



# CITY OF SALEM CONSERVATION COMMISSION

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## NOTICE OF MEETING

Notice is hereby given that a meeting of the Salem Conservation Commission will be held on February 21, 2023, at 6:30 p.m. via remote participation in accordance with Chapter 107 of the Act of 2022.

Gregory St. Louis, PE, Chair

## MEETING MINUTES

6

Greg St. Louis opens the meeting at 6:33 pm

### I. ROLL CALL

*In attendance:* Greg St. Louis, Dan Ricciarelli, Judith Kohn, Bart Hoskins (4)

*Absent:* Tom Campbell, Tyler Glode (2)

*Commission Staff:* Kate Kennedy (1)

*Minute Clerk:* Chelsea Titchenell

### II. REGULAR AGENDA

- A. 50, 52 Circle Hill Road – DEP# 64-764, DEP# 64-765 – (Request to Continue to March 21, 2023) -** Public Hearing – Two Notices of Intent of Patrick Delulis, Pasquanna Developers, Inc. for proposed construction of two single-family homes, associated driveways, utilities, grading, and landscaping located at 50 and 52 Circle Hill Road, subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.

*A motion to continue the public hearing to March 21, 2023 is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 4-0.*

- B. 57 Memorial Drive – DEP# 64-771 – (Request to Continue to March 21, 2023) -** Public Hearing – Notice of Intent of Scott Patrowicz, Land Development Engineering, on behalf Justin Mattera, 57 Memorial Drive, Salem, MA, location for the proposed construction of a fixed pier, landing, loading area, seasonal gangway and floating dock, steps and site work, within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection &

Conservation Ordinance.

*A motion to continue the public hearing to March 21, 2023 is made by Dan Ricciarelli, seconded by Bart Hoskins, and passes 4-0.*

- C. 67 Derby Street - Salem Wind Port Terminal – DEP# 64-772** - Public Hearing - Notice of Intent of Crowley Wind Services at 67 Derby Street, for the construction of an offshore wind marshalling facility to assemble and deploy turbine components. The work includes construction of a Loadout Wharf and a Delivery Pier Trestle: filling and stabilization of the upland; installation of utilities; and dredging. The project is located within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.

Susan St. Pierre, on behalf of the applicant, shares a presentation. Highlights include:

- Former coal powerplant that was then developed by Footprint Power Company
- Crowley negotiated acquisition of 42 out of 67-acre property
- Grades were changed and 95% of elevations are at or above 10
- The site is in the Salem Harbour Designated Port Area and includes State designated port basin
- Current FEMA map shows much of the area in the flood zone
- 2 velocity zones
- Majority of the upland portions of the site are outside of wetland resource areas
- Highest elevation is at 15 for the site
- Lowest elevation is 10

Greg St. Louis: I want to remind the applicant that the fill placed in this zone that causes it to be out of the floodplain is an interim condition that is not currently permitted with any authority, so it is prudent that this project permit the fill placed in this floodplain above the preconstruction and pre-demolition condition. There is an active outstanding Order of Conditions on this site. I don't think any of us have a problem with it, but it has not been permitted or documented to my knowledge

- Susan St. Pierre: So as part of this project, we will be re-grading the entire site and adding denser aggregate, so does that solve it?
- Greg St. Louis: You need to say the grades from the demolition permit and say that you are doing it from those and not from the interim condition.
- Susan St. Pierre: So, we are filling from the condition from before the fill was placed from the previous project?
- Greg St. Louis: That or from the design grades that were permitted but not constructed, if they were being raised.

Susan St. Pierre continues the presentation. Highlights include:

- Land containing shellfish and no work being proposed in that area
- Powerplant with two laydown areas, delivery pier, loadout wharf rendering shared.

Judith Kohn: In the ferry parking area, my understanding is there was a planted buffer, and the rendering looks like a wall of concrete with no buffer.

- Susan St. Pierre: Yes, there will be a landscape buffer. Those plans are still in development so at the next meeting we will have a more advanced design for landscaping.

