

Conservation Commission
September 24, 2012
Present: Present: Chair, Joe Taylor; John Dallen, Cora Peirce
Andy Jones & Janine Peccini
Absent: Steven Pereira & Jay Simmons

Meeting called to order at 6:30pm

Chairperson, Joe Taylor asked if anyone was recording the meeting, to which no one answered. He also asked for the audience members to either shut off their phone or put on vibrate.

Before they began with New Business, Joe Taylor advised that the board would hear from William Roth, regarding donated land.

Mr. Roth addressed the board and stated that the land owner of a subdivision on Washburn Street wanted to donate a land parcel to the Conservation Commission. He stated it was the entire lot to the North, Parcel A on the plans he gave to the board). He said he will just need to make sure that all the taxes are paid.

Andy Jones made a motion to accept the land donation, after all the taxes have been paid on it; Cora Peirce 2nd the motion. All in favor.

NEW BUSINESS:

- 1. Notice of Intent, Applicant Fairhaven Shipyard Companies, Inc., Location 32 Water Street Plot 07, Lot 001, Purpose installation of steel cofferdams, removal of unsuitable materials (dredging) placement of structural fill. Installation of utilities and pavement for three service bays within a flood zone.**

Susan Nilson of CLE Engineering was present to speak on behalf of Fairhaven Shipyard Companies. Ms. Nilson provided the board with a packet of the project narrative and reviewed it with the board. The project purpose of the project is to improve the shipyard infrastructure and service capabilities by increasing the number of work bays for vessels hauled by the travel lift on site. The project proposes 3 additional bays. Ms. Nilson added they would be doing the least damage to the environment in their dredging; and this improvement would be adding additional jobs to the area.

Kevin McClaughlin of Fairhaven Shipyard was also present and he stated that there is a lot of space, and they work on boats up to 160' long.

Ms. Nilson said they have had mitigation meetings in front of the state and federal agencies and they are committed to work with the Shellfish Warden in town to get a plan down for seeding and the shellfish.

Andy Jones asked if they were in receipt of the 9/19/12 letter from Department of Fisheries, to which Ms. Nilson replied they had. Mr. Jones then asked if they could review each concern from the letter. Ms. Nilson read each point/concern made in the letter, and then responded to it.

a) The cofferdam and solid-fill pier system will permanently remove approx. 11,135 sf of intertidal/subtidal habitat. The proponent needs to develop an appropriate mitigation plan and work with state & federal agencies to address the loss of Essential Fish Habitat and shellfish habitat. The mitigation plan as proposed (shellfish seeding) has insufficient detail.

Ms. Nilson responded that 'true we don't have a lot of information.' She said they are working with DEP to get more information in the proposed plan.

Andy Jones said that he knew this one was going to be a concern and knew that was an on-going project they had to work out.

b) The proponent should submit a more thorough alternatives analysis that clarifies the extent to which each alternative minimizes environmental impact.

Ms. Nilson said they did submit a more thorough alternative analysis in the proposed narrative. She advised it was in the summary, pages 10-16.

c) It was unclear in the application and at the site visit if contaminated sediment exists and specifically how it would be handled. Using the site as a contained disposal facility (CDF) instead of using a confined aquatic disposal facility (CAD cell) should be discussed in the application and potential alternatives for fill materials should be provided.

Ms. Nilson advised they did state in the narrative to do more testing. They don't want to be tied to taking in what they're trying to get rid of.

d) If a CDF is feasible in this location, the relationship of this project with other harbor development projects should be identified.

They advised they are trying to get clean sand from CAD cell, it's all about the timing.

Cora Peirce made mention that Marsh Island is going to be stripping their sand as well, so they may have some available.

Joe Taylor asked, "Granular?"

Ms. Nilson said, "Yes."

e) The applicants should consult with Neil Churchill in the Marine Fisheries Shellfish Program to determine if the relocation of quahogs found within the project footprint is warranted.

They agreed.

f) No silt-producing work should be performed from Jan. 15-June 30 to protect winter flounder and diadromous passage, spawning and juvenile development. Cofferdam installation and dewatering should occur outside of this timeframe. Work conducted inside the cofferdam will not require a time of year restriction.

"That's expected," Ms. Nilson said.

g) The dredge material will require dewatering prior to either upland disposal or disposal into the CAD cell. If the dewatering area is onsite, adequate containment, and if necessary filtration, should be required.

It would go on a barge to CAD cell, they advised.

Joe Taylor said he would refer this to Andy Jones, where as he has more experience.

