



# Conservation Commission

September 8, 2015 – 6:30 PM – **Minutes**  
Brooklawn Senior Center

## Members Present

**John Radcliffe, Chairman**  
**Craig Dixon, Vice Chairman**  
**Dennis Audette**

## Members Absent

**Paul Pacheco**  
**Jacob Gonsalves**

## Staff Present

**Agent Sarah Porter**  
**Sandy Douglas, Admin. Specialist**

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

## OLD BUSINESS:

## CONTINUED HEARINGS:

1. (Continued from 7/7/15, 7/21/15, 8/4/15, 8/18/15) - A request to Amend Order of Conditions SE49-0702 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 maintain stockpiles in the Buffer Zone to Bordering Vegetated Wetland and extend a rip rap apron associated with Wet Basin Number Two. Representative is Richard Riccio of Field Engineering.**

**Mr. Richard Riccio of Field Engineering was present. Mr. Riccio submitted copies of the plans that he emailed today to Mr. Turner. Mr. Riccio advised that he received a letter from Nitsch Engineering on the 3<sup>rd</sup> with a couple of requests for minor revisions to the plan for the amendment. The requests were as follows: 1) to add a rip rap apron where the break in the berm will be, 2) add a rip rap apron at the outfall of the pipe along with 3) placing specification for the rip rap on the plan as well. All of which have been done and should satisfy all his comments related to the amended order. Mr. Riccio requested that said amendment be approved at this time so that they continue to work on finishing the remaining of the project to get towards a Certificate of Compliance.**

**Chairman Radcliffe stated that he was not present at the original July 7<sup>th</sup> Meeting he has listened to the entire hearing earlier today and then went to visit the site. Chairman Radcliffe stated that erosion controls had been previously discussed and that he and Agent Porter had a meeting with Mr. Riccio and one of the contractors and that sufficient erosion controls were still not in place and was told at said meeting that the erosion controls would be addressed. Chairman Radcliffe visited the site today and the erosion controls that were discussed were still not in place as of today.**

**Chairman Radcliffe inquired as to why the erosion controls were still not in place as discussed and as per the original Order of Conditions. Mr. Riccio inquired as to what erosion controls Chairman Radcliffe is referring to. Chairman Radcliffe replied that new straw haybales were to be placed and the straw bales were going to be put across the driveway at the conclusion of work each day and they were not there and have not been there. Chairman Radcliffe had pictures of the site. Mr. Riccio stated that he presented pictures to this Commission at the last meeting of the haybales all in place and maybe they have been taken down. Chairman Radcliffe advised that these haybales need to be put in place as ordered.**

**Chairman Radcliffe added that the other issue is the stockpiles are very close to the resource area and said stockpiles need to be pulled back. Mr. Riccio replied that it was his understanding from the last site**

visit that the Commission was satisfied with the stockpiles being pulled back and the only request was the place the haybales across the driveways which had been done. Chairman Radcliffe stated that the haybales may have been put in place once but have not been put back. He has visited the site on a couple of different occasions and has not observed any haybales. Mr. Riccio replied that he was under the impression that the haybales had been placed and he is unable to visit the site every day but the last time he visited the site he did witness the haybales in place as ordered and he has pictures to proof it but will address this matter with the applicant and will make sure the haybales are placed.

Agent Porter stated that there are haybales at the site that are deteriorating and need to be replaced. Agent Porter inquired as to how they make sure the rip rap that is being put into spec is actually the spec that Mr. Riccio's is calling for and how they would be assured that the contractor is doing it correctly. Mr. Riccio replied that this was addressed in his letter to Mr. Turner and he didn't seem to have any concerns.

Chairman Radcliffe stated that this matter will not move forward until the erosion controls are in place.

Commissioner Dixon made a motion to continue this matter to September 29<sup>th</sup>. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

2. (Continued from 8/18/15) Notice of Intent as filed by the City of New Bedford Department of Public Infrastructure for property identified as 1484 Airport Road (Map 123, portion of Lot 3). **Applicant proposes to construct a salt shed in the Buffer Zone to a Bordering Vegetated Wetland. Representative is City Engineer David Fredette, P.E. of the Department of Public Infrastructure.**  
CONTINUED TO 9/29/15.

