



Town of Danvers Conservation Commission

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Commission Members:

Michael Splaine, Chair
Peter Wilson, Vice-Chair
Jean Hartnett
Chelsea King
Neal Waldman, Alternate

The Danvers Conservation Commission held a public meeting on Thursday, October 25, 2018, in the Daniel J. Toomey Room, Danvers Town Hall, 1 Sylvan Street.

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

Staff present: Erin Schaeffer, Principal Planner
Alicia Linehan, Secretary

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

A. Public Hearing [310 CMR 10.05 (4)] – Notice of Intent (NOI) – Continued from October 11, 2018

161 Elliott Street and 107 R Elliott Street, DEP File No. 14-1312

Applicant: Dan Delorenzo

A continuation of a public hearing to discuss proposed maintenance dredging along the northeastern end of the docks in Millet Creek by the Porter River.

Luke Fabbri of Geological Services represented the applicant. He stated that he has no further information to present this evening than what has been presented in the previous meeting, other than the zoning issue that was raised. A process has been initiated to obtain a municipal zoning certificate and a Chapter 91 license. He explained that every time a Chapter 91 license is filed, it is required to get a municipal zoning and planning board certificate. DEP will not process a Chapter 91 without the certificate. The question was asked how long it takes and how long it is good for. Mr. Fabbri responded that it is town dependent on how long it takes, and it is only good for the project, which in this case is 3 years.

To recap - the dredging was originally going to be done from 107R Elliott Street. It will now take place from the restaurant side of the Danversport Yacht Club. All sediment controls will be utilized. The Commission conducted a site visit, and everyone agreed that this was a much better location. A project engineer will always be onsite. The project is scheduled for the fall of next year between September 1st and February 15th. The expectation is that it will take between 2 to 4 months from beginning to end.

Andrea Daley, Precinct 3 Town meeting member stated that it is her understanding that a certification is required by the Zoning Board of Appeals and the Planning Board. She told the Commission that the Zoning Board of Appeals is going to have to appeal a court order that allowed the marina to be built because that is land court settlement. After that it will require them to go to the Planning Board to change the plans of the site. She pointed out that the applicant was asked at a previous meeting to provide copies of all the licenses that are valid and current. And questioned whether this has been done.

Mr. Fabbri responded that they have provided the appropriate documentation to the Department of Marine Fisheries, DEP and to the Commission. He suggested that any further concerns should be addressed regarding the permits should be addressed with Chapter 91 Licensing.

Mr. Fabbri told the Committee that he is aware of what Mrs. Daley was referring to. He explained that in 1978 DYC applied for and was issued a temporary permit (permit 203) with 150 slips. After that time, they were required to go back to the DEP and apply for a permanent license. They applied in 1984 but there were some issues around the bridge crossing North Creek. They went through a series of requirements that DEP put before them. In 1987 the DEP stated that the license application form 1984 was no longer valid because things had changed. They were asked to file a new license application. DYC then applied in 1987. The DEP finished review of that application in 1994. They drafted the permits, stamped the plans but lost them. In 2016 when the issue came before the Commission that the bridge was not permitted, they engaged Mr. Fabbri to research. He found that there was a set of plans that were missing from the Danversport and Conservation Commission files. After a series of conversations with the Chapter 91 license staff, they suggested Mr. Fabbri assist with looking for the files. In the end he found 2 license applications, one for all the floats and the other for the bridge and stone filled road as a permanent structure. There was an administrative consent issued in 2016. This was brought to DEP's attention. There is no statute as to when they must issue the permit. They have the permit applications and are now trying to figure out what to do with them. The DEP has the mylars with the plan numbers, but they are not recorded. Mr. Splaine asked Mr. Fabbri if this has anything to do with the project. Mr. Fabbri's response was that it does not. He suggested that if there are concerns with the structures, then Chapter 91 should be contacted.

Mr. Fabbri told the Commission that the stone filled road was part of the construction plans. Between 1997 & 1984, the elevation was dropped a couple of feet so that it is even with wetlands. This was authorized by EPA, DEP, Army Corp of Engineers. The question was asked if this road will be used in the future. Mr. Fabbri confirmed that it will. It also holds the flats in place because if removed, all the mud would flow into the creek.