Andy said, "it totally makes sense."

h) The proponent's description includes the installation of a pressure wash pre-treatment system and storm water management. However, the ENF and plan do not address these items. Marine Fisheries requests more information.

Ms. Nilson advised they have included more information with their Notice of Intent.

Chairperson, Joe Taylor said this was one of his concerns, and asked if the system they have now will be able to handle more storm water without a problem?

Kevin said they don't power wash in the rain.

Andy Jones said, "I don't imagine you'll be power washing 10 boats at a time."

Kevin replied, "Right. It's one at a time."

i) Appropriate containment techniques should be used to prevent construction debris, storm water runoff and loose sediments from entering the marine environment during construction.

Ms. Nilson agreed this was standard.

Joe Taylor said his only other concern would be testing on the soils and the shellfish; "I'd like to get more information from them before we stamp our approval on this project," he said.

Cora Peirce said the hard part is they still don't have a formula we can use to figure that out.

Andy responded regarding the mitigation feeding formula, and that we wasn't so concerned with the contamination of sediments that are there, and he said, 'again, it's all about the timing, and they know that.'

Ms. Nilson said it would either be a CAD or shipped off sight.

Andy said he did think that the shellfish thing needs to be looked at; and it would be nice to get some feedback on it.

Ms. Nilson asked if they would be accepting to state/federal agencies advice.

Andy said he would refer to the Town's Shellfish Warden, but they would obviously agree with any state or federal advice regarding the matter.

Andy asked when they wanted to start the project.

Ms. Nilson said that Kevin would like to start asap, but realistically..

Kevin said, "Realistically not til next summer."

'Binding to the shellfish stuff,' Ms. Nilson said.

'The shellfish stuff needs to be ironed out,' Andy said.

Ms. Nilson said that Tim Cox has been to several meetings, but nothing concrete.

Joe Taylor said it seemed we were all coming together on the plan; but that he would like to move the meeting to the following one (10/15), and between now and then he would discuss with Tim Cox, and put it down on paper to what his suggestions are.

Andy said he'd be happy with a suitable condition.

Janine said, 'what then if division of marine fisheries said something different.'

Ms. Nilson said they are meeting again with the Division of Marine Fisheries.

Joe Taylor said he'd feel more comfortable putting it off to the next meeting, and going down to the site with Tim Cox.

Cora asked if they wanted to do this as an on-site?

Joe said, "that's fine."

Andy said that basically this was Tim Cox's jurisdiction overall, and that if he's okay with taking direction from the state, I'd like our shellfish warden to be accepting.

Ms. Nilson repeated that he had been at meetings, but nothing was concrete.

Andy made a motion to continue this hearing to the October 15th meeting, which is the next meeting; and in the meantime they would consult with the Town Shellfish Warden regarding the shellfish and restoration plan; Cora 2nd. All in favor.

Andy then asked if Ms. Nilson had any suggestions on how to word a condition, from her experience, if she could submit it to them; which she agreed.

2. Notice of Intent Applicant Dave Hebert. Location Cottonwood Street. Plot 43C, Lot 46, 219, 47,223, 48, 225 & 49. Purpose resource improvement.

Applicant, Dave Hebert was present with his engineer, Dan McHugh of NE Wetlands.

Mr. McHugh began by showing the board on plans an area of salt marsh originally taken over by fragmities and historical fill they they were going to improve on.

Andy Jones asked for the background on the project.

Dave Hebert said it was a mitigation project that has been going on since 2002; he said he had to restore wetlands from what his forefathers had done. "This is the 7th step, so to speak," he said. Historically a wetland and they are proposing to restore back what nature made.

Andy Jones confirmed that it was at the end of Cottonwood street which is a paper street layout, to which they agreed.

Joe Taylor asked if they have a restoration plan; and then he said that it was not easy to restore a salt marsh. "Not an easy thing to do," Joe Taylor said.

“What is?” , asked Dave Hebert.

Andy Jones asked if there was a time frame requirement on the project.

Dave Hebert said that the Army Core has that information, he had a previous engineer working on the job, but he just moved to Colorado.

Dan McHugh said they have a 100% track record and he presented the large plan to the board. Mr. McHugh explained that traditionally it was a very nice marsh, they are going to do a low marsh and with a low marsh he thinks it will stand.

Joe Taylor asked if the property is state owned.

Dave Hebert said it was not, just old lots.

Andy Jones said he would like John Rockwell to look at the site and give his input.

Joe Taylor explained why we use John Rockwell.

Mr. McHugh said that it's a good project overall and that the Army Core can't approve it, til the ConCom approves.

