



City of New Bedford  
Scott W. Lang, Mayor

## Minutes of the Conservation Meeting of December 6, 2011 Room 314, City Hall

### Members Present

John Gurney, Chairman  
Robert Morris  
Jack Radcliffe

### Members Absent

Bonita Cade  
Kenneth Motta

### Staff Present

Agent Sarah Porter  
Sandy Douglas, Admin. Specialist

Chairman Gurney called the meeting to order at 6:31 p.m.

Chairman Gurney advised that the NOI application by NSTAR will not be heard this evening and has been postponed to the next meeting and that the representative for the NOI application for Barnum Street will be arriving at a later time because he is at another meeting.

### OTHER BUSINESS:

#### 1. Bledar Gora to address the Commission with regard to 94 Mate Drive.

Agent Porter advised the Commission that Mr. Gora had contacted her with regard to this property and inquired whether or not the split rail fence could be moved and she recommended that he appear before the Conservation Commission. Agent Porter stated that it is a small lot and she pointed out the property on the map to the Commission.

Mr. Bledar Gora advised the Commission that this property has absolutely no yard and the land cannot be accessed because of the fence and shrubbery and he is not planning on building any permanent structure on the property but feels that this fence places a restriction on the property. Mr. Gora stated that he was an attorney and feels that this is a "taking without compensation" and he began to cite case law from Supreme Court and stated that this is considered an irregular taking and there is an ordinance that doesn't allow you to build certain things on your property or restricts you from using your property and also cited a North Carolina case in support of this.

Commissioner Radcliffe stated that he would like Attorney Gora to provide the Commission with copies of these decisions that he is citing for the record.

Chairman Gurney inquired whether Mr. Gora presently owns this property. Mr. Gora replied that he has signed a Purchase & Sale Agreement and a closing is presently scheduled for January 6, 2012.

Chairman Gurney commented to Mr. Gora that it seems that he has done a lot of legal research and asked that Mr. Gora then explain to him the research that he conducted with regard to the Wetlands Protection Act and why there is a 25 foot setback. Mr. Gora replied that he had looked at the ordinance and that the purpose of the 25 foot setback is to protect the wetlands and animals.

Chairman Gurney explained to Mr. Gora what the Wetlands Protection Act is and gave him different scenarios as to why this Act is important and how it also protects the resources because of the value it has to the society. Chairman Gurney also explained to Mr. Gora the importance of setbacks and that a functioning wetland belongs to everyone. Mr. Gora agreed with the explanation.

Mr. Gora continued to argue that he cannot use this property because of the wetlands. Commissioner Radcliffe stated that if a piece of property has some sort of defect in terms of the purpose one wishes to use it for then it should not be purchased. Commissioner Radcliffe added that this Commission has already compromised with this development to the extent of reducing the 50 ft. buffer to a 25 ft. buffer and he feels that there is no room for negotiation at this point to further compromise this wetland.

Chairman Gurney stated that this argument has been brought to the Commission by many people and that Mr. Gora cannot do what he pleases with this land because there is a wetland there and in the State of Massachusetts it is controlled by the Wetlands Protection Act.

The Commission agreed that Mr. Gora is purchasing this property knowing there are restrictions on this property because of the wetlands. Mr. Gora stated if this is state wetland or city wetland, then why would this property be sold. Chairman Gurney replied that he would have to ask the developer as to why he is selling this property.

Commissioner Radcliffe explained to Mr. Gora that this is not a personal matter it's about the Commission having a sworn duty to uphold the law. Mr. Gora continued to disagree and debate the law.

Chairman Gurney advised Mr. Gora that the debate will not be continued because the Commission is a body that is bound by the Wetland Protection Act in the State of Massachusetts and if Mr. Gora doesn't like the law then he would have to go to the State Legislature to change the law.

Chairman Gurney explained to Mr. Gora that the Commission understands his position but unfortunately there is nothing they can do and wished Mr. Gora luck.

## **2. General Correspondence**

Agent Porter advised the Commission that Richard Rheume of Prime Engineering has filed a NOI and he has requested that this file be submitted to Nitsch for review. Agent Porter agreed that this matter should be sent to Nitsch.

Commissioner Radcliffe made a motion to send the NOI from Tarkiln Place to Nitsch Engineering for review. Motion was seconded by Commissioner Morris. All in favor. Motion carries.

## **3. Agent's Updates: Padanaram Ave/Dartmouth Grant application.**

### **DARTMOUTH GRANT APPLICATION**

Agent Porter advised the Commission that the Town of Dartmouth did not get the grant money for the construction of the stormwater facility and they will be resubmitting.

### **PADANARAM AVENUE**

Agent Porter reported to the Commission that there is a big violation at 1510 Padanaram Avenue. Agent Porter advised that the violator, Martins Family Nominee Trust, was previously before the Commission and stated that he was only going to do interior work. Agent Porter showed the Commission pictures of