Jared Kemp, Crowley Project Manager, continues the presentation. Highlights include:

- Laydown Yard A will be preassembly load out and storage. That will be raised 2 feet in elevation
- Loadout Wharf will be east where barges will be loaded in
- Transition Yard leads to Laydown Yard B and this yard will be where turbines will sit and be stored and the larger electrical will be located
- Parking staying in the same location
- Heavy lift platform:
  - 416ftX78ft
  - 6000 pf pile supported concrete structure
  - Place for components to be preassembled
  - 36' steel pipe pile will be drilled into existing laydown area
  - Concrete tech with DGA on top
- Landscaping:
  - Raising grades along the laydown area will create a slope and increasing the landscaping from parking lot to fence edge for laydown yard
  - Area will be site drainage and creating a swale
  - Buffer being widened along Blaney Street area
  - Derby Street will be keeping existing trees
  - Creating a community area with more landscaping for public access and additional planting, as well as cruise access
  - Using similar planting and adding physical barrier for the neighborhood

David Simpson, Civil Engineer, continues the presentation:

- Heavy lift platform:
  - Number of different loadout areas
  - Large cranes positioned on platform that has steel piles driven in that are about 50 to 100 feet in length and 36 to 42 inches in diameter, with concrete deck.
  - Portion of existing masonry wall will need to be demolished, but bulk of wall will stay
- Delivery Pier and Trestle:
  - Brings in blades, tours, cells
  - Unloaded using cranes aboard ship
  - Pile supported concrete platform
  - Use of some of the existing rubber jetty
  - Some dredging needed and positioned face of wall almost parallel to turning basin
- Trestle Pier
  - Similar structure
  - Loading 2 to 2 ½ psf
  - Looking to remove some fill from behind the sheet pile, some excavation would be needed
  -

Dan Ricciarelli: Are components brought out or shipped in with fluids in them?

- David Simpson: There is probably some. The cell will have some fluids in it, but it is fully sealed, and self-contained. They are designed to endure pretty intense weather conditions.

David Simpson continues the presentation. Highlights include:

- Dredge plan:
  - Small dredging in the shoulder areas to deepen
  - 2 feet of berth dredging

- 6 feet of dredging right again berth section
- 80,000 cubic yards of dredging with most of it being maintenance dredging

Dirk Grotenhuis, Civil Engineer, continues the presentation. Highlights include:

- The parking area is an existing parking area that will remain as is. Currently paved with outlet drainage towards Derby Street.
- Intend to install a better swale system for better solid removal from the drainage system
- Laydown Area B currently does not have drainage system but infiltrates or runs off the edge of the pier
- Dense grated gravel will be added and can help with moving the heavier material. Looking to add about 2 to 3 feet in areas and will be impervious due to being densely packed.
- Proposing trench drainage system for Laydown Area B, put into stormwater separator treatment system, and remove the solids for low frequency storm events and new 12-inch outfall along that face
- Laydown Area A:
  - Currently has stormwater drainage system from Fort Ave along the perimeter.
  - Located between Lot A and the power plant
  - Surface swale along the top of the pipe. It then goes into the channel.
  - Elevation will be increased.
  - Grade 10 slopping down diagonally across site to existing drainage system
  - Also catch in the 24-inch proposed pipe
  - Installing drainage swale between Blaney Street
  - Sediment discharge separator will be installed
- Slope for dense grated gravel will be .5% due to heavy equipment that will be onsite
- Everything will be drained to the edges, treated, and then discharged

Susan St. Pierre continues the presentation:

- Land subject to coastal storm flowage has soil stabilization and fill activities and impacts a little over 3 ½ acres
- Land under Ocean in Designated Port Acre is impacted for .39 acres for the load out wharf and .05 for the pier
- Dredging is a total of 21.3 acres
- Pile placement occurs in Land into Ocean with impact of 2,769 sqf
- Coastal Bank impact at 1,365 sqf
- Mitigation will have upgraded stormwater system, installing treatment devices, following relevant time of year restrictions, wet down area to control dust, slow start pile driving

Greg St. Louis: Earlier you mentioned a transformer storage area in Laydown Area B. What containment is associated with that area?

- David Simpson: There is no transformer being stored. There is a cell that is a generator unit.

Greg St. Louis: It sounds like drainage is being routed to the Chapter 91 access area. Is there a conflict with stormwater accumulating in areas that might be in walkways?

- David Simpson: I would not think so. The invert of that swale is below the level of the pedestrian path that runs through the powerplant.
- Greg St. Louis: The hydraulic report does a very simplistic analysis of stormwater conditions. There is some pipe math with high velocity, it doesn't show time of concentrations and flows

across the site and such.