Joe Taylor asked for abutters, to which there weren't any.

Joe Taylor said let's agree to a continuance to 10/15, the next meeting; and in the meantime he'll contact John Rockwell.

Andy Jones said, “Technically, the whole board doesn't have to go with John, he's our technical person.”

Andy Jones made a motion to continue the hearing til 10/15/12 and have John Rockwell go out for a site visit. Cora 2nd. All in favor.

3. Request for Determination, Applicant Omar El Halabi. Location 4 Newton Street. Plot 22B, Lot 397. Purpose install sona tubes for second floor addition within 100' buffer zone to BVW.

The applicant's cousin, Salim Khalif was present to speak on applicant's behalf. He said they want to extend the 2nd floor eight feet.

Andy Jones asked him to point out on the plan where his house was, and confirm there's lawn & then wetlands after; to which Mr. Khalif agreed.

Mr. Khalif said they were going to add 5 sona tubes between house and septic.

There was an abutter who came in with his letter, who didn't understand why he was notified. Joe Taylor explained to him why he received the letter. The abutter was satisfied.

Andy Jones made a motion for a -3 with no special conditions. Cora 2nd. All in favor.

Andy advised the board there was no paperwork for them to sign, as Wayne F. didn't leave it, so Joe will talk with Wayne, and people will have to stop in to sign it. Joe Taylor advised Mr. Khalif that he can still come in on Wednesday to see Wayne for the paperwork.

RESCHEDULED HEARINGS:

1. Notice of Intent, Applicant Steven Block. Location 624R Sconticut Neck Road. Plot 41, Lot 2 Purpose Salt Marsh Restoration.

Joe Taylor asked Mr. Block if he received the email from John Rockwell, which he stated he did.

Joe T. asked about the portion upfront, suitable materials and everything will be carted off site, to which Mr. Block agreed.

Cora Peirce stated that Mr. Block knew that the delineation line was for this project only?

Mr. Block agreed.

Cora made motion to agree with the following 8 special conditions:

1. EMC-1
2. REC-1
3. REC-3
4. MAC-3
5. MAC-4
6. The delineation line is valid for this project only.
7. DEB-1
8. The use of the onsite disposal area for excess suitable material north of the wetland line

denoted by flags (BZW-100, BZW 101 AND BZW 104) is prohibited. Any activity in this area will require anew Notice of Intent and a new resource area delineation.

Andy Jones 2nd the motion. All in favor.

Mr. Block said that it's a pro-active restoration project, it's to enhance the resources that are there.

Joe Taylor asked when they were looking to start the project.

Mr. Block said, 'earliest April, but most likely later.'

2. Notice of Intent, Applicant Richard Gomes. Location 14 Sylvania Street, Plot 34A, Lots 149-150. Purpose install 6' stockade fence and above ground swimming pool within the BVW (after the fact).

Joe Taylor said there was a letter sent to Mr. Gomes to do a wetland delineation, so he recommended moving this hearing to the next meeting of 10/15.

Andy Jones asked if Mr. Gomes did a wetland line when he first came to see us?

Joe Taylor said he asked Wayne and he said, 'no.'

Andy Jones agreed to just continue it.

Andy Jones made a motion to continue to 10/15, Cora 2nd. All in favor.

OTHER BUSINESS:

In other business, Richard Rheume was present on behalf of Luis Pacheco of 307R Sconticut Neck Road. Mr. Rheume showed the board historic pictures that the wall was there in the 90's, it was just the new rocks he put on top of the wall. He said they filed an amendment to the order to keep the wall.

Andy Jones advised the board they didn't have any paperwork, so they can approve it, but they would have to sign it at a later date.

Joe Taylor reiterated it was just to keep the wall there, because it had historically been there; but to just take the stones off of it.

Janine Peccini asked if the amendment was to remove everything.

Joe Taylor explained, no just the rocks; and allow the wall to remain in place.
Cora made a motion to amend the order to leave wall to it's historic shape, John Dallen 2nd. All in favor.

Bills:

Fairhaven Neigh. News \$35.00 for advertising.

Cora P. made a motion to pay the Fhvn. Neigh. News \$35.00, Andy Jones 2nd. All in favor.

There were no Certificate of Compliances to discuss.

Enforcement Orders:

Andy Jones read that there were 2 outstanding enforcement orders that Wayne wanted the board to vote on to take it to the next step in housing court.

The enforcement orders were for

1) Property at 6 Cove Street. Bulldozing a dune.. issued on 6/18/12, received on 7/23/12 and has failed to comply.