Jane Fuller was under the assumption that the Commission would have soil samples before proceeding with the project. Mr. Splaine stated that if approved this would be one of the conditions. Mrs. Fuller asked the Commission if they thought driving an off-road would impact the wetlands. For this project there is no need to drive across it. now that they are working from the other side. Mr. Fabbri explained that this road was constructed for heavy equipment, so it would not have any impact. Mr. Splaine responded to Mrs. Fuller's concerns by explaining that the Commission is voting on the dredging as amended to occur on the residence side of the property. And the Commission is concerned that the soil be tested, and the project be done in a reasonable way to not contaminate the wetlands in any way. Mr. Fabbri also noted that the road is not a wetlands resource area and has been there for 40 years. Mr. Splaine asked when the last time the road was used. Mr. DeLorenzo responded that it has probably been 10 years when an excavator was used. This road supports heavy equipment.

Peter Clement, Precinct 3 Town Meeting Member, asked if there was a comment period for the permit. The answer is yes for 10 years there was a dialogue going on from residents, DEP and the Delorenzos.

Andrea stated that she assumed the Commission could not make any determination until this project is approved by the Zoning Board of Appeals and Planning Board. Mr. Fabbri said this is not the case. The municipal certificates are part of the Chapter 91 License. To apply for the license, it is required to have an Order of Conditions and a Zoning Certificate. When the Order of Conditions is granted it will be included in the package to the DEP as part of the Chapter 91 License. A Conservation Commission hearing is the first step in the process.

Mrs. Daley then stated that if that is the case that the board grants the Order of Conditions, then they should recommend that float stops be placed on the foot bridge prior to being returned to the creek, discussed in a previous meeting. Mrs. Daley read an order that the DYC not install the foot bridge unless the float stops are installed and maintained until maintenance dredging is performed. She stated that it was unclear who required this. The Town Counsel then stated that the floats go in 18 inches above tide. Mrs. Daley is recommending that this be an order of conditions. Mr. Fabbri responded that the stops were applied to all the floats. The administrative consent was dropped by the DEP after Mr. Fabbri found the permits in their files. Secondly all stops were applied to the floats and are there now. They currently sink into the mud until dredged. Once dredged, the stops will float. This is the reason they are applying for the dredging permit.

Prior the meeting, Jane Fuller presented staff with pictures for the filtration system. One of the pictures was of a back hoe being used in wetlands but this has since been resolved by the town. Other pictures show the cut through as well as some flooding during rain. The swale and retention basins are functioning as designed during a flooding. Mrs. Fuller made the comment that all the pavement contributes to the runoff into the river

Mr. Splaine read a draft order that addresses all the issues raised. The applicant shall notify the Commission prior to starting the project; recorded information will be submitted to the Commission; all names and telephone numbers of supervisors will be submitted to the Commission; a 48 hour work notice will be provided; the applicant will notify the Commission and arrange an onsite inspection of the watering chambers; the applicant must submit soil samples, location samples were taken from and the result of testing; street sweeping will be done after every dredging shift. Mr. Splaine indicated that all the concerns have been addressed by the Commission. He affirmed that if this keeps the foot bridge out of the mud, then this dredging is good.

Mrs. Fuller requested that there be work times placed on this project. Staff stated that dredging will be done during the hours placed on the bylaws for construction.

MOTION: Ms. King makes a motion to issue an Order of Conditions for 161 Elliott Street and 107 R Elliott Street, DEP File No. 14-1312 with conditions & special conditions, including the timing; Mr. Waldman seconded; all in favor

B. Public Hearing [310 CMR 10.05 (4)] – Notice of Intent (NOI) – Continued from October 11, 2018

191 Old Burley Street; DEP File No. 14-13_

Applicant: North Atlantic Air, Inc.

The applicant has requested to withdraw the Notice of Intent without prejudice. Ms. Shaeffer explained that the airport has decided to withdraw at this time, and the without prejudice allows them to refile in the future. She confirmed that all abutters would be re-notified.

MOTION: Ms. King makes a motion to vote on the applicant to request to withdraw the Notice of Intent for 191 Old Burley Street without prejudice; Mr. Waldman seconded; all in favor.

