



**Minutes of
Danvers Conservation Commission
Thursday, October 12, 2017
Danvers Town Hall**

The Danvers Conservation Commission held a public meeting on Thursday, October 12, 2017, at Danvers Town Hall, Toomey Room, 1 Sylvan Street.

Members present: Michael Splaine, Chairman
Chelsea King, Member
Peter Wilson, Member
Neal Waldman, Alternate Member

Staff present: Georgia Wilson, Planner
Alicia Linehan

Mr. Splaine opened the Conservation Commission meeting at 7:00 p.m. with a reading of the “Commission Statement.”

1. Public Hearing [310 CMR 10.05(4) - NOI
• **Summer and Maple Street; DEP File No. 14-1301**

Stephen King, represented the Town of Danvers DPW Civil Engineering Division. The Town requested VHB to conduct a study for improvements at the intersection of Summer and Maple Streets. There is a pre-feasible plan in place to install signals. This project does abut the riverfront area that includes some improvements and relocation of flood plain storage. The commission, joined by some of the neighbors, did a site walk on Tuesday, October 5th. These neighbors were appreciative for the project. The plan have not changed and project is set to begin spring of 2018.

MOTION: Mr. Wilson makes a motion to issue an Order of Conditions for Summer and Maple Street, DEP File No. 14-1301; Ms. King seconded; all in favor.

2. Request for Certificate of Compliance
• **11 Jacobs Landing; DEP File No. 14-871**

Attorney Arthur Goldberg, one of Mr. Winthrop Knox’s representatives, reiterated that the Commission had motioned to continue the last hearing because they questioned whether or not the order of conditions were met on the amended order. One of the issues expressed by the Commission was the starting and ending point of the dock. Following the September meeting, Mr. Pierson, an Engineer of Weston & Simpson, went to the site and found the starting point for measurements and updated the survey. Mr. Splaine stated that the dock was initially represented 9 feet then 9 ½ feet too long in length. The applicant changed his position and said it was measured wrong. It is only 5 inches too long.



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Attorney Goldberg reminded the Commission that the dock is 13 years old. And the reason for being in front of the Commission is because the building department denied him a permit to expand his deck due to an outstanding order of conditions. The issue is whether or not Mr. Knox complied with the Commission's amended order of conditions. And because thirteen years have passed since the dock was built, if the Commission determines an error, then remediation would cause greater harm than leaving it as is.

Attorney Goldberg read the letter of September 30, 2004 from Mr. Knox to Kristan Tarricantz that contained the requirements from the Commission.

The problems found were:

- Dock needed to be 2' higher
- Dock float was resting on mud flats during low tide.
- Possible grounding of boat during moon tides
- No channel exists in dock area & dock can move without concern.

The changes to plans included:

- Raising the dock deck 2'
- Extending non-floating part of dock out an additional 29'6"
- Shorten floating dock by 20'
- Turn floating dock at 90 degrees to run parallel with the shore line.
- Remove moorings and use piles to support floating dock as requested by the Harbor Master.

These changes were reviewed by the Corps of Engineers, the Harbor Master and Ms. Tarricone (Staff Planner) and needed to be presented to the Board for modifications to the existing Order of Conditions.

Attorney Goldberg then referred to the email to Mr. Knox from David Keddell of US Army Corps of Engineers dated September 27, 2004 regarding the changes. The part of the plan process to Mr. Knox's resubmission was that the Harbormaster would have involvement in the final placement of the floats and associated piles to be sure that there are no hazards to navigation while maintaining a depth of water appropriate for keeping the craft afloat during low tide events. The significance of this is that the Harbor Master at that time is the current Harbor Master. Attorney Goldberg stated that if that is the case, then within 13 years he would have raised an issue with the placement prior to Mr. Knox applying for a recent permit.

In 13 years there's been no issue with navigation. The commission was out on the site visit and saw that there are floats and piles, so clearly complied. Attorney Goldberg stated that it is not 200 feet if it drops you in the mud flats, not 200 feet if it drops you in a place where propeller wash doesn't work. It's 200 feet taking into account the mud flats, propeller wash, pilings are that a boat's not going to go there and no interference with navigation.