- Dirk Grotenhuis: Are you talking about the site itself or the public walkways?
- Greg St. Louis: Both. Yard A is going towards the ocean and your narrative says extreme storm events will discharge towards the sea. What collection structure is in that area?
- Dirk Grotenhuis: We have trench drains and catch basins there. For the walkways there are no proposed sidewalks on the site. What is paved is the public access routes and those would just be drain off since that is primarily on the powerplant side.
- Susan St. Pierre: We are replacing the walkway on Blaney Street, which might end up being wider than what is there now.

Greg St. Louis: I know I mentioned a peer reviewer, but I would look at the velocities. They look fairly high, and I don't know if that is because they are inline vs offline.

- Dirk Grotenhuis: We can take a look at that. These are only going to treat one- or two-year storms. Everything else will bypass.
- Greg St. Louis: I don't know what the existing pipes are, but you may need to update the pipes to class 5 rcp or some other material to accommodate those loads
- Dirk Grotenhuis: We fully agree.

Greg St. Louis: I don't recall but I believe at one point about re-laying a City drain. Is that already re-laid?

- Jared Kemp: Are you talking about the 48"? The one that is a bit further southeast that we are tapping into? That was laid when they did the footprint plan.
- Greg St. Louis: Okay, so that is new.

Greg St. Louis: There are still a number of concrete pads and foundations out there. Are those going to be further reduced or eliminated?

- Jared Kemp: The existing pads are going to stay and get covered. The two steel structures are going to be removed, which are part of the old powerplant, and then the existing two warehouses. The one concrete pad in the transition may have been poured when they setup a trailer.
- Greg St. Louis: I would ask you to work with our peer reviewer on detailing out some of the hydrocad and accounting for the various areas remaining.

Greg St. Louis: I know we permitted a number of soil tests on site and didn't see those in the report, are those available?

- Jared Kemp: We are wrapping up on those.

Dan Ricciarelli: Does everything come in packages for trash and waste with these large components? Is there a waste area for that? And are the components cleaned after they are fabricated and put together?

- Jared Kemp: The components come off the vessel put together with preassembly occurring. They will be stored and there won't be mechanical waste. It will be an electrical hookup in the load out and preloading of the towers going on the vessels. There will be no manufacturing.

Judith Kohn: Can we return to the FEMA floodplain map? I understand that fill has been placed on the powerplant site. I see the FEMA crossing over the street, onto the site, and then engulfing the ferry terminal. I have questions about the impacts of putting a 6-foot wall on the site and the impacts on the surrounding properties. Have you done any analysis on any offsite flooding impacts for this?

- Jared Kemp: We are conducting a flood analysis currently. We also did a preliminary one for the

initial design. We don't have the complete analysis to share at this time, but it should be completed by the end of March.

- Judith Kohn: I would like to see that before taking any action on this project.

Judith Kohn: I think for a project of this scale, and I know sound and noise is not part of our purview, the buffer zone being proposed is insufficient. I would say to add evergreens, especially considering the height and noise from the facility. I would encourage you to relook at that.

- Dan Ricciarelli: I think an acoustic study has shown that plantings don't buffer noise
- Judith Kohn: I think it is more the psychological effect. Plus, maybe an acoustic fence. I do have concerns about the neighbors and the impacts on them so I would ask you to consider more substantial buffers.

Judith Kohn: What size vessels will be berthing here?

- Jared Kemp: Anywhere up to 600 feet for the delivery berth and the main wharf will be 400x100 footer barges.
- Judith Kohn: How many would be there at one time?
- Jared Kemp: One at the main berth and one at the delivery. We won't be having two barges in the main load out area. It is designed for one at a time.
- Judith Kohn: And what actually happens?
- Jared Kemp: A delivery vessel will bring in the components, either from another location overseas or in the US. They will be offloaded onto the delivery pier. If it is towers or blades it goes to A, if it is cells it goes to B. They will be grouped into packages and a cell will come over, along with blades. They will all then get put on a barge and be towed out.
- Judith Kohn: Is that all done by crane, or will there be trucks?
- Jared Kemp: Load out will be done by crane. And then SBMTs will do the other work. It is slow-moving with no fast-moving vehicles since they are large and fragile pieces.
- Judith Kohn: Would that be 24/7?
- Jared Kemp: The idea is to operate in regular daylight hours. Vessels will come for 12 hours, offload, and then they leave.
- Judith Kohn: There will be lighting on site?
- Jared Kemp: Correct. We will have high mass lighting around the edges where there aren't neighbors and lower lighting in the Derby Street area.

