



Conservation Commission

June 3, 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 & 5/20/14) - 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 & 5/20/14) - 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. Ratify Enforcement Order. **CONTINUED**
 3. **A Request for Determination of Applicability 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. **CONTINUED**
- Chairman Motta advised that this application has been withdrawn and the applicant will be refiling a Notice of Intent application.
4. **SE 49-699 - (Continued from 4/1/14, 4/25/14, 5/6/14 & 5/20/14) – 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. **CONTINUED**
 5. **SE49-702 – (Continued from 5/20/14) - 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. CONTINUED

- 6. SE49-703 - A Notice of Intent as filed by Mary Rapoza, City of New Bedford Director of Parks, Recreation and Beaches for property identified as 86 Popes Island (Map 60, Lot 2). Applicant proposes to construct a Quonset-style shelter for rowing shells within Land Subject to Coastal Storm Flowage and the Buffer Zone to a Coastal Bank and Land Under the Ocean. Representative is Courtney Cohen of Prime Engineering.**

Mr. Richard Rheume of Prime Engineering was present and advised that this project is on Popes Island and briefly explained the proposed project.

Commissioner Pacheco inquired as to what type of material the hut would be made of. Mr. Rheume replied metal fabric.

Chairman Motta inquired as to why this hut is being proposed. Mr. Rheume replied that it will be used for storage and its 72' long x 42' wide. Mr. Rheume added that the City hopes to one day have a complete boathouse.

Commissioner Audette inquired whether the ends of the hut will be closed. Mr. Rheume replied that the ends will be closed. Commissioner Audette also inquired if the structure will be removed during the winter. Mr. Rheume replied that it's a year round structure.

Chairman Motta inquired whether Mr. Rheume has spoken with the Building Department with regard to anchoring it. Mr. Rheume replied that the Building Department will need a structural engineer stamp certifying the accuracy of the foundation.

Chairman Motta inquired if on the plan it shows the detail of the depth of the crushed stone. Mr. Rheume replied that its 2" deep and it's basically just for the splash. Chairman Motta suggested going a little deeper so that he could get out of the top soil.

Commissioner Radcliffe inquired as to what the timeline is for this project. Mr. Jonathan Schwartz, Chairman of the Board with the New Bedford Rowing Center responded that from the time they receive the permits it should take approximately one month.

Agent Porter advised that they are not exempt from stormwater management standards but the project has runoff generated from the roof itself and are proposing pea stone. Chairman Motta stated that they are going to dig it down 6" and put the stone done so that the stone is below the root zone of the grass.

Agent Porter inquired as to what Mr. Rheume is proposing to use to excavate that area. Mr. Rheume replied that they will use a 10' wide bucket and will saw cut the strip before excavating.

Chairman Motta added that Mr. Rheume can elect to dig the trench by hand or with a mini bucket and it doesn't have to be specific in the permit and it should simply state that any area that disturb by the contractor's operations and installation shall be restored to its pre-existing condition.

Agent Porter stated that another condition would be that all construction be in compliance with the State Building Code for Construction in the Floodplain.

Chairman Motta inquired if there was anyone present that wished to comment on this matter. None heard.

Chairman Radcliffe made a motion to approve with said conditions. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

OTHER BUSINESS:

1. Lot 122 Padanaram Ave. – fence

Commissioner Radcliffe made a motion to take item #2 out of order. Motion was seconded by Commissioner Dixon. All in favor. Motion carries.

Chairman Motta recused himself from this hearing and left the room at this time. There is an employment conflict of interest that precludes him from participating in this matter.

Mr. Patrick Conlon of 1543 Padanaram Avenue was present.

Ms. Judith McMullen of Dartmouth, MA was present.

Mr. Antone Amaral of 1539 Padanaram Avenue was present.

Mr. Conlon and stated that he bought his house approximately two years ago and he is here this evening hoping that the wrongful demolition and resulting damage of the illegal removal of the fence on Lot 122 on Padanaram Avenue.

Commissioner Radcliffe inquired as to why he was here this evening before the Conservation Commission asking to rectify this issue. Mr. Conlon responded that the Conservation Commission removed the fence. Agent Porter replied that the Conservation Commission did not remove the fence, DPI did.

Mr. Conlon continued to state that they had a meeting with the Mayor and Blair Bailey and others last year in October. Patrick Sweeney the developer threw out lots 112 & 122 in the 1920s and in 1960 these lots were taken for taxes without notice to the deeded holders of the property.

Commissioner Radcliffe interrupted Mr. Conlon and reminded him that this Commission enforces the Wetlands Protection Act and if there is a violation of the Wetland Protection Act then he can bring it before the Commission but he does not need to reiterate the history of the property.