Attorney Goldberg also mentioned an additional issue with being 5 feet or more away from the mooring dock. The measurements presented show 215 feet out is the mooring. That distance is beyond where Mr. Knox's dock is. The starting point of the 200 feet is the end of the floating pier. The edge of the mud flats is



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somewhere towards the edge of the 200 feet of the dock. The dock must be a certain level and length so there isn't a drop. Attorney Goldberg showed the picture where the deck does not interfere with the seawall and mud flats. Mrs. Wilson confirmed that there is a 76 foot natural gas easement under the dock. If remediation is ordered by the Commission, this would affect the natural resources they are trying to protect by the original and amended Order of Conditions. Again, the question is whether or not Mr. Knox complied with the amended order of conditions.

The next representative was James Pierson, Engineer of Weston Sampson Engineers. Mr. Pierson wasn't responsible for preparing the plan but was given the plan originally, prior to July 2017 conducting a site visit of the dock and comparing it to the plan. He did a comparison of the "as built" conditions to the plan conditions. The problem that presented itself was that there are some dimensions on the dock itself but there are not any dimensions shown at the point of the beginning of the dock to the house. The only clue that the drawing gives you where the dock is supposed to begin is in the profile where it states the connection to the existing deck. At the initial visit to this site it became apparent that where the plan is showing the existing connection to the deck it didn't look as though it lined up accurately with where the existing deck was in reality. So initially when the measurements were made, prior to July 2017, for lack of any initial beginning the depiction of house and lines were presumed to represent the deck were used to as a starting point of measurement. Mr. Knox hired Weston Sampson Engineers in October 2017 to review measurements because there was concern there may be a discrepancy. It appears that the way the house and existing deck are depicted on the plan are not accurate as to what is currently out there. The other thing depicted on the drawing is the existing seawall. The existing house and deck are represented appropriately to scale with the relationship to existing seawall. During this review the engineers looked at the depiction of where the seawall is shown. The first row of piers is depicted to be installed at the toe of the seawall. At the site the first row of piers are indeed installed in that location. The beginning of the 200 foot dock length begins at some point landward of the piers, the engineers scaled the distance of the plan to where that point beginning is shown and then scaled out at about 5 feet. The point of the beginning of dock was used as 5 feet landward to piers and measured out to the end of the float the footage of the dock to be 200 feet and 5 inches. The question was asked where 5 feet off the first set of pilings places you. The answer is somewhere towards the middle of the seawall. The seawall is sloped. According to the way the drawing is scaled, the deck appears to be in a different location, however it is much further back. It seems it is depicted indirectly in relationship as to where the seawall is in the drawing. The question was asked if this is the drawing that was filed. This is the original drawing filed and on record. Addition questions – Was it filed in 2004; prepared by engineers; what is the date on the plan? Response - it was prepared on June 24, 2002 and revised in 2004 by Williams Engineers. The original order of conditions was in 2002, which was amended. The 2004 plan is the one presented.

Mrs. Wilson questioned some points in the October 5th letter. It refers to as shown on the plan only 15 sets of piers, rather than 16 sets. Mrs. Wilson counted 15 not 16. Mr. Pierson confirmed that there are actually 14 installed which is shown in the photo, rather than the 15 stated.

Andrea Daley, Precinct 3 and Town meeting member gave a brief history on the property. It was a parcel of land (3 acres) initially set for 32 townhouses. The residential zoning was then changed from 1 to 2 and so fell flat for being developed as condos. The seawall was then built. It is not straight up and down vertical but



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pitched at an angle, maybe a 20 or 25 degrees. If it were built straight up and down it would hit the mark. And if measured from the base to the top it would be different. Whoever did the measuring may be a difference of 5 or 9 feet. This property was surveyed in 2002, revamped in 2004 for an amended order of conditions and that may be why the measurements are off.

The moorings were then addressed.

During the site visit, Mr. Wilson was told that the mooring was moved. However the mooring is shown in the picture. What is shown in the picture is not a mooring, but a drawn dot to depict a mooring.

Pete Clement of Danvers Mooring and a Town meeting member stated that the moorings are still in place. He requested that the Committee look on the picture, there are two floats at the end. These moorings are now lobster pots. Mr. Clement went to service the mooring and placed it back in the same spot. He told the Commission that if you pull up on the mooring/chain, you will find out where it was. This would tell the committee that if Mr. Knox went by where the mooring is, it would give the reference point Mr. Knox alludes to, a GPS reading.

