



# Conservation Commission

July 1, 2014 – 6:30 PM – **Minutes**  
City Hall, 133 William Street

## Members Present

John R. Radcliffe, Chairman  
Craig Dixon, Vice Chairman  
Dennis Audette  
Paul Pacheco

## Members Absent

## Staff Present

Agent Sarah Porter  
Sandy Douglas, Administrative Specialist

## HEARINGS:

Chairman Radcliffe called the meeting to order at 6:30 p.m.

1. **(Continued from 10/7/13, 10/22/13, 11/12/13, 11/26/13, 12/10/13, 1/7/14, 2/8/14, 2/19/14, 3/4/14, 3/19/14, 4/1/14, 4/25/14, 5/6/14, 5/20/14, 6/3/14 & 6/17/14) - A Request for Determination of Applicability as filed by Ron Labelle, City of New Bedford Commissioner of Public Infrastructure for property identified as 1350, 1296, 1232, 1216, 1182 & 1174 Sassaquin Avenue, New Bedford (Map 138, Lots 445, 81, 67, 69, 60, 392, and 191) and the Swallow Street and Sassaquin Avenue Rights of Way.** Applicant proposes to upgrade the storm water management system in the Buffer Zone. Representative is David Fredette of the Department of Public Infrastructure.
2. **SE49-597 – (Continued from 1/7/14, 2/8/14, 3/4/14, 3/19/14, 4/1/14, 5/20/14, 6/3/14 & 6/17/14) - A Request for Certificate of Compliance as filed by Ana M. Reis, Trustee of Bismark Meadows Realty Trust for property identified as Bismark Street (Bismark Meadows Road), (Map 136, Lot 131).** Representative is Edwin H. Gless of Existing Grade, Inc. Developer Ken Steen requested to appear before the Conservation Commission to address outstanding Enforcement Order.

Agent Porter advised the Commission that the developer was requested to appear but is not here this evening and he advised that he would not be attending this evening without explanation.

An Enforcement Order was issued requesting compliance with the outstanding items on the detention pond. The only thing that has occurred is the surveyor staked out the detention pond. The Order of Conditions expired on June 23<sup>rd</sup> and they cannot be fined because this was approved prior to the enactment of the local wetland ordinance. A letter from the Planning Board has been received where the Planning Board itemized all the outstanding issues that they have with the project and they have given the developer until July 9<sup>th</sup> to show substantive work on the project. But right now the developer does not have an approval from the Conservation Commission to do any work because he needs an Enforcement Order in order to conduct the work since the Order of Conditions and the initial Enforcement Order expired.

Chairman Radcliffe stated that it is the Planning Board's intention that if the deadline is not met they will then utilize the Performance Law.

Chairman Radcliffe suggested issuing another Enforcement Order with a deadline of two weeks.

Chairman Radcliffe inquired whether there was anyone present who wished to comment on this matter. None heard.

Commissioner Dixon made a motion to issue another Enforcement Order with a deadline date of two weeks. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

**3. SE 49-699 - (Continued from 4/1/14, 4/25/14, 5/6/14, 5/20/14, 6/3/14 & 6/17/14) – Notice of Intent as filed by Claremont Companies for property located on Downey Street (Map 123, Lot 3).** The applicant seeks to construct an airplane hangar building along with 12 paved parking spaces, utilities, landscaping, and stormwater management. Representative is Christian Farland of Thompson Farland, Inc.

Christian Farland of Thompson Farland was present on behalf of the applicant. Mr. Farland advised that he has addressed the additional comments and concerns that consultant had and received a response today and have revised plans accordingly. The only changes made to the plan were a detail of the stone diaphragm and the improvement of the drainage section placing the manhole in the front. Mr. Farland submitted the revised plans and response letter to the Commission and for the record. Mr. Farland added that another comment that the consultant made was with regard to the calculations for the stormceptor unit and that they meet 80% tss removal and it is actually at 91%.

The Conservation Commissioners took a moment to review the submitted plans and response letter. Mr. Farland reviewed some of the comments on the response letter.

Agent Porter advised that there isn't any soil information for the site and the elevation to seasonal high ground water affects the bottom of the bio-retention basins. In Nitsch's opinion a soil test should be performed which is standard engineering practice to provide soil testing. Agent Porter also stated that she does not know how they can size something with an unknown contributing drainage to the offsite areas North and West which contribute to the proposed stormwater system. Agent Porter's concern was if it's not accounted for in the design calculation how do you know if the proposed stormwater management system will work.