2)Property located at 28 Monatauk Ave., alterations of a barrier, bobcat on a dune, issued on 6/18/12 and received on 6/28/12. Has failed to comply.

Cora Peirce said she was unsure why we were rushing to housing court with these two from June, but there are a lot more out there that has been out there for longer time.

Andy Jones said although he agrees with Cora, he believes the board needs to have a clear indication of what comes next. These were ratified, signed and we have to set the tone.

Andy J. made a motion for Wayne to file in housing court on these two outstanding enforcement orders and John 2nd. All in favor.

Joe Taylor said that he would speak to Wayne to go back & get a list of all enforcement orders that are out there, and that we need to do this for all of them.

Andy made a list of enforcement orders they remember, Charity Stevens Lane, Bayview Avenue (that is owned by someone on Manhattan Ave); and New Boston Road (contractor left cement & bricks within a BVW).

The minutes from the previous meeting 9/10/12 were forgotten to approve in the beginning of the meeting, so Joe T. asked someone to make a motion on the minutes.

Cora P. approved the minutes from 9/10/12 as presented, John Dallen 2nd. All in favor.

In other business, Joe Taylor started to say that he visited the old movie theater with ..

But was interrupted by Andy Jones who said, "We don't do an on-site without a notice of intent."

Joe T. said, 'they were looking for direction.'

Andy J. said he was of the opinion that the board should not be going on any site visits without the proper paperwork being done.

Joe said, "My mistake, now I know."

Joe T. said that he was starting to gain information for new wetland scientists, to have more than just a few to use.

Cora Peirce said that Westport had a great link on their website with a lot of different names.

Andy Jones said he'd rather piggyback on that, then to have us gathering information on different names.

Joe Taylor explained that he was trying to get some people's names, so they have a number of consultants at their disposal, so we can approve them.

Andy asked, 'approved by who?'

"the commission," Joe Taylor said.

Andy explained that he appreciated Joe going through the work, but it's a waste of time. 'You're collecting information', he said, 'but it's dependant on the project.'

Joe said he was just trying to gather information of consultants so they had enough people, for the board to use.

Joe said that maybe at their by-law meeting they can discuss it then, on how to add new consultants.

Andy J. said he wasn't sure how that would be done, but we can discuss it.

There was a brief discussion on the process.

Andy Jones then advised the board that on Sunday, he got a call from the harbormaster who said that there was a vehicle on the tip of Hoppy's Landing in the water with his truck. Andy and Cora went out there, and indeed there was a truck that had been moved, it was two town fishermen who drove through the saltmarsh in other tire tracks. Mr. Jones informed them that the property was Town Property and they really couldn't drive through the saltmarsh. Mr. Jones said it surprised him that there was no tire spinning damage, it was as if the truck went in/out the marsh right on the tire track marks of previous trucks.

Initially they thought that a sign would be good down there, but the police department thought it wouldn't be a good idea, if it was a metal sign, someone might steal it; if it was wood they may use it as fire wood. So they came up with the idea of adding 5-6 boulders down there, big enough so that people could see you can't drive through there. So the DPW, will be doing that.

Cora made a motion to adjourn; John 2nd. All in favor. Meeting adjourned at 8:30pm.

Respectively submitted,

Patricia A Pacella
Recording Secretary

5. **Notice of Intent.** Applicant Luis Pacheco, Location 307R Sconticut Neck Road. Plot 29/29D, Lots 16F/1C Purpose removing invasive vegetation and stabilization by planting a lawn construction of a stone wall within 100' of coastal bank and within a VE flood zone, after the fact.

Engineer, Rich Rheaume was present to speak on behalf of applicant. He said he went out with John Rockwell and there is 4-8" of fill in that area. Dune as salt marsh. After removal of fill, planted wetland seed, built a wall in the wetlands, and it's up to the commission whether they want to take out the stone wall. So we're basically here to find out the disposition of the wall.

Andy Jones read an email he received from John Rockwell. Andy said he was of the opinion to remove the stonewall and move it to the west of the wetland line. It's an after the fact filing, site restoration correct? He asked.

Richard Rheaume said, 'yes.'

Andy Jones read the plan dated revised 8/20/2012.

Joe Taylor made a motion for an approval on the Notice of Intent with 5 special conditions. The 3 Standard conditions: EMC1, REC-1, & REC-3; and #4: that the Stone wall, out of resource area, be removed prior to fill; and #5: Fill within BVW must be removed. Steve Pereira 2nd the motion. All in favor.