Mr. Splaine asks when the moorings were removed. Mr. Knox responded that the moorings were moved when the dock was built. He states that when the barge was in place, the mooring were relocated to the west. The purpose of the two moorings on the original plans were to anchor the dock by the moorings, not the piers. But the Harbor Master requested it be anchored by the piers. So the moorings were then removed and relocated. What is depicted in the drawings is the 215 feet which determines where the mooring was located because Danvers Mooring stated GPS could not be relied upon, wouldn't be accurate 12 years ago. Mrs. Wilson states that there are longitudes and latitudes of where the mooring was, so longitude and latitude would still apply. Mrs. Wilson asks at what stage of construction the mooring was removed. Mr. Knox responded - It was removed at the first stage of construction. She then asks how he knows that the dock was built 5 feet from the mooring if it were already removed. Mr. Knox relied upon the contractor that measurements were correct based upon contractor removing the mooring. The purpose of the placement of the dock in reference to the mooring is that was to make sure that the waters were navigable and no harm to boating. And as passage of time indicated, there have been no incidents that Mr. Knox or his representatives are aware of.

Mel Higgins, Sr. Environmental Scientist of Weston & Sampson, pointed out the hazards if the Commission should decide the dock needs to be modified. Over the 13 years the dock has been in place, shell fish habitats have grown around and within. If Mr. Knox is asked to move the dock inward, this would cause disturbance of shell fish habitats where the piers currently exist. If the dock were to be shortened, the rudder dredging would also cause a disturbance. And certainly would not want to disturb the gas line that runs below the dock. Mr. Splaine agrees that one concern of the Commission is disturbing the existing shell fish habitats. The question was asked, when original pilings were put in was the same magnitude of disturbance created then as what would be now? Mr. Higgins doesn't know the methodology that would be used now. There really isn't any reason to disturb the beds if only moving a dock on 5 inches. Splaine stated that the Commission is not concerned with 5 inches, but rather the 5 or 9 feet. The starting measuring point is going to be 5 feet in from the first pile. Measured at 5 feet behind that pile on out to the end, the dock measured at 200 feet and 5 inches.



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Mr. Wilson addressed the gas pipe disturbance. He asked how deep down is the pipeline. It is 70 feet below and drilled through mud. Mr. Wilson would like to have that established. 40 foot piles, 20 feet above ground and 20 feet below ground.

Andrea Daley contacted Maritimes of Northeast Pipeline. Andrea was founder if the Maritimes Northeast coalition in 1999. At that time the Maritimes were bringing a gas pipeline from Nova Scotia to Dracut and from Dracut to the Salem Harbor. It was discussed with the neighbors and Mrs. Daley formed coalition with several towns in the area that were going to be affected by this natural gas pipeline. It goes from Dunkin Donuts out to the channel, through a land route (directional drill) of Kernwood Country Club and empties out into McKay Park. The gas is distributed to barges from Beverly Harbor. The intent is to bring it down to Florida. Mrs. Daley showed the plan obtained from Rick Rodgers that shows the route of the pipeline. Mr. Knox's pier pilings go on top of the pipeline. It is 75 feet down from the flats and encased in metal that doesn't erode with a casing of concrete around it. Pulling down or pulling up the pilings isn't going to affect the integrity of the gas pipeline because not corrosive, encased in cement and 75 feet down. Mrs. Daley provided staff area of where the pipeline is for the file.

Attorney Richard Nylen, Environmental Specialist, stated that the conditions were met. The length of the dock is 200 feet & 5 inches long and navigation is more than 10 feet away from the where the mooring was located. Attorney Nylen pointed out the fact there was a Chapter 91 license issued, but because it was never recorded, it became void. Mr. Knox will have to go through the Chapter 91 process again. This plan will be submitted with the application. And if there are any questions with navigation, it will be addressed during this process. Mrs. Wilson pointed out that this was not built as approved per the order of conditions and the amended order of conditions. One of the requirements is that the applicant has all applicable licenses before construction, and Mr. Knox did not have his Chapter 91 license when the dock was built and hasn't had it for the past 13 years. The dock was built without the required permits which is a ground for denial should the Commission choose. As for the length, this is secondary concern.