#### **NEW BUSINESS:**

1. A Request for Determination of Applicability as filed by Keith Lovett of the City of New Bedford Buttonwood Park Zoo for property identified as 425 Hawthorn Street (Map 43, Lot 5). **Applicant proposes to conduct proposed improvements to the existing elephant exhibit area in the buffer zone to Bordering Vegetated Wetlands and Buttonwood Brook. Representative is Robert Bichel of the Department of Public Infrastructure.**

Mr. Robert Bichel of the City of New Bedford DPI Department was present. Mr. Bichel advised that Agent Porter has conducted the flagging and that this is a City project to enlarge the outside area of the elephant exhibit. The proposed project is to extend the elephant yard, place a new pedestrian path, and building a new maintenance 10' wide driveway. Proposing to build a new concrete docking area and a new concrete pad to lay the dumpster on. There are two existing storm drains with flared ends that empty out into the Buttonwood stream and are going to protect those basins with hay waddles, silt sacs and are going to enhance the interior or correct any deficiencies in the catch basins. Proposing to add oil and trash separators to the outlet pipes to keep the area clean and three additional catch basins. Will be placing a new elephant restraint fence and setting the control fence in a 3' dry swale. Test pits have been done and it has been determined that the soil will accept water and drain itself.

Chairman Radcliffe inquired whether there would be any use of fertilizer or pesticide. Mr. Bichel replied that none of that will be used, it's natural grass with stone under the fence. There is a drain pipe that will be going through the buffer zone and will be placing a silt fence and haybales along the existing fence. Will also be correcting the existing drainage that is onsite while they are conducting this work.

Chairman Radcliffe advised that he and Agent Porter have visited this site with several people from the Zoo, DPI, and Recreational Department. Chairman Radcliffe feels that this is a thoughtful plan and that the resource area has been considered.

Commissioner Audette inquired if they would be hosing down the area near the dumpster. Mr. Bichel responded that DPI does not personally hose down the area and that dumpster is used for the elephant waste and hay.

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

Agent Porter recommended the following special conditions: 1) that no fertilizer or herbicide permitted in the swale; and 2) that loose construction material be stockpiled as far away from the wetland as possible. The Plan for approval is Conservation RDA Plan Elephant Exhibit Overview dated April, 2015.

Commissioner Dixon made a motion for a negative determination with the special conditions as recommended by the Agent. All in favor. Motion carries.

2. A Request for Determination of Applicability as filed Annette Lawrence for property identified as 1087 Tobey Street (Map 136A, Lot 824). **Applicant proposes to install a fence in the Buffer Zone to Sassaquin Pond and its Bank. Representative is Annette Lawrence.**

Mr. Raymond Lawrence was present and is proposing to install a 6' fence to define the property line up to the retaining wall along the waterline. The retaining wall is about 3' higher than the water level. Cape Cod Fence would be performing the work. They would hand dig approximately 6" in diameter holes by 2' deep and remove any fill from the premises and place steel posts cased in concrete. Mr. Lawrence added that the fence in the back would be 6' high and the fence in the front would be 4' high.

Chairman Radcliffe inquired as to what the purpose of the fence was. Mr. Lawrence replied that it was to have privacy and define the property line.

Chairman Radcliffe stated that this Commission's concern is entirely with the resource area and not any neighbor disputes and there is impact on the resource area with this project.

Agent Porter stated that she visited the site and there is a retaining wall and if they keep the last post back a certain amount of feet from the retaining wall so it does not impact the stability of that wall then they should be okay. It also has to be done in order for wildlife to continue to pass through. From the bottom up a 6" wide gap will have to be left.

Chairman Radcliffe stated that his concern is with the process of the project and would feel more comfortable if he had a plan for the installation of the fence from the company. Mr. Lawrence inquired whether he would have to wait until the next meeting for an approval. Agent Porter stated that instead of having a plan submitted it can be conditioned in the order.

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

Agent Porter recommended the following condition: 1) excavate down 2' or more and remove all soil from the hole and dispose of off-site.

