$5,000,000.

Cmmr. Kent supported Cmmr. Murphy, adding that he thought the amount of the bond actually should be higher - reason being the whole project is based on science and scientists sometimes get it wrong. He went on to say that if you look at all the homes and there's excessive water and the possibility it could jeopardize their property, then the project is a failure. He said he actually would like to see the bond amount increased, because to repair these homes if something really bad happens could possibly have the costs go off the chart. Based on this uncertainty, he would like to see the bond more in the area of \$7.5 million or \$10 million. He emphasized that he also would like to see the Town protected. Lastly, he said, 5 years from now when the project is complete, we would want to make sure we did it right.

Chairman Thompson explained to those present, it was not a matter whether we like or don't like the project, because it meets the requirements of the law - but we can make sure all is protected.

Cmmr. Gowen asked the Chairman to explain the benefits of a Performance Bond.

Chairman Thompson explained that the bond would protect the part of the project that falls under their purview; like replication. It would also address Storm Water Management -if there is any damage to resident's property it would provide funds to rectify these types of problems.

Cmmr. Coven asked how long the bond would remain in effect and the Chairman replied to his knowledge it would be until the Certificate of Compliance was issued.

Ms. Schloss further explained that the applicant could typically come in before the project was completely finished for a Partial Certificate of Compliance, adding that the 'final' Certificate of Compliance could not be issued until the applicant had complied with 'all' of the conditions. She pointed out that the monitoring period for the plantings alone would take three (3) years. She said they would know better about the time involved after the construction period re. the sediment basin - or until the buildings have been constructed. At that point they would need to convert to the replication area - which again takes a minimum of three (3) years. She noted that in a prior project/Order of Conditions issued by the Commission, the members requested a post Certificate of Compliance due to the ground water monitoring. She further explained that that particular applicant reported back that he was unable to obtain a bond for that time period. She stated she would be comfortable releasing the bond once the final Certificate of Compliance was approved.

Chairman Thompson asked if she was talking about 5 years and Ms. Schloss replied "3 to 5 years".

The Chairman then stated based on the 3-5 year period the difference in cost could be about \$10,000. He then told Cmmr. Coven that 5 years looked like the appropriate timetable.

Cmmr. Coven said he wanted to make sure that they followed through with Engineering as planned and felt that the applicant would want to comply so that the project could move forward. In closing he said he felt that a 5 years bond for \$5,000,000 would be fine.

Chairman Thompson next referred to the blasting and blasting concerns by the residents, stating that any flaws in the design related to the blasting and Storm Water Management would materialize right away, according to the experts.

Cmmr. Murphy commented that 'post construction' to him was most important and that is where his concerns lie.

Cmmr. Kent addressed the bond once again, stating that with the present economy the bond will start when the construction starts - then asked, what happens if the project is not completed; i. e., bankruptcy - whose responsibility would it be and would the bond cover it?

Chairman Thompson said he felt that \$5,000,000 would go quite a long way to correct any problems under the Conservation Commission's jurisdiction.

Ms. Schloss noted that she had been recommending a smaller amount for a bond based on her discussion with the peer review team. She explained that it was based on the cost of reconstructing the replication system, etc. She added that it doesn't deal with the foundations, which would be out of their jurisdiction.

Chairman Thompson replied to the Administrator, 'you say \$250,000 - we say \$5,000,000'.

Ms. Schloss said she felt \$5,000,000 was high for just the conservation work, emphasizing that would be the work that fell under their jurisdiction.

Chairman Thompson told her that he spoke with an insurance broker about a conservation bond and he told him that a conservation bond was not uncommon and readily attainable - but at this point the person was yet to get back to him with the numbers.

Cmmr. Murphy explained that he told the person he spoke to that this was a large project and somewhat contentious with a lot of risks - explaining to those present that they were just trying to do the best they could for all involved. In regard to the \$350,000 number, he didn't feel that amount would go anywhere. He wanted to point out that his intention was to send a message to the applicant to make sure the work is done perfectly - and that the applicant would stand behind it.

Cmmr. Murphy went on to say that \$5,000,000 in this day and age is not a lot of money, adding if the applicant wants it bad enough, the money should not be an issue. He then referred to the research done by Cmmr. Kent noting that he is asking for a much larger amount; i. e., \$10,000,000 than that suggested by peer review. He said if he and Cmmr. Kent compromise on the figure than \$7.5 million would be the amount he would be recommending.

Chairman Thompson asked Cmmr. Coven what figure he would like to see and he replied that it was difficult to put a figure on the bond, but he would go along with the \$7.5 Million.

Cmmr. Gowen interjected that she would also be comfortable with that number.

Cmmr. Murphy moved to require a Performance Bond from the Alexan at Arbor Hill applicant in the amount of \$7.5 million and for a period of 5 years.

Cmmr. Gowen seconded.

UNANIMOUSLY VOTED

Chairman Thompson then proceeded to explain the 'boiler plate' conditions the Board includes with all projects, adding at this point he would now like to address the 'special' (draft) conditions that were being proposed by the peer review team and the Administrator.

Chairman Thompson and members then commented on the following Draft Conditions.

Chairman Thompson read Special Condition #38 (draft conditions attached), commenting that he was in favor of this condition.

Ms. Schloss told members that she spoke with Mr. Sweeney about #38, noting that they had made reference to the Handbook to simplify their concern and to make sure all was covered.

Chairman Thompson then referred to Condition #41 stating that was 'fine' also was fine with him.