The Commission was concerned that when Mr. Knox files his Chapter 91, it would require a valid Order of Conditions. Also the odds of the Chapter 91 reviewer approving a 2004 Order of Conditions would be unlikely because it may be very outdated and not applicable to today's requirements. The plan attached to the Amended Order of Conditions is not what was as built right now. For example the gazebo was suppose to be 8 feet from the float and its 21 feet. Mrs. Wilson had confided in Town Counsel, DEP waterways division, and DEP Northeast division and proper procedures weren't followed. It is a 13 year old plan with an expired Chapter 91 license. Mr. Splaine mentioned that the Commission would like to have Mr. Knox file again. However Attorney Nylen stated the he doesn't see a problem with DEP issuing a license with the 2004 Order of Conditions because the dock was built in accordance with the plan. The question was asked if the applicant will be submitting a new plan. The applicant will be submitting a new plan with the existing conditions. The Commission brought up the fact that all the rules of the Conservation Commission weren't followed, the recording of the Chapter 91 license. Attorney Nylen stated that if DEP says the Amended Order of Conditions is not good enough, then they will come back to the Commission, but should deny Mr. Knox based on what



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another organization may or may not do. The Commission would like a surveyed stamped plan. Mr. Knox will submit a plan with the existing conditions. The Chapter 91 license process may take from 4-6 months before a license issued. The commission is requiring a stamped surveyed plan. Staff asked Attorney Nylen to clarify when completing the Chapter 91 license what will be included with the application. He stated that when filing the Chapter 91 license, the amended Order of Conditions from 2004, the 2004 plan because the only difference between that plan and what's out there now is 5 inches.

Andrea Daley, pointed out that in last page from the Amended Order it states that all other conditions from the original order of conditions shall remain except as noted below. Noted below states that the Harbormaster shall oversee the final placement of the floats and associated piles to assure that this is no hazard to navigation while maintaining a depth of water appropriate for keeping any watercraft afloat during low tide events. However the Harbormaster did not oversee the placement, he was never made aware of this condition. Andrea points out that even though it was not communicated to him, this is still a legal document. The Commission agrees that the fact the Harbormaster wasn't notified, it is their problem and not Mr. Knox's. Mr. Splaine was not present at the September hearing and inquired what was presented by the Harbormaster. Mrs. Wilson read a statement from the Harbormaster that he was opposed to this scale because it intruded upon navigation in the channel and expressed his concerns to the Commission back in 2002 and surprised to see that the entire project was extended given his previous concerns expressed. Instead the construction of the pier was extended 9.7 feet and Mr. Knox never came back before the commission. This should have been addressed at the time. Mr. Sanborn stated that the reason for extending the dock in Mr. Knox's letter was not accurate and hindrance to navigation and would the Commission consider this in their decision.

The commission would like to see measurements from an independent agency. The staff is requiring new plans that will be submitted with the Chapter 91 License application.

MOTION: Mr. Wilson makes a motion to continue the hearing for 11 Jacobs Landing; DEP File No. 14-871 to April 2018 or until the Chapter 91 License is approved with conditions that independent survey is provided showing the exact location of the marker stated in the new order of conditions; Ms. King seconded; all in favor

- **Minutes – 9/28/17**

MOTION: Mr. Wilson makes a motion to approve the September 28, 2017 minutes, Ms. King seconded; all in favor

- **Staff update**

There's a beaver damn in Brentwood Circle that is causing flooding in that area behind a number of residential homes. Mrs. Wilson viewed the area with the Department of Public Health and DPW and requesting an emergency certification. This was done in 2013 and before as well. They will be removing the damn by hand, no equipment. The beavers will be trapped and moved. There is a concern that the beavers will return. The long term plan might be to install a beaver deceiver, a noise that deters the beavers from returning.



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Adjournment

MOTION: Mr. Wilson makes a motion to adjourn at 8:30 PM; Ms. King seconded; motion passed unanimously.

Respectfully submitted,

Alicia Linehan
Conservation Commission Secretary