Judith Kohn: What other permits do you need?

- Jared Kemp: We're going to the Planning Board for site plan review next month. We still have quite a few permits we need.

Greg St. Louis: Is there a reason that Chapter 91 access was not included along the boundary to the water as we discussed on our site walk?

- Jared Kemp: The border there between us and the sanitation has a lot of electrical components. There will be a larger transition yard with low and medium voltage. That is why we don't have a walkway that runs along that edge.
- Greg St. Louis: It would be great to investigate that a little further so we can try and build out our coastline a little further.

Greg St. Louis: I had mentioned a peer review if the Commission would like to make a motion.

- Dan Ricciarelli: Would we combine that with the Planning Board?

- Greg St. Louis: We could. I think it depends on their scope vs. ours.

A motion to engage a peer reviewer for all components of the project that are under the jurisdiction of the Commission prior to further action on the project is made by Judith Kohn, seconded by Dan Ricciarelli, and passes 4-0.

Susan St. Pierre: Can we run through any actions or deliverables you would like to see from us at the next hearing?

- Greg St. Louis: The fill in the floodplain issue needs to be resolved to the Commission's satisfaction.
- Dan Ricciarelli: And you want a graphic of the impacts?
- Greg St. Louis: Yes, I think it is helpful. And then if you can look at additional Chapter 91 access. When you say laydown yards, but I don't have a sense of what it is so I think something to know what they look like.
- David Simpson: It is the components stacked in the open.
- Greg St. Louis: And they sit on the crushed stone?
- David Simpson: They have a rack that they sit on with big feet to spread the load. But it is really a gravel surfaced field at the end of the day.
- Dan Ricciarelli: I think updating the rendering as well before this gets out to the public.
- Greg St. Louis: And additional details on the hydrocad for flow paths and collection devices. I imagine the peer reviewer can handle it directly, but something to consider.
- Judith Kohn: And the floodplain impacts.
- Greg St. Louis: As well as the soil logs.

Susan St. Pierre: Do you have an idea of when a peer reviewer will be obtained and how long that process takes?

- Greg St. Louis: I know Kate was already working on that, so we are moving forward as best we can for that.

David Simpson: For the soil profiles, is there anything specific you are looking for?

- Greg St. Louis: The hydrocad called the subsoil a hydrologic soil group d, which I find surprising, and it impacts your runoff calcs.
- Judith Kohn: And to see how deep the fill is across that site too. Also, Greg's point about the historic fill on the site, my understanding is that the fill was brought in when the power plant was built, and it was brought up above 10, is that correct?
- David Simpson: That is my understanding. When the old station was demolished it was then capped. It was part of the same effort.
- Greg St. Louis: The powerplant didn't finalize their grading when they demobilized and put the onus on the new landowner. Permits transfer with the land, not the owner. There is unpermitted fill on a site that is transferred to a new owner. The owner is acting like the placed fill was existing, when it is actually an interim condition. We will all look at it together, figure out if I can close the outstanding order of conditions or if the other order stays open since it is the only way to hold on to the unpermitted activity in the space.
- Kate Kennedy: The original and the amended Order of Conditions are there.
- Judith Kohn: Does the applicant have access?
- Kate Kennedy: It is in the public folder and the applicant has access. There is also a document with brief descriptions of the permitting history.

*A motion to continue the public hearing to March 21, 2023, is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 4-0.*

**D. 200 Fort Ave- Salem Willows Pier – DEP #64-773** - Public Hearing - Notice of Intent for Massachusetts Department of Fish & Game- Division of Marine Fisheries and the City of Salem, for the construction of a recreational fishing pier and reconstruction of seawall, located at 200 Fort Avenue- Salem Willows Park, an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.