Ms. Schloss then went back to Condition #39, commenting that it was complicated and quite lengthy - noting it referred to Infiltration systems 1, 2 & 3. She said that they weren't sure they would work due to uncertainty about the level of the groundwater elevation - and they spoke about the need for monitoring wells. Based on that concern, this condition spells out how they would work. Further, she spoke with the applicant and he was amendable to the condition, although concern was voiced about the use of the Frimter method to adjust for high groundwater. She quickly noted that all would be peer reviewed, adding she was including the requirement to hire a peer review consultant for the future. She thought that possibly Richard Sweeney would review this, which would allow them to review the protocol and wetland data.

Chairman Thompson was in agreement with this.

Ms. Schloss then referred to Condition #28 - reading the parts that were pertinent to the replication area, etc. (planting/seeding).

Next the Administrator recommended deleting #5 and the Chairman agreed.

Chairman Thompson then spoke about the length of time the bond would be in effect; i. e., possibly 5 years or until a final Certificate of Compliance is issued.

Members discussed the duration of the bond further and the Board agreed that the Bond would remain in effect until the 'full' Certificate of Compliance was issued.

Cmmr. Murphy moved to amend his motion to change the duration of the Performance Bond from a period of five (5) years requiring the Performance Bond remain in affect until a Full Certificate of Compliance is issued.

Cmmr. Kent seconded.

UNANIMOUSLY VOTED

Cmmr. Coven then referred to Condition #41 regarding the construction sequence and the construction of the replication wetland - asking whether the Commission could require that the wetlands not be filled until the replication area was constructed.

Ms. Schloss replied that based on Mr. Albano's comments it would present a difficulty, as they would need to use the basin during construction. With reference to the effects to wildlife, she noted that she was not concerned with the loss of "D" & "E". She felt they had a high quality resource area 100 ft./150 ft. - although when it could be done was an important factor.

Cmmr. Coven commented that her answer made sense to him.

Ms. Schloss then referred to Condition #29 re. permit/presentation of Open Space - and pointed out that the Town's Special Town Counsel for this project had added quite a bit of language to this condition in an effort to make sure the property was protected.

Chairman Thompson and Cmmr. Coven were in favor of it being "preserved in perpetuity".

Ms. Schloss agreed, then referred to the other possible preservation method - a Permanent Deed Restriction. She stated that the Town's attorney is presently looking into whether a deed restriction can provide permanent protection; adding 'for now we're fine with it' and that the language was being worked out. Further, she spoke with Jim Clarke about removing the reference to having the land deeded to Town and Mr. Clarke said he was 'OK' with it.

Cmmr. Kent next asked about proposed Conditions #58 & #59.

Ms. Schloss replied that without the post compliance period the verbiage should go, because it is now being replaced with a bond. She added that the Commission might want to say 'in order to occupy the building a Partial Certificate of Compliance would be required' - and if in favor, she would add the correct language.

Chairman Thompson questioned the numbering of the conditions, noting some were missing and Ms. Schloss acknowledged this, confirming they all would be renumbered properly.

Cmmr. Murphy moved to approve the draft Order of Conditions as amended.

Cmmr. Gowen seconded.

UNANIMOUSLY VOTED

O Pond Street – Continued Public Hearing

Map 61, Block 641, Lot 8

DEP File # not available

Notice of Intent

Ms. Schloss informed the Board that because this evening was "Passover", the applicant had asked to continue his hearing to the next meeting on April 29th, 2009. She told the Board that it is expected that the meeting place would return to the Council Chambers in Town Hall.

Cmmr. Murphy moved to continue the hearing to April 29, 2009 at the applicant's request.

Cmmr. Kent seconded.

UNANIMOUSLY VOTED

Request for a Certificate of Compliance

File 81-396

1119 Washington Street

Chairman Thompson asked the status of this project and Ms. Schloss replied that at this point it was 'not good to go'. She pointed out that the project was over 20 years old and when researching the paperwork; she could not locate the file. She said once the paperwork is located she would check to see if the project is in compliance, adding she planned on making a site inspection.

Cmmr. Murphy moved to continue the request for a Certificate of Compliance re. File 81-396 to the April 29th, 2009 meeting.

Cmmr. Kent seconded.

UNANIMOUSLY VOTED

Other Business

Grant Application, Herring Brook Storm water Improvements

Ms. Schloss informed the Commission about a grant application opportunity.

Cmmr. Coven, the Commission's representative on the CPC, also addressed the grant, noting that the monies from the Community Preservation Act allowed them to take a look at Jackson Square. They are looking at minimizing the amount of sediment from Jackson Square that goes into the Herring Run/Back River. To fund this work they would be requesting \$200,000 from the CPC. It was explained that 60% of the cost might be covered by the state.

Ms. Schloss told them they were speaking about the "319 Grant Program". She also wanted to note that if they do not receive the money from the state, they would need to cancel the request from the CPC. She said that tomorrow she would be meeting with the DPW on it, to make sure that the one they select is one they would be comfortable with.

Cmmr. Murphy made a motion to support the CPC request re. the sediment removal work at Jackson Square (to minimize the negative effects to Herring Run/Back River).

Ms. Schloss will be present at the CPC April 16th, 2009 CPC meeting to address the request, with a follow-up meeting scheduled for May.

Chairman Thompson was delighted with the idea.

Conservation Report**Pond Street Update**

Ms. Schloss told members that the Pond Street applicant has made a request to have the fees waived based on it being a Town project, but her question was "is it a Town project?" She told members that Jim Clarke told her it was not eligible for the waiver, because it was not. She added that in the past they approved the building, but this request is for the sidewalk.

Ms. Schloss went on to say that they have some issues with 'fees'. She noted that this was a minor project, but if the Commission is comfortable with \$100/Local Fee - they should pay it.

Adjournment

Cmmr. Kent moved to adjourn at 9:15 PM.

Cmmr. Murphy seconded.

UNANIMOUSLY VOTED

Respectfully submitted,

Susan DeChristoforo
Recording Secretary

APPROVED: _____
Scott Coven, Clerk

DATE: