



Conservation Commission

May 20, 2014 – 6:30 PM – **Minutes**
City Hall, 133 William Street, Ashley Room

Members Present

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

Members Absent

Staff Present

Agent Sarah Porter
Sandy Douglas, Administrative Specialist

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

HEARINGS:

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) - 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. **CONTINUED**
2. **SE49-597 – (Continued from 1/7/14, 2/8/14, 3/4/14, 3/19/14 & 4/1/14) - 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.

Agent Porter informed the Commission that Mr. Gless is not here this evening but he sent an e-mail this morning requesting a copy of the plans so that he could stake out the detention pond for re-construction. Agent Porter advised him that he could pick up a copy of the plans but the Order of Conditions expires on Sunday and there will not be sufficient time to complete the work before the expiration of the Order and they have not requested an extension of the Order to date. Agent Porter recommended that the Commission issue an Enforcement Order requesting compliance of the original approved plans with a deadline for compliance. Agent Porter explained that they are in violation of Condition #12 and are not in compliance with the construction of the detention basin as documented on letter dated March 13, 2014 from Nitsch Engineering. The site is to be completely stabilized and the detention pond re-built in accordance with the approved plans and an as-built would have to be acceptable to the Commission and a Certificate of Compliance issued. Agent Porter stated that the Commission will have to determine a deadline for completion of the work.

Chairman Motta explained that the expansion of the detention basin needs to be complete and then they need to prepare an as-built plan, submit the plan and then follow through with the original request for a Certificate of Compliance. Chairman Motta suggested giving them a thirty (30) day deadline. And waive all penalties and fines and have this be a friendly Enforcement Order. The Commission agreed to this suggestion. The thirty days would be from the date that the Agent issues the Enforcement Order.

Chairman Radcliffe made a motion as recommended by Chairman Motta with said conditions and deadline of thirty days. Motion was seconded by Paul Pacheco. All in favor. Motion carries.

3. **SE 49-699 - (Continued from 4/1/14, 4/25/14 & 5/6/14) – 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.

Mr. Christian Farland of Thompson Farland, Inc., was present on behalf of the applicant. Mr. Farland stated that he was last before this Commission on April 25, 2014 in which the Commission made a motion to send out this to peer review with Nitsch Engineering and since then he has a revised set of plans, stormwater pollution prevention plan, revised long term pollution prevention plan together with a response letter to peer review and to Agent Porter's comments that he will be forwarding to Nitsch for their review.

Mr. Farland advised that he has already received approval from the Planning Board and the stormwater was approved by DPI Engineering.

Chairman Motta inquired whether the drainage was going to be tied into the existing drainage. Mr. Farland responded that it would be and that the airport's drainage system doesn't have any water quality, it's just basically a bunch of catch basins that lead to the bordering vegetated wetland. The major issue with this site is that it's at a certain elevation and because of FAA regulations they are not allowed to raise the site and have to work with the existing grade and unfortunately the wetland is across the street.

Mr. Farland advised that they have improved the water quality by adding two water quality inlets which are the catch basins, the rooftop and the impervious improvements.

Mr. Farland stated that they have labeled the intermittent stream on the erosion control plan, there is a net increase in impervious area of 6,000 square feet.

Chairman Motta explained that just the front parking area constitutes the increase in impervious area because the building footprint is all within the existing pavement footprint.

Commissioner Radcliffe inquired as to why a parking area was necessary. Mr. Farland replied because there will be an office in the building and the private plan can hold up to 12 passengers and the Zoning Board required there by 12 parking spaces. Commissioner Radcliffe suggested that Mr. Farland confer with his client to possibly reducing the amount of parking spaces by four parking spaces. Mr. Farland responded that he will suggest to his client to possibly eliminating four spots from the front and give more room for a possible rain garden.

Chairman Motta suggested that some of the parking spaces could be moved to along the side of the building and it wouldn't interrupt any of the access aisles.

Mr. Farland advised that Nitsch Engineering had stated that this would be considered a new development and he feels it is a mix of new and re-development considering 80% was already pervious and they are replacing that with the building which is an improvement in regards to stormwater.

Chairman Motta stated that by definition it is considered a new project because triggering the increase of the impervious but because he is working with a developed portion of this area a portion of the site can still be considered a redevelopment project primarily if there is physical site constraints based on the previous development that would not allow him to comply with the standards and the extent the Chairman would be looking for is to the extent practicable. He feels that Mr. Farland made a good case with regard to the elevation and ground water.

Commissioner Audette stated that he does not want any fueling in the hangar at all.

Mr. Farland replied that building code will require drainage inside the hangar and he does not object to the condition of prohibiting fueling inside the hangar.