Mr. Farland replied that as far as the soil testing goes they have designed the bio-retention as recommended by the Conservation Commission and in this case the soil testing is irrelevant because the elevations here cannot change and they have designed to the maximum extent practicable. Mr. Farland suggested the one of the conditions be that during construction a test pit can be done and if groundwater is high they can put a line on the bottom of it to keep it from infiltrating.

Chairman Radcliffe inquired as to what benefit the City is getting from this project. Mr. Farland stated that there is a great benefit especially as to the water quality since there is presently no treatment there whatsoever. There will be clean run-off from the rooftop, adding two stormceptors units that are treating 90% of the stormwater and are adding some re-charge.

Agent Porter recommended the following special conditions: 1) that the contributory area shall include the offsite areas to the North and West for the proposed water quality structures and will be defined by the calculation that they will provide which is probably another 10,000 s.f. for the proposed water quality structure; 2) that the lessee is responsible for the long term operation and maintenance of the site as described in the Long Term Operation and Maintenance Plan dated June 20, 2014; 3) annual maintenance reports shall be filed with the Conservation Commission detailing the stormwater facility maintenance requirements as detailed in the long term operation and maintenance plan referenced above and on the approved plans; 4) no fueling of aircraft is permitted at the site. The plans for approval are cover sheet, existing conditions, layout and landscaping, utilities, grading, details and details and notes all with a revised date of July 1, 2014.

Chairman Radcliffe inquired as to whether there was anyone present that wished to comment on this matter. None heard.

Commissioner Dixon made a motion to approve with the conditions as read by Agent Porter. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

- 4. SE49-702 – (Continued from 5/20/14, 6/3/14 & 6/17/14) - A Notice of Intent as filed by Eric DeCosta of Logal, LLC for property identified as 100 Duchaine Boulevard (a.k.a. a portion of 50 Phillips Rd) Map 133, Lot 15.** Applicant proposes to expand loading areas and parking lots with associated improvement to the stormwater management system within the Buffer Zone to Bordering Vegetated Wetland. Representative is Richard Riccio of Field Engineering.

Mr. Richard Riccio of Field Engineering was present on behalf of the applicant. Mr. Riccio stated that he had a meeting with Mr. Scott Turner and Agent Porter last week and he has made the changes as requested. He has upgraded the capacity of the fuel storage facility. The basin is converted to a natural detention basin with stormceptor and he has further defined the rip rap.

Mr. Riccio advised that he did receive a letter today from Nitsch Engineering stating that this project now meets the stormwater standards to the maximum extent practicable for a re-development project.

Agent Porter stated that she doesn't have any comments except one of the conditions will be that the only wetland boundary approved is the one in the buffer zone.

Agent Porter recommended the issuance of an Order of Conditions with the following special conditions: 1) annual stormwater management system operation & maintenance report shall be submitted to the Conservation Commission detail the maintenance of the stormwater systems as provided on the approved plans; 2) the updated long term operation & maintenance plan is an approved document (see Stormwater Management System Report Addendum #2 dated 6/5/2014); 3) the stormwater pollution prevent plan for the project shall be submitted to the Conservation Commission two weeks prior to work start up and the monitoring reports also submitted to the Commission for their records. The approved plans are title sheet, notes and legend, existing conditions, overall site layout, site grading and drainage, detail sheet 1, detail sheet 2 bio-retention area landscaping all with a revised date of June 24, 2014.

Agent Porter inquired whether the Commission would like construction monitoring. The Commission agreed to have construction monitoring. So that will be added as a condition as follows: The Commission's consulting engineering shall attend the project's pre-construction meeting. A construction schedule shall be received from the contractor at that time. At a minimum, the consulting engineer shall perform construction observations at the following times: a. during the preparation of the subgrade for the wet basins; b. during construction of the detention basin; c. during and/or following the installation of outlet control structures and/or rip rap and d. following completion of site grading & stabilization of the site.

Chairman Radcliffe inquired whether there was anyone present who wished to comment on this matter. None heard.

Commissioner Dixon made a motion to approve as recommended by the Agent with special conditions as read. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

- 5. (Continued from 6/17/14) - A Notice of Intent as filed by Massachusetts Clean Energy Technology Center for property located at 1277 Kempton Street (Map 61, Lot 2).** Applicant proposes to construct an AM radio Tower with associated ground array, foundations and broadcast building. The project shall impact 4,900 s.f. of Bordering Vegetated Wetland and the Buffer Zone. Representative is John McAllister of Apex Companies.

Mr. John McAllister of Apex Companies was present together with Stacey Minihane from Beals & Thomas.

Mr. McAllister advised that they have addressed all of the Agent's comments with regard to operational maintenance monitoring plan. They have also addressed Nitsch Engineering's comments with regard to the stormwater design, groundwater elevation for the recharge chamber and have provided more grading data on the plan in compliance with the detail sheet.

Agent Porter stated that they have satisfied all the concerns and comments. Agent Porter recommended the issuance of an Order of Conditions with the following special conditions: 1) that the wetland resource impact area shall be replanted as depicted on the approved Planting Plan and as described in the OM & M Plan (stamp date received 7/1/14) during the spring or fall planting season; 2) the wetland impact area trees shall be allowed to re-grow as described in the OM & M plan (stamp date received 7/1/14); 3) monitoring of the wetland impact area shall be done in accordance with the Monitoring Plan as described in the NOI 4. Annual Stormwater Management System Operation & Maintenance Reports shall be submitted to the Conservation Commission detailing the maintenance of the stormwater system in accordance with the O M & M plan; 5. The elevation of the groundwater shall be determined during construction in the vicinity of the recharge galley and the bio-retention basin. In the event seasonal high groundwater is encountered that conflicts with the stormwater management guidelines for separation to seasonal high groundwater, the applicant should immediately notify the Conservation Commission to discuss alternatives to the proposed design; 6. Stormwater Pollution Prevention Plan for the project shall be submitted two weeks prior to work start-up. The Plans for approval are Existing Conditions Plan, Proposed Conditions, Erosion & Sedimentation Control, and Planting Plan & Detail Sheet all with a revised date of 6/30/14. The document for Approval is Operation, Maintenance, & Monitoring Plan for Stormwater Best Management Practices and Wetland & Buffer Zone Plantings at the AM Radio Tower Location 1277 Kempton Street, New Bedford, MA (stamp dated received 7/1/14).

Chairman Radcliffe inquired whether there was anyone present who wished to comment on this matter. None heard.

Commissioner Dixon made a motion to approve as recommended by the Agent with special conditions as read. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

**6. A Notice of Intent as filed by Ron Labelle, City of New Bedford Commissioner of Public Infrastructure for property identified as Fisherman's Memorial Pier on East Rodney French Boulevard (Map 6, Lot 2).** Applicant proposes to construct a new elevated promenade and conduct structural repairs to the existing pier in Land Subject to Coastal Storm Flowage with temporary alterations proposed on the Coastal Bank and Coastal Beach. Representative is Magdalena Lofstedt of CDM Smith.

Ms. Magdalena Lofstedt of CDM Smith was present on behalf of the City of New Bedford. Ms. Lofstedt advised that the intent of the project is to repair the existing damage to the pier and renovate it and place a sculpture on the Fisherman's Memorial Pier. The pier is a masonry pier with concrete foundation. The end of the pier facing East needs repair and the intent is to do as much work as possible by the landward side. They would excavate to pour a foundation. Excavation and construction work is proposed to be performed during low tide.

Ms. Lofstedt added that they have had geotechnical and coastal engineers look at this project.

Chairman Radcliffe inquired as to what the form of siltation was going to be used. Ms. Lofstedt replied that they would be using a boom on both sides. Chairman Radcliffe inquired as to how far down the booms go. Mr. Lofstedt replied 12 inches.

Ms. Lofstedt advised that the amount of water that lands on the site will not change but there is an opportunity for some water to infiltrate through a planting area with placing a catch basin in the low point of the planting area which will drain to the existing drain pipe.

Commissioner Audette commented that they are still going to be draining the asphalt into the ocean. Ms. Lofstedt replied that it will be concrete and not asphalt but it will still drain to the same outfall points. There should be less runoff because of plantings & less impervious surface.

Ms. Lofstedt stated that it is proposed that the pier itself would have a rise on it with a platform and structure would be 8' tall x 15' wide.

Commissioner Audette questioned as to how high the proposed trees would be. Ms. Lofstedt replied that they would be planted at approximately 10' apart and then they would grow.

Commissioner Audette also inquired whether any consideration was given to the fact that proposed statue would obstruct the neighbors' views.

Ms. Lofstedt replied that she believes the Mayor is intending on holding a public hearing relative to the park and any effects on the views and elevation at some point in the near future. Ms. Lofstedt added that she was not part of the planning process in which they discussed views.

Chairman Radcliffe stated that unfortunately for the abutters and neighbors, this Commission only has the purview to deal with the impact to the resource area. This Commission does not have the authority to go into matters of aesthetics.

Commissioner Audette just feels that this project during a storm will be a pure and open disaster.

Chairman Radcliffe agreed with Commissioner Audette and stated that he has concerns with the construction process and doesn't see it a viable way to deal with this.

Chairman Radcliffe stated that he would like to have the Commission's consultant engineer look at this project. Agent Porter advised that the consultant would refer this project to their coastal design engineer.

Chairman Radcliffe inquired as to project timeline. Ms. Lofstedt replied that the plantings are proposed to start in the fall and the repairs would take about one week and DPI would be doing the work.

Chairman Radcliffe suggested that Ms. Lofstedt submit an order of construction with time points, a proposal of how they will be completely containing the work area and sealing it from the harbor and what the mitigation will be for any disturbance.

Ms. Lofstedt replied that they did submit the mitigation methods with the NOI filing.

The Commission agreed that the pier does need to be repaired. Chairman Radcliffe added that it does need to be repaired but it needs to be repaired in conformity with the best possible practices for its impact on a resource area and he does not see best practices being utilized.

Commissioner Dixon agreed with Chairman Radcliffe.

Chairman Radcliffe recommended that the Commission obtain its own expert opinion from a coastal engineer as to what possible impacts there would be on the resource area.

Chairman Radcliffe inquired whether there was anyone present who wished to comment on this matter.

Mr. Harvey Kertzman of 1147 East Rodney French Boulevard was present and stated that he agrees that the pier needs to be repaired. Mr. Kertzman added that he moved to New Bedford approximately one year ago and he

purchased his home because of the priceless view and if that pier is raised it will be right in front of his face and will lose that panoramic view and is against any raising of the pier. Mr. Kertzman added that pier was not designed to be a national monument.

Chairman Radcliffe thanked Mr. Kertzman for his comments and reminded him that this body is unfortunately unable to talk about the impact on the water views.

Councilor Joseph Lopes was present and stated that the work being proposed is strictly being proposed not to just repair the pier but to prep it to put 15'x18' granite, concrete structure. Councilor Lopes stated that if the Commission grants a permit they are allowing the City to be one step closer. Councilor Lopes asked that this matter be tabled until after a public meeting has been held and the neighbors are notified of said project.

Chairman Radcliffe stated that a permit will not be issued today because the Commission needs to obtain the opinion of a consulting engineer.

Commissioner Pacheco inquired if the monument is not placed there if the City would still repair the pier. Councilor Lopes replied that it would become a dead issue.

Agent Porter advised that no comments have been received from the Division of Marine Fisheries. Agent Porter advised Ms. Lofstedt that she needs to make sure her replies match her plans because they reference on Sheets L1 and L4 that they are using straw wattles. Agent Porter stated the NOI refers to the planting area as a bio-retention area that is sending clean stormwater to it. This will not be sent out for stormwater review because it's all clean water but there should be a maintenance plan for DPI.

Chairman Radcliffe would also like mitigation for disturbance of shellfish. Agent Porter replied that this should come up with DMF.

Commissioner Dixon made a motion to send this matter to a marine engineer for review. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

Commissioner Dixon made a motion to table this matter until the next meeting with an understanding that this Commission may not be able to act on this project at that point. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

## **OTHER BUSINESS:**

### **1. 1147 Forbes Street shed**

Mr. Rui Antao of 1147 Forbes Street was present and stated that he had a surveyor come to the property and he found the existing fence post from the property line to be 42.45'. He explained he worked off a square grid and was able to shoot across and measure to the fence which was 41.77' and then measured from the fence to corner of the shed to be 61.2' and the corner of the shed is 1'6" in the resource area. Mr. Antao stated that he built the shed there because it was the flattest area.