David Smith from GZA, on behalf of the applicant, shares a presentation. Highlights include:

- Project involves the reconstruction of the old pier at the Salem Willows Park
- Total pier was 7,170 sq. feet
- Pier has been removed, but had gangway and pile supported hoist frame and seasonal float on the north side
- There is an existing concrete seawall that was between to ledge outcrops
- Pier was beyond its useful life and the condition divided the project into two projects. First to remove the pier, and there was a NOI and Order of Conditions for this in November 2021 for the removal. Now looking to reconstruct it back.
- Took over from prior consultant who did much of the survey work and exploratory boorings.
- Shallow embedment on the piles, which are taken into account for proposed design
- Looked at wave heights, store impacts, and wanted to balance that we are looking for an ADA accessible fishing pier
- Flood elevation is 16', which is 6' above the existing pier. Elevation 13' was decided on, as it is a public access pier
- Landside it will transition down to existing grade
- Proposed pier will be 330 feet by 12 feet and will be in the same footprint as the existing, though it is narrower
- Want to reestablish the gallows frame pile supporting hoist and bring the season gangway back into use for the City
- Concrete abutment as part of the work and return it back 20 feet towards land
- Plan to replace entire old wall in the same footprint but increase the height slightly and bring it to elevation 13' with new railing to match the existing pier
- Gabbian mattress and scuppers also being proposed
- Separate NOI will be filed for landscaping, but they will reduce the bituminous paving and improve the path to have ADA accessibility. For the time being the wall will be constructed and then backfill with existing materials
- Will replace an old clay pipe with potential swale wall being placed in later.

Dan Ricciarelli: Why is the width smaller on the new dock by almost 10'?

- David Smith: The original pier has had its use changed over time. It was used for commercial uses and offloading. We don't need one that wide for recreational fishing and there will be no vehicular access. It is strictly pedestrian access.

David Smith continues the presentation. Highlights include:

- Eliminates 176 piles and proposing 76 new piles to go in which will be 16" in diameter steel piles



- Will have to rock socket each pile into ledge.
- Work from water and ledge side
- It is timber framed and heavily fortified and bracketed and will be more resilient than the previous pier.
- 192 sq feet of land subject to coastal storm flowage
- 87 square feet of new paved area
- 160 square feet for land under ocean for the piles

Bart Hoskins: Why would you not have lights on it?

- Bill McHugh, Harbor Master for the City of Salem: All parks close at sunset, but we wanted to avoid stanchions that would deteriorate with the weather and prevent any lighting issues for the neighborhood.
- Ross Kessler, Division of Marine Fisheries: We do try to avoid lighting in a lot of cases because of complaints from neighbors and the issues of maintenance. If there is lighting it is done at a later time by the town. We have used ground level lighting that is solar but do need frequent replacement.

A motion to close the public hearing is made by Dan Ricciarelli, seconded by Bart Hoskins, and passes 4-0.

A motion to issue an Order of Conditions, subject to standard conditions, is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 4-0.

- E. Massachusetts Electric Company (MECO) - Request for Determination of Applicability-** for Massachusetts Electric Company for the proposed installation of one distribution pole along Bridge Street cross section, adjacent to Flint Street, in Salem, MA- located within an area subject to protection under the Wetlands Protection Act MGL c.131§40 and Salem Wetlands Protection & Conservation Ordinance.

Samantha Walker, on behalf of the applicant speaks. Highlights include:

- Install 2 new utility service poles on Bridge Street
- Work proposed in Land Subject to Coastal Storm Flowage
- Work proposed on existing utility area and roadside area
- Any excavated materials will be used as back fill
- Disturb areas will be restored to existing condition as much as possible

Greg St. Louis: I have no issue with the application. You do need to grant location from the City Council for any utility pole installation. The only question is if the Commission wants to correct the application that this is not Land Subject to Coastal Storm Flowage, it is actually an inland floodplain, as deemed by FEMA.

A motion to close the public hearing is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 4-0.

A motion to issue a –2 –6 is made by Dan Ricciarelli, seconded by Bart Hoskins, and passes 4-0.

### III. OLD | NEW BUSINESS

**A. Request for Certificate of Compliance – Salem Harbor Power Station - DEP# 64-552 – Lot 2**

Greg St. Louis: Matt, were you here during the earlier presentation?