Mr. Conlon stated that the property always had a three posted fence and it was there to protect and it had only a 4' opening to prevent cars from parking and driving over vegetation and restrict larger watercrafts. The ranch fence is important because it is accessible for emergency vehicles.

Commissioner Radcliffe verified that Mr. Conlon's position is that the City took down the fence and the purpose of the fence was initially for safety and to keep people from driving into the lot.

Commissioner Radcliffe stated that if the process of taking the fence violated the Wetlands Protection Act, then at that time a complaint should have been issued or brought to this Commission's attention. Mr. Conlon stated that the fence was taken down on January 14th, 2014.

Commissioner Radcliffe questioned Mr. Conlon as to what City agency removed the fence. Ms. McMullen replied that the Conservation Commission removed the fence. Commissioner Radcliffe replied that the Commission did not personally go to the site and remove the fence.

Ms. McMullen stated that this all started because of an FOIA request made by David Glicksman to this Commission requesting any information on that fence. Mr. Conlon added that this request was made by

Massachusetts Public Records Law, MGL Chapter 66, Section 10 under the Freedom of Information Act. The requested information was all interactions, memos or all communications that might have transpired between the personnel of the Environmental Stewardship of New Bedford and the various Departments and companies pertaining to Lot 17A, Lot 122 from 1997-December 15, 2012. The Commission responded to this FOIA that there weren't any documentation.

Mr. Conlon stated that he was never notified by the City that the fence was being removed. Commissioner Radcliffe advised Mr. Conlon that the Conservation Commission isn't the agency that took down the fence. Ms. McMullen replied that the Conservation Commission approved the removal of the fence. Mr. Conlon and Ms. McMullen would like this Commission to order that the fence be put back.

Commissioner Radcliffe and Commissioner Audette explained that if this Commission is going to approve that a fence be re-erected in a resource area, the proper application needs to be filed by DPI.

Commissioner Audette advised Mr. Conlon that he might want to contact the Mayor again and inquire as to the status of re-installing this fence.

Commissioner Radcliffe advised that when DPI files the appropriate application Mr. Conlon will be notified of the meeting. Mr. Conlon replied that he wasn't notified when the fence was taken down.

Ms. McMullen stated that this Commission had approved that the fence be taken down at a previous meeting and no one was notified that this meeting was being held and then DPI never notified anyone because they were told by this Commission to remove the fence. They then contacted the Mayor with a complaint that the fence had been removed. The fence was removed without any application being filed. Councilor Lopes came before this Commission asking that the fence be removed.

Ms. McMullen stated that since the fence has been removed, Mr. Glicksman has been repeatedly running over the vegetation on Lot 122 on a daily basis.

Ms. McMullen presented a video of Mr. Glicksman driving onto lot 122. Commissioner Radcliffe advised that a copy of this video needs to be forwarded to this Commission for the file.

Commissioner Radcliffe advised that this is outside of this Commission's purview. There are 2 things going on here that Ms. McMullen and Mr. Conlon are concerned with. But only one of those issues is within the purview of this Commission and that is the fence in the resource area.

Commissioner Radcliffe inquired of Agent Porter if she could update the Commission on the City's legal position on this property. Agent Porter replied that she would have to check with the City Solicitor's office. But the property is owned by the City of New Bedford and they have deeded rights to pass and re-pass.

Commissioner Radcliffe concluded that if the Mayor ordered that the fence be re-built then DPI will come before this Commission and get permission to re-build the fence. Ms. McMullen replied that she understands but she is only doing what they were told to do by Blair Bailey. Ms. McMullen stated in the New Bedford Code, Section 15-103 states that a permit and application required by the article shall not be required to maintain, repair and replacing existing and lawfully located structures. The permit and application required by this article shall not apply to emergency projects necessary for the protection for the health and safety of the public provided that the work is to be performed as so ordered and be performed by an agency of the Commonwealth or a political subdivision thereof. Ms. McMullen asked that the Commission approved plans and then let the City do the work. Commissioner Radcliffe replied that the Commission cannot approve a plan that they don't have before them.

Ms. McMullen added that this fence was not taken down properly with the required permits.

Mr. Antone Amaral submitted and read his affidavit to the Commission. Mr. Amaral stated that he has been on Padanaram Avenue since 1966 and has always maintained the property. He feels that he should have been notified that the fence was being removed and notified of any hearing that took place with regard to this fence. Mr. Amaral states that he read in the Meeting Minutes that this Commission voted to remove the fence without the required permits.