Agent Porter stated that she looked at it and it appears to conform to the plan and the wetland may have expanded and she did not flag the wetlands because she didn't want there to be two different wetland boundaries out there since the Commission had allowed Mr. Antao to use the old wetland boundary.

Mr. Antao showed the Commission pictures that he took of the shed and his property including the fence.

Mr. Antao acknowledged that he should have spoke with someone prior to building the shed. The shed sits on concrete posts.

Chairman Radcliffe stated that he thinks trying to move the shed will cause more damage to the resource area than leaving it where it is.

Chairman Radcliffe suggested that Mr. Antao speak with Agent Porter to come up with a plan that would give back to the resource area and to bring it before the Commission at the next meeting.

Councilor Joseph Lopes was present and suggested the possibility of Mr. Antao using erosion controls around the rear of his property line i.e. arborvitaes.

Agent Porter stated that there is grass growing right up to the wetland boundary into the no disturb zone area now and there is an area that was cleared around the shed that should be allowed to re-grow. Chairman Radcliffe suggested that Agent Porter walk the property with Mr. Antao to determine where the arborvitaes may be planted.

Chairman Radcliffe recommended that he visit the site along with the Agent and Mr. Antao to come up with a plan and then report back to the Commission at the next meeting. The Commission and Mr. Antao agreed to said recommendation.

## **2. 1151 FORBES STREET**

Mr. Robert Racine was also present with Mr. Antao and expressed his concern with his property because his backyard seems to be sinking and that a retaining wall was never built.

Mr. Antao also stated that Mr. Racine has been taxed on the whole lot. Agent Porter advised that Mr. Racine should take the plan to the assessor's office and they will determine how much is buildable and unbuildable.

Chairman Radcliffe inquired of Agent Porter if there was anything that could be done with regard to the erosion and who could help Mr. Racine.

Agent Porter replied that this is private property and it has to be determined whether Mr. Racine needs rip rap revetment or a retaining wall as it was not part of the original design.

Chairman Radcliffe suggested to Mr. Racine that he would have to hire an engineer to look at his property and bring a proposed construction plan before this Commission. Mr. Racine replied that he is financially unable to hire an engineer and feels that the City is responsible for this and the City should correct it.

Chairman Radcliffe explained to Mr. Racine that unfortunately this Commission can only enforce the Wetlands Protection Act and would be open to a method to mitigate this erosion but cannot take the action of actually building an erosion control.

Mr. Antao questioned if Mr. Racine would be able to get someone in the future with a machine and dig down deep enough and make a concrete curb and bring it up to grade and fill it on one side to hold it back and try to remedy the situation without costing him a fortune. Chairman Radcliffe replied that if Mr. Racine was to do any type of new construction he would have to come before this Commission prior to commencing any work with an application and a proposed plan.

## **MADDIE DRIVE**

Agent Porter advised the Commission that the as-built has been submitted for this single family dwelling and that only a small portion of the project was in the buffer zone to begin with. Agent Porter visited the site and advised that the site looks to be stabilized, they have put a swale in and there is grass growing. She also spoke with the abutters, the Krouzeks, and they advised Agent Porter that they were all set.

Agent Porter explained that this was a Request for Determination of Applicability and as part of the Conditions, the Commission had requested that an as-built be submitted before signing off on a Certificate of Occupancy.

Commissioner Dixon made a motion to issue a Certificate of Occupancy. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

### **3. Agent updates**

#### **CARDINAL PLACE**

Agent Porter advised that the silt fence has been installed and are now installing the hay bales and will be removing all the debris. They will be hand carrying the debris out.

Agent Porter stated that the developer would like to do tree clearing and would like a pre-construction meeting prior to tree clearing. Chairman Radcliffe agreed a pre-construction meeting should take place.

#### **PALMERS ISLAND**

Agent Porter advised that the Phragmites have been mowed and the invasive species treatment will begin in a couple of weeks. She has the methods for the herbicide application. They are proposing to do a foliar application and it will most likely be done at the crack of dawn. Agent Porter stated that the methodology would be posted on the website.

#### **DAVY'S LOCKER**

Commissioner Audette inquired as to where the new owner stands under Chapter 91. Agent Porter replied that they will have to follow the Chapter 91 license issued to the previous owner.

### **4. General Correspondence – none discussed.**

A motion to adjourn was made by Commissioner Dixon at approximately 8:44 pm. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

Respectfully submitted,

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Sandy Douglas  
Administrative Specialist