Commissioner Dixon made a motion to issue a negative determination with the condition as read by the Agent. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

3. SE49-315 - A Request for Certificate of Compliance as filed by MacLean's Seafood for property identified as 10 North Front Street (Map 79, Lot 5). **Representative is John J. Hannon of Mayflower Engineering, Inc.**

**Mr. John Hannon of Mayflower Engineering was present. Mr. Hannon stated that there was an Order of Conditions issued fourteen years ago and the work was never performed at both locations. Mr. Hannon is here on behalf of both matter, SE 49-315 and SE49-270. Mr. Hannon added that Agent Porter and he were at the site and it has been verified that no work has been complete. They are in the process of changing the properties and are in need of a Certificate of Compliance on both projects.**

**Agent Porter stated that the project failed to materialize so it's an invalid Order of Conditions because the Order has expired and the work was never completed.**

**Commissioner Dixon made a motion to grant a Certificate of Compliance for SE49-315. Motion was seconded by Commissioner Audette. All in favor. Motion carries.**

4. SE49-270 – A Request for Certificate of Compliance as filed by Seafood Services d/b/a MacLean's Seafood for property identified as 10 North Front Street (Map 79, Lot 5). **Representative if John J. Hannon of Mayflower Engineering, Inc.**

**Mr. John Hannon of Mayflower Engineering was present. Mr. Hannon stated that the work on this project was never completed and requested a Certificate of Compliance.**

**Agent Porter stated that the project failed to materialize so it's an invalid Order of Conditions because the Order has expired and the work was never completed.**

**Commissioner Dixon made a motion to grant a Certificate of Compliance for SE49-270. Motion was seconded by Commissioner Audette. All in favor. Motion carries.**

#### **NEW HEARINGS:**

1. A Notice of Intent as filed by Gregory Kulpinski of VVK Realty, Inc for property identified as 1494 East Rodney French Boulevard (Map 12, Lots 77 and 290). **Applicant proposes to renovate the site including building renovations and expansion, installation of four floating docks and 12 moorings, rehabilitation of the existing pier, repaving parking lot and construction of a 10' wide public access way. These improvements are being conducted in the Coastal Buffer Zone and within Land Under the Ocean, Land Containing Shellfish and Land Subject to Coastal Storm Flowage. Representative is Susan Nilson of CLE Engineering.**

**Susan Nilson of CLE Engineering was present together with Mr. Jeramy Packard also of CLE Engineering.**

**Ms. Nilson advised that they are presenting the NOI for 1494 E. Rodney French Boulevard a/k/a Smugglers Den or Billy's Wharf property.**

**Mr. Packard advised that they are proposing 12 new moorings in the water for transient boaters. Ms. Nilson added that they have met with the Harbor Development Commission and the Harbor Master and have included their comments in the NOI filing.**

**Mr. Packard sated that the only impact from installing the anchors will be from the blade itself of the anchor. On the West side there is an existing timber pier 140' x 10' that was built in the 1920s and are proposing to rebuild the pier as necessary including structural members, decking, railings, etc.**

Ms. Nilson added that the pier work will take some time but are trying to repair what is critical first and are looking to pull some old remnant piles that are outside of the pier.

Mr. Packard added that they are proposing 3,400 square feet of floating dock. The floating docks will be attached to the existing pier. The docks will be pile supported so there is minimal impact and erosion.

Mr. Packard advised that everything located on the land are in land subject to coastal storm flowage and everything along the coastal bank is in a 100' buffer to coastal bank. There is a 10' public access way and the tiki bar has been relocated. They are working with DEP to provide full access around both sites and will connect to the New Bedford Public boat ramp.

Pervious pavement is being proposed for the public access way and proposing pervious pavement in order to allow for stormwater infiltration. Ms. Nilson added that it will infiltrate through the pavement. The old ticketing building will be rebuilt and used as a Dock Master building; there will be no change in the footprint.

Mr. Packard advised that there will be architectural improvements to the restaurant building. There will not changes to the footprint except there will be a vestibule area at the front door, there will be a commercial refrigerator that will be installed on a concrete pad and a proposed ADA access ramp.

Chairman Radcliffe inquired as to what this building was going to be used for. Ms. Nilson replied that they will have the decks open in the summer to serve cocktails and raw bar and have it available for private parties and events.

Commissioner Audette commented that the previous owners were supposed to bring the walkway completely around. Ms. Nilson replied that she has been working closely with DEP Waterways. The present new owners have inherited those issues. Ms. Nilson added that they have also filed a Chapter 91 with DEP with alternate to move spaces back slightly to allow access and where the old tiki bar was keep the barriers up and make that the public area for the walkway with benches. You would be able to walk from the barriers and pick up to the other public access way and cross over to the city parcel. They are also working with the City Solicitor's office and HDC to place a bike rack on the City's property as required by Chapter 91.

Chairman Radcliffe commented that he does not want to see the bulkhead disintegrate and anything that can be done to improve this would be a plus.

Mr. Packard added that another improvement is the existing impervious is going to be resurfaced with no increase.

Commissioner Audette inquired as to what would be done with the docks during the winter. Ms. Nilson replied that they would be removed.

Agent Porter advised that there was a letter from Councilor Lopes that read as follows and that is being entered into record: "I am writing to inform you that I cannot attend the Conservation Commission meeting on Tuesday, September 8<sup>th</sup> due to a previously scheduled commitment. I would, however, like to state my support for item #1 (Notice of Intent as filed by Gregory Kulpinski of VVK Realty, Inc., for property identified as 1494 E. Rodney French Boulevard (Map 12, Lots 77 & 290).

Agent Porter stated that as far as the project goes they are in land containing shellfish and have an email from DMF and they did not propose any mitigation and did not have any other recommendations. Agent

Porter advised that this Commission needs comments from Natural Heritage because some of the moorings extend out into Natural Heritage's domain along with stormwater management plan.

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

Ms. Nilson requested that this matter be continued until October 20, 2015.

Commissioner Dixon made a motion to continue to October 20<sup>th</sup>. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

2. A Notice of Intent as filed by Adam Guilmette of McDonald's USA, LLC for property located at 1080 Kings Highway (Map 125, Lot 29). **Applicant proposes to raze and rebuild the existing McDonald's including new utilities and improvements to landscaping and stormwater management within the Buffer Zone to Bordering Vegetated Wetlands. Representative is John Kucich of Bohler Engineering.**

Mr. John Kucich of Bohler Engineering was present and advised that they are proposed to rebuild the existing McDonald's restaurant on Kings Highway. The restaurant is approximately 40 years old and in need of some work and going to demolish the entire building and start fresh. The building will be erected in the same exact spot.

They are proposing to add some green space to the sides and make it flow a whole lot better. They will be holding the existing curb line and will add some grass along the front and sides. The work that is within the wetland will be ripping up the pavement and putting down new pavement.

Mr. Kucich advised that there is a proposed reduction of 4,600 to 4,700 square feet of paved area. They will be reducing some of the parking with landscaping. It is a very flat site and as of now it drains downward and there is no curb.

Mr. Kucich stated that they are adding some catch basins and have met with the City Engineer earlier today.

Agent Porter recommended that this application be sent to Nitsch Engineering for peer review. Agent Porter questioned why the erosion controls didn't run along the back line as well. Mr. Kucich will add a couple of check dams in this area.

Chairman Radcliffe stated that they will need to get a new detailed plan with the dams and more detail about the construction method and address how the materials will be brought in and taken away together with a staging area that works. Mr. Kucich agreed to provide this plan.

Commissioner Dixon made a motion to table this matter to September 29, 2015. Motion was seconded by Commissioner Audette.

Commissioner Dixon made a motion to forward this application to Nitsch Engineering for peer review. Motion was seconded by Commissioner Audette. All in favor. Motion carries. Mr. Kucich will forward the plans directly to Nitsch Engineering.

#### **NEW BUSINESS CONTINUED:**

1. **Agent Updates** (Certificates of Compliance for the City of New Bedford).

## **AEROVOX PROPERTY**

Agent Porter advised that the City has outstanding Certificates of Compliance for Aerovox property. Only have a plan that shows what was demolished, another hand drawn site plan and another set of site plans. The City is trying to sell a lot and need the Certificate of Compliances.

Chairman Radcliffe commented that if the City is going to sell the property, the buyer is probably going to do something with the property and at that point this Commission can address any concerns.

Agent Porter advised that the City will be applying for said Certificate of Compliances.

## **John Vertente Boulevard**

Agent Porter advised that she has engineering plans for John Vertente Boulevard and questioned whether the Commission would like Engineering As-Built too. Agent Porter will speak with Blair Bailey and see how he would like to proceed with this.

### **2. A-1 Asphalt (Shawmut Avenue)**

Mr. Greg Sirois of 1930 Shawmut Avenue was present and stated that he has been having issues with A-1 Asphalt for the past 2 ½ years with regard to activity that goes on at the property. Mr. Sirois has gone to the Neighborhood Task Force and has met with Danny Romanowicz and John Flor with regard to this property. Mr. Sirois' concern is the type of material that is being brought into the property. There are construction companies from all over the area that bring in unknown materials. The dust and dirt is all over the roadway and it's been causing a great problem. One of the most important issues is that they have had some material there from the airport project and is being processed over at A-1 Asphalt. This property abuts wetlands and the Flora B. Peirce Trail and there is a stream that runs under or through his property. Mr. Sirois would like to know what A-1 Asphalt is doing to rectify the underlying ongoing problems that have been going on.

Mr. Sirois provided the Conservation Commission with a copy of Mr. Anthony R. DeCosta's Affidavit dated 9/1/15 that states that he has been taking in asphalt and concrete since 1981. Mr. Sirois also provided a copy of his letter dated June 26, 2015 addressed to the City of New Bedford Neighborhood Task Force.

Chairman Radcliffe entered into record the documents that Mr. Sirois provided.

Mr. Sirois' concern is what is being transported to this site and feels that one of the steps that should be taken is to find out what Mr. DeCosta has done to come into compliance with some violations that exist.

Mr. Sirois is also concerned that if this site becomes a contaminated site it will affect the market value of the homes in that area including his home. Mr. Sirois would like to see DEP be brought to the property and conduct some soil samples to see exactly what is there and Mr. DeCosta not being able to continue doing business until the results of the soil samples are done.

Agent Porter advised that she spoke with Rick Charon today and they have re-surveyed the 50' mark off of the wetland boundaries. Mr. Charon will call tomorrow and it should be ready for a site walk by Thursday or Friday. Chairman Radcliffe stated that is the first thing this Commission will do is a site walk. Chairman Radcliffe also explained to Mr. Sirois that this Commission's purview is only over the environmental impact to the resource area.

Mr. Sirois stated that there are piles of materials on the land that are like 80' high. Agent Porter added this some of the piles are stabilized because they have grass growing on them.

Mr. Sirois stated that he has been a police officer with the city for 26 years and has worked details in the City, where he has seen A-1 Asphalt trucks carry materials with PCBs to the property on Shawmut Avenue. He has worked details at sites that are known to have contamination and has seen trucks leave these sites and head to A-1 Asphalt. Mr. Sirois stated that he has even witnessed City trucks dump material on site.

Chairman Radcliffe stated that the Commission will visit the property and review the correspondence that Mr. Sirois submitted this evening. This Commission will keep Mr. Sirois informed as to the outcome.

### **CARDINAL PLACE**

Commissioner Audette inquired as to what is going to be done with regard to Cardinal Place. They have violated three conditions. 1) working in the buffer zone, 2) haybales; and 3) cutting of trees.

Chairman Radcliffe advised that he and Agent Porter visited the site and they were very clear with the applicant that the next time there was any violation he would incur a fine. The applicant at that time advised that he wanted to come before the Commission to get permission to remove trees from lot 5. Chairman Radcliffe advised him at that time that prior to him removing the trees from lot 5 he would have to remove all the brush and debris being dropped on lot 6 by an abutter even though it's not him doing this he is still responsible to keep his lot clean. Mr. Hopps and Mr. Rowlett were told that they are not allowed to cut any trees in any of the other lots until they come before this Commission for an Amended Order of Conditions.

Agent Porter advised that there is double haybales out there right now and where the trees have been dropped is not in the 25' no disturb because the 25' no disturb starts back further and this can be confirmed by looking at the plans.

### **3. General Correspondence**

### **4. Meeting Minutes of July 21, 2015 for approval.**

There being no additions, corrections or deletions of substance, a motion to approve the Meetings Minutes of July 21, 2015 was made by Commissioner Dixon. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

A motion to adjourn was made by Commissioner Dixon at approximately 8:15 pm. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

Respectfully submitted,

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Sandy Douglas  
Administrative Specialist