Ms. McMullen stated that if the Commission could waive an NOI and RDA to have the fence removed then they can do the same to have the fence re-erected especially since there is a safety issue. Further damage is being done to a lot under this Commission's protection and jurisdiction.

Mr. David Glicksman of 1550 Padanaram Avenue, New Bedford, MA was present and stated that he has been before this Board on numerous occasions for RDAs and NOIs. The bottom line is when something is put into the ground especially when using concrete you have to file an RDA. Mr. Glicksman stated that a boat had sunk and it had to be removed from Lot 122 and the fence was there and they couldn't remove the fence because it had concrete around the footing. Mr. Glicksman stated that he felt that the fence was an eye sore and that it had fallen down on several occasions. Mr. Glicksman also stated that he does not have any objection to the fence being re-built.

Mr. Edward Arsenault of 1532 Padanaram Avenue was present and questioned why the City left the pole from the fence so they could put a railing for the steps that were built.

Commissioner Radcliffe suggested that they contact the Mayor's office and explain that the Conservation Commission will gladly entertain a further discussion on the probable or possible permitting of the re-erection of that fence in a subsequent hearing but that it has to be filed by the DPI.

2. Haskell Farm Conservation Restriction

Agent Porter advised that they are not present tonight and they just today sent the final revisions that need to be reviewed by the Commission. Agent Porter stated that the items that were of interest were the alternative energy produced must be used exclusively on the premises, that is one of the changes to the CR and the other change was the description of the merchandise that can be sold on the property which is hats and clothing.

Commissioner Radcliffe stated that the any retail that does get sold on the property needs to be pertinent to TTOR. Agent Porter replied that it does state that.

Commissioner Radcliffe made a motion to table this matter to the next meeting June 17th for approval or denial of the CR. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries.

3. Agent updates

Agent Porter advised that she met with the MBTA yesterday and they have a proposal for track upgrades along Nash Road. The applicant would like to know what type of application they should file with the Conservation Commission for this proposed work. Agent Porter advised them of the 25' no disturb zone and they are exempt from local by-law but will adhere to it wherever they possibly can. Their stormwater management would be to put things into a proposed under drain and then collect that water and take it down to an upland area with discharge to the buffer zone.

The Commission agreed that an RDA should be filed.

4. General Correspondence

PADANARAM AVENUE

Agent Porter advised the Commission that one of the owner's that recently purchased a home on Padanaram Avenue needs to do structural repairs to a roof and he is not expanding the roof but he needs P.E. Stamped plans for the building department and she inquired whether the Commission would like the owner to file an RDA application or not. Agent Porter stated that normally with a standard roof repair a permit is not required but the owner is proposing structural repairs. Agent Porter advised that they are not changing the footprint of the roof itself.

Chairman Motta confirmed that he is just replacing the current roof and there is no increase vertically or horizontally and are only doing a structural repair to a house that is in a flood zone.

Agent Porter stated that he is changing the design in the roof but not raising it and just making it more slanted.

The Commission agreed that he will need to file P.E. Stamped Plans with the building department and does not need to file an application with this Commission.

BISMARCK MEADOWS ENFORCEMENT ORDER

Commissioner Radcliffe made a motion to ratify the Enforcement Order for Bismark Meadows. Motion was seconded by Commissioner Dixon. All in favor. Motion carries.

MADDIE DRIVE

Chairman Motta advised that there was a site meeting at Mr. Krouzek's house on Acushnet Avenue and the property owner of lot on Maddie Drive and they were amenable to resolving the problem. Agent Porter was at the site on Friday and they took the swale out per plan and they have graded and draining to swale. Chairman Motta stated that when he spoke with the contractor his intent was to take all the runoff from the rear yard area and redirect it to the detention pond as opposed to the south.

ELECTION OF OFFICERS

Commissioner Audette made a motion to nominate John R. Radcliffe as Chairman. Motion was seconded by Commissioner Dixon. All in favor. Motion carries. Commissioner Radcliffe accepted said appointment.

Commissioner Audette made a motion to nominate Craig Dixon as Vice-Chairman. Motion was seconded by Commissioner Pacheco. All in favor. Motion carries. Commissioner Dixon accepted said appointment

5. Meeting Minutes of March 19, 2014 for approval.

There being no additions, corrections or deletions of substance, a motion to approve the Meeting Minutes of March 19, 2014 was made by Commissioner Dixon. Motion was seconded by Commissioner Radcliffe. All in favor. Motion carries.

A motion to adjourn was made by Commissioner Dixon at approximately 7:48 pm. Motion was seconded by Commissioner Audette. All in favor. Motion carries.

Respectfully submitted,

Sandy Douglas
Administrative Specialist