Chairman Motta stated that there will be a prohibition of any fueling of planes within this building.

Commissioner Radcliffe inquired as to why this project is being proposed. Mr. Farland replied that it's a targeted area by the City of New Bedford for development for the airport. The City has the right to lease it to private plane owners.

Chairman Motta confirmed with Mr. Farland that the City will own the building and all the utilities.

Chairman Motta stated that he understands that there are FAA requirements that govern the alignment and the separation of the taxi ways and maximum grade required in order for plane to get into the building. With the reduction of the front parking and the implementation of the rain gardens, to try and get as much of the roof drain as possible into the rain gardens.

Chairman Motta suggested that Mr. Farland fine tune his response letter to Nitsch Engineering based on what was discussed this evening.

Commissioner Radcliffe made a motion to table this matter to June 3, 2014. Motion was seconded by Commission Audette. All in favor. Motion carries.

4. SE49-700 - A Notice of Intent as filed by Phil and Debbie Rose of Remax Classic for property identified as the west side of Maddie Drive (Map 136, Lot 501). Applicant proposes to construct a single family dwelling in the Buffer Zone to Bordering Vegetated Wetlands. Representative is Seth Dufort of Outback Engineering, Inc.

Mr. Nyles Zager of Outback Engineering was present on behalf of the applicants, Phil & Debbie Rose. Mr. Zager advised that at the last hearing there were issues with regard to the wetland line and are back this evening to address said issue. Mr. Zager advised that there was an Order of Conditions issued by this Commission back in July, 2010 with an approved wetland line at and feels it's still valid with the permit extension act. Mr. Zager feels that the wetland line that was approved under the current Order of Conditions, even though it was not recorded, is still valid. Mr. Zager advised that they have staked the house and have also re-hung the wetland lines that were previously approved in 2010. Mr. Zager also advised that Agent Porter has gone to the site and she does not agree with the wetland line and that is what triggered this filing. Mr. Zager is looking for the Commissions' stand on this matter.

Chairman Motta explained that to his recollection there were two orders issues on this property. The first order was for the roadway construction and the detention pond only to establish the line for the purposes of the detention pond and the roadway. It was specific in that Order that it was not to apply to the development of the individual lots. Mr. Zager concurred. The second Order was for the repairs to bring it up to compliance with the original Order since the original Order had expired, which Order was never recorded. Chairman Motta inquired if the Order was never recorded and has expired how can Mr. Zager say that it's still valid under the permit extension act? Mr. Zager explained that he contacted DEP and was advised by DEP that the Order does not need to be recorded in order for it to be valid and as long as it's valid during the years of the permit extension act you get an automatic year extension.

Mr. Zager stated that this is the main issue and they are proposing a single family home similar to the other homes and they have pulled everything as far away as possible from the wetland resource area and have minimized the size of the home, the driveway is on the northerly side of the lot and there is not structure within the 25' buffer. The only work within the 25' buffer is clearing and grading and a small portion of a drainage

trench that was requested by DPI back in 2010. As far as the drainage, this was all issues that were discussed back in 2010.

Commissioner Audette stated that if you go back to the original Order of Conditions, it takes lot 380 completely out and it says separate filings should be made for both lots with the Conservation Commission. And according to the original Order both those lots were never given rights to be built on without coming back before this Commission with a Notice of Intent. Mr. Zager replied that he agrees with Commissioner's Audette and agrees that the work was never permitted but the wetland line was locked in during the original Order of Conditions.

Agent Porter stated that she was advised by the City Solicitor today, that because of Condition #51 the Commission has a right to ask for additional information regarding the wetland boundaries. Agent Porter also spoke with Teena Davis from DEP today and she suggested that it was the Commission's opportunity now to ask for additional information on the wetland boundary because it's a refilling.

Mr. Tim Cusson was present and stated that they are here this evening requesting a new Order of Conditions but that wetland line is locked in until 2017 under the permit extension act and the only time the Order of Conditions has to be recorded is prior to the work being done. Mr. Cusson stated that the Order of Conditions should have been recorded by the City of New Bedford when they commenced the work last year. Mr. Cusson advised that he is in agreement that they need a new Order of Conditions to do the work on the lot but said wetland boundary is locked in. Mr. Cusson advised that he has spoken with Alice Smith of the Boston DEP Office and she agrees that the wetland boundary line is locked in and there is no requirement under the permit extension act that an Order of Conditions has to be recorded in order to be valid. The Order of Conditions only has to be recorded prior to work commencing within the permitted period.

Commissioner Radcliffe inquired if Mr. Cusson could provide documentation for the opinions that were cited. Mr. Cusson replied that DEP will not issue any opinions in writing to anyone. Commissioner Radcliffe stated that then there is only here say to go on.

Commissioner Radcliffe stated that there is a matter of interpretation here. There are two experts that state that the Commission can revisit the wetland delineation. Mr. Cusson explained that he believes it was said that the Commission can ask for additional information and not change the lines. Agent Porter stated that she was advised that the Commission can request additional data on the wetland boundary. Mr. Cusson replied that doesn't mean the line can be changed.

Commissioner Radcliffe stated the Commission would like go to the site and see where the wetland boundary is now. Mr. Cusson stated that is fine but it still cannot change the wetland line location that was established in 2010 through 2017. Commissioner Radcliffe stated that wetland boundaries change all the time.

Commissioner Radcliffe stated that part of the filing of the separate Notice of Intent is indeed wetland delineation. Mr. Cusson replied that this one was locked in 2010. Commissioner Radcliffe explained that a new filing requires new wetland delineation. Mr. Cusson stated that he did not agree but is willing to work with the Commission but is not willing to relocate the line.

Commissioner Radcliffe stated that he is not going to vote to approve a Notice of Intent without having a current look at what the wetland boundaries are and explained that his job is to protect the wetland and where the wetland was four years ago is irrelevant to him at this time.

Commissioner Radcliffe suggested getting an expert opinion as to whether the rule applies or not. Mr. Cusson replied that he feels that is a waste time.

Agent Porter added that City Solicitor Jane Medeiros-Friedman has already provided an email stating that this Commission has the opportunity to request additional information on the wetland boundary. Mr. Cusson was provided with a copy of said email.

Commissioner Audette inquired whether Mr. Cusson was the present owner of the lot and he replied that he was not but he was involved with the original developer.

Chairman Motta read the email correspondence from City Solicitor Jane Medeiros-Freidman dated 5/19/14 out loud. Commissioner Radcliffe made a motion to accept said email into the record. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

Chairman Motta stated that he has a serious reservation about the functionality of the drainage system for the entire development of the entire development and the fact that this Commission never received an as-built plan, a certification from the engineer that the drainage system was constructed in accordance with the original design and is not in the position to support any further development on any of these lots until this information is received.

Mr. Cusson replied that they had nothing to do with the development and are here to build on this single lot and that the City is the owner and took \$156,000.00 to complete the road and they were to complete the work per the Order of Conditions.

Mr. Zager wanted to clarify that in 2010 there was a modification as-built filed for modifications to the detention basin and other structures of the basins that was supposed to be taken care of by the City. The work was shown and there was an as-built plan. The majority was installed according to plan and there were minor modifications made. Mr. Zager explained that besides the minor changes the system was installed according to plan and the Commission does have this information on record.

Chairman Motta inquired if Mr. Zager would be willing to do an inspection of the basin and if there is any remaining work to be done on the drainage system if they would be willing to implement those changes. Mr. Cusson replied that has nothing to do with them it was the City's job and responsibility to do the work correctly.

Mr. Zager replied that he would have to speak with his client but he doesn't see why they would go ahead and spend any money when they don't know whether or not the Commission will agree with the wetland line.

Chairman Motta stated that there is a difference of opinion as far as the determination of the boundary and the applicant's position is clear that the boundary is as it was back in 2010 and the Commission respectfully disagrees.

Commissioner Radcliffe inquired as to why the applicant is objecting to the possibility of a change in wetland boundaries. Mr. Cusson replied that it would be an expense and it's their right under what was previously approved and he has a buyer that is willing to go forward and if they lose that sale will have to find another potential buyer. So they would lose time and money.

Commissioner Radcliffe made a motion to deny this application. Motion was seconded by Commissioner Dixon. All in favor. Motion carries.

The application was denied because there isn't current wetland delineation and there is insufficient information on the wetland boundary.

5. SE49-702 - 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.

Chairman Motta recused himself from this hearing and left the room at this time. There is an employment conflict of interest that does not allow him to participate in this hearing.

Mr. Richard Riccio of Field Engineering was present on behalf of the applicant. Mr. Riccio explained that some of the building has been demoed and the remaining portion of the building is going to be renovated. The existing slabs from the previous building will remain there for the time being. The other concrete slab is going to get converted to a gravel area for parking. The other area they are proposing to install 16 new paved loading docks. Mr. Riccio has revised plans this evening with revised calculations that he submitted to the Commission. Proposing a subsurface treatment system to handle the impervious area. The gravel surface is going to run over land to a forebay and into a bio retention area. The existing pavement is going to be renovated and grated to a small forebay and bio retention area. At this time there is no stormwater treatment that exists for these areas. Even though this is a redevelopment project they have met all of the stormwater standards. They are also proposing an above ground fueling system for the trucks which would be required to meet all Fire Department requirements with double wall and secondary containment.