**C. Public Hearing [310 CMR 10.05 (4)] – Public Hearing- Request for Determination of Applicability
24 Robin Hill Road, NOI 2018-06**

Applicant: Michael & Jessica Rossotti

Greg Hochmuth of William and Sparges, LLC represented the applicants. The property is in the Choate Farm subdivision. Mr. Hochmuth has been before the Commission 3-4 years ago permitting the abutter to the east who installed an inground pool. And the abutters to the west who installed a swimming pool and constructed an addition about 2 years ago. The applicants purchased the property within the last couple of years. The property backs up the Wenham Swamp, about 1000 feet from the observation platform at the swamp walk. No work is proposed in the flood plain. The lot is a strange configuration and slopes down quite steep from where the patio is located.

The proposed work is to create more of a level area in the backyard for the family. Currently, there is a retaining wall along 3 quarters of the back which is about 7 feet. The applicant would like to continue this wall along the rest of their property. In order to do so, it would require almost a 10-foot wall. It will be constructed with the same material as the existing wall. It will be roughly 180 cubic yards of fill that would be brought into the backyard. The original plan submitted with the filing showed some of the wall within the 35 foot no build zone. Staff suggested that it be pulled out of the no build zone.

The prior owners had been mowing a small section within the Town Open Space. Staff recommended that the current owners stop mowing and put in plantings. The existing wall was not installed by the owners, but instead part of the original subdivision. However, the new wall being proposed is not part of the original plan. There are no stairs being proposed so once the wall is installed, there will be natural growth. Mr. Hochmuth told the Commission that this area is very steep, 3 to 1. There is an existing stockade fence and wood post and rail fence. The proposal is to take out the wood post and rail fence and to replace with aluminum fence in front of the wall for safety purposes and to match neighbors' fence.

A few options were considered for the applicant. They wanted to keep costs down but unfortunately with a wall this size it is expensive. The proposal is to install erosion control during construction. The wall itself will sit on a 6-inch minimal pact gravel base. Everything will be constructed on the upland side of erosion controls. There will be no need to stock pile equipment or materials. The intent is to plant 2 maple trees and 8 shrubs in the area that was mowed. It will continue to slope but not as steep as it is now. There will be no impacts to the wetlands. Many of the properties in this development have block walls behind them to stay out of the wetlands. This was originally filed as an RDA but within 5 days it was filed as a NOI.

The question was asked if the equipment will be in the buffer zone. Mr. Hochmuth stated that the erosion controls will go in first and the equipment will not be allowed to go beyond. A wall will be built and then it will be back filled. The excavator will be placed on the top of the hill and pull back. Every 7 feet geo fabric that will hold the wall in place and then loam will be brought in. Work will be done as soon as possible. The wetlands have been flagged 4 times and during that process Mr. Hochmuth has kicked up soccer and basket balls. The question was asked how the wall will be maintained. Mr. Hochmuth stated that if the wall is put in correctly, it should never be maintained. The applicants have no interest in installing a pool.

Andrea Daley, Precinct 3 Town Committee Member, stated that there is not enough detail and strength to put a wall at that height. Mr. Hochmuth once again reviewed the measurements, height and construction.

Ms. Schaeffer reminded the Commission that their jurisdiction is to identify the impact of the wall to the buffer area and not the engineering of the wall.

Mr. Hochmuth stated that they are constructing these walls all the time. He compared it to the wall on Route 1 near the orange dinosaur.

Mr. Splaine requested a site visit. Mr. Waldman stated that it will not look like a superimposed wall because it is starting low and gradually increasing in height.

Ms. Schaeffer stated that they are no concerns. She had conducted a site visit to view the grade and the open space area.

MOTION: Mr. Waldman makes a motion to issue an Order of Conditions for 24 Robin Hill Road, DEP File No. 14-1313 with an additional condition of not mowing the open space area; Ms. King seconded; Mr. Splaine not in favor

MINUTES

Meeting minutes- Review and Approval of 9/13/18 & 10/11/18

MOTION: Ms. King makes a motion to approve the 9/13/18 & 10/11/18 minutes with the addition of a last name and the correction of a misspelled word; Mr. Waldman seconded; all in favor

Adjournment

Mr. Waldman makes a motion to adjourn the meeting; Ms. King seconded; all in favor