Commissioner Radcliffe inquired as to what is the nature of the work to be done. Mr. Eric Da Costa from NWD was present and replied that it would be a cross box location for reloading trucks that are sent out to Indiana, Kentucky, Ohio and New York. They specialize in frozen fresh seafood and have been in business since 1979.

Agent Porter advised that she has been out to the site to review the wetland boundary and it's not all flagged yet and she only needs to review the wetland boundaries that are in the buffer zone to the work that is proposed. Mr. Riccio added that they need to refresh the flags and will do so prior to the next meeting.

Agent Porter added that the current property is subject to an RDA for demolition of a portion to the Polaroid site so when she visited the site she found demolition debris in a section of the wetland area and she is meeting with George Clemsworth, the contractor, tomorrow to go over the removal of the debris.

Agent Porter advised that a peer review would be necessary for the stormwater management on site.

Commissioner Dixon made a motion to send this application for peer review. Mr. Audette seconded said motion. All in favor. Motion carries.

Commission Dixon made a motion to continue this matter to the next hearing on June 3. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

OTHER BUSINESS:

1. Haskell Farm Conservation Restriction

Ms. Kelley Whitmore was present and advised that the Massachusetts Historical Commission has reviewed the Conservation Restriction and changes have been made and Anne Louro has agreed to the changes and is satisfied with everything. The changes that they have all agreed to are on pages 2, 4-6 and 9. They all have to do with the John Hathaway house and the area that was called the envelope around the house and is now called the associated building landscape area. The State Office of PR Review has also reviewed the changes and she received those suggested changes this morning and the changes are incorporated in the document and there are a couple of outstanding questions that she will have to address since she didn't have time to do so since she only received them this morning. Ms. Whitmore also advised that the Commission has some time to review the CR because they are now not under pressure to record this document by end of June.

Commissioner Radcliffe inquired whether there are any changes made that will change any of the Conservation Commission's use of the land. Ms. Whitemore replied no.

Commissioner Radcliffe made a motion to table this matter to June 3, 2014. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

2. Agent updates

MADDIE DRIVE

Mr. Ronald Krouzek of 4085 Acushnet Avenue was present and advised the Commission that he here with regard to the new home that they are building on Maddie right next to the detention pond. This property is still higher than his and all the dirt is washing down onto his property and hopefully will not kill his trees. Mr. Krouzek does not know what can be done about this to keep the water and dirt from continuing to flow onto his property. Mr. Krouzek gave the Conservation Commission to enter his property for any site inspection.

Chairman Motta stated that the drainage from that lot according to the approved plan there is supposed to be a swale that pitches towards the school in a westerly direction so there should be no runoff from that property in a southerly direction towards Mr. Krouzek's property.

Commissioner Pacheco, Commissioner Radcliffe and Agent Porter will visit the site tomorrow at 1:00

BRALEY ROAD

Agent Porter advised that and RDA was issued for the foundation on the northwest corner of Braley Road back in 2007 for selective cutting and she has a call into John Keegan at SITEC to see if DPM did the cutting without a permit. The permit is still valid but just violated the conditions of the permit because they went beyond the scope of the permit. Agent Porter will visit this site again tomorrow.

NEW BEDFORD AIRPORT

Agent Porter advised that she has been monitoring the airport on a weekly basis. They had a major minor screw up on site where they were installing a new erosion control line for the new phase and towards the wetland ditch they basically took a row of 51 riverfront plantings to put the erosion controls down on the wrong side of the riverfront plantings and they have now had to replant them and DEP is on top of them and have requested restoration plans.

3. General Correspondence

SASSAQUIN POND

Chairman Motta stated that he saw all the correspondence from Normandeau with regard to the testing at Sassaquin Pond.

Agent Porter stated that Normandeau felt that the stormwater inflows are something that should be monitored.

Commissioner Audette added that the catch basins are not working and there is garbage flowing into the pond. And that the City is not installing the tree boxes at all. An association meeting was held and they are putting in pits with holes in them with loam and they have put in 11 of them.

4. Approval of March 4, 2014 Meeting Minutes

There being no additions, corrections or deletions of substance, a motion to approve the Meeting Minutes of March 4, 2014 was made by Commissioner Pacheco. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

A motion to adjourn was made by Commissioner Dixon at approximately 8:30 pm. Motion was seconded by Commissioner Radcliffe. All in favor. Motion carries.

Respectfully submitted,

Sandy Douglas
Administrative Specialist