- Matt Moyer: I was.
- Greg St. Louis: I want them to specifically permit and own the fill that was in place. I am not ready to act on this until they take action for effectively placing the fill there.
- Matt Moyer: I am confused then. We came back in June of 2020 for a Notice of Project Change, filed for approval for the current condition, and it was agreed upon. We have since issued all required documentation and for all intents and purposes, the Commission denied the COC and we have not received written denial for why it was rejected. I am trying to understand how to get out of the grey area.

Greg St. Louis: What is the feeling on the Commission on absolving the permit?

- Dan Ricciarelli: I don't know how we can hold both parties. If there is an amended order.
- Greg St. Louis: There is no amended order. The Commission voted on a Notice of Project Change that someone would come in with a revised grading plan permitted for the site. What came before us was not from the initial site to the proposed condition, but from the interim. We now have the wind turbine suggesting it is outside of the floodplain, even though it is within it. So, if the wind turbine facility permits from either the previous proposed design or from the original preconstructed site survey, then they can own the revised design.
- Matt Moyer: You ultimately want the Crowley team to come in with their existing conditions representing the bowl as opposed to the ones existing today. You are looking for them to pick up from where the original order left off?
- Greg St. Louis: Yes.
- Dan Ricciarelli: I think when someone purchases something they absorb the issues themselves.
- Greg St. Louis: Yes, which is why we approved a partial for Lot 1, since it alleviates Footprint.
- Matt Moyer: But we are on the hook for both.
- Greg St. Louis: The Notice of Project Change is just not a ConCom identified process.
- Matt Moyer: It is a process that was identified in your order, which is why we went down that path. Hindsight is 20/20, we would have done an amended order in June to keep it simpler.

Judith Kohn: So, which party actually filled the floodplain, or was it never floodplain to begin with?

- Matt Moyer: There was floodplain on the southern half of Lot 2
- Judith Kohn: Mapped properly by FEMA?
- Matt Moyer: No, but in 2013, the mapping was elevation 10, which was close to what FEMA had. It was filled as part of the power plant project. So, they leveled it for construction staging, parking, material storage, and so forth,
- Judith Kohn: And they had an Order of Conditions that allowed them to fill Land Subject to Coastal Storm Flowage.
- Matt Moyer: They had an Order that allowed them to fill some of it. They were at the time responsible for the bowl, which was intended to offset discharge to the harbor. We basically think that removing something that will just be filled in again doesn't make sense financially.
- Judith Kohn: It is a regulatory problem, but it seems like it can be resolved as a practical problem with a Certificate of Compliance.
- Greg St. Louis: My fear is that the previous party didn't go to Army Corp to permanently fill, up to a certain elevation, and those permits with the Federal Government up to a point.

- Judith Kohn: But the Corp permits work in Land Subject to Coastal Storm Flowage, only wetlands. So, I don't think it is a Corp issue. Once you fill up to elevation 10, that is the critical elevation.
- Matt Moyen: There was a substantial portion that was above elevation 10. There were containment berms around a lot of this, so unless you know the fine grading it isn't totally accurate. And Judith, you are right, it isn't a Corp Issue.

Matt Moyen: Would you guys be able to issue a COC and put a condition with the previously approved Land Subject to Coastal Storm Flowage being the exception, or something like that? Is there a way to issue a COC that gives you the certainty that Crowley will pick it up?

- Greg St. Louis: Continuing conditions are normally things like "you must maintain the vegetation"

Judith Kohn: Can we issue a Certificate of Compliance for the original order?

- Greg St. Louis: There is no amended order. And once an amended order is created it supersedes the previous order.

Greg St. Louis: Is there anything in your deed document that says "fill to be permitted and managed accordingly" or all conditions being transferred? The permit runs with the land, which is my point.

- Matt Moyen: What I understand is that Footprint is still on the hook for the COC.
- Dan Ricciarelli: It seems to me that that needs to be figured out between the two parties.
- Judith Kohn: I think we would be relatively safe issuing the COC and understanding that the liability might run to the current owner.
- Dan Ricciarelli: I would feel uncomfortable putting burden on the new owner.
- Judith Kohn: But if we issue the certificate, we aren't putting burden on anyone.
- Greg St. Louis: We can issue a Certificate of Compliance, and then issue an Enforcement Order, but that doesn't make any sense.
- Greg St. Louis: Matt, you are saying there was no permit for placing fill in Land Subject to Coastal Storm Flowage.
- Matt Moyen: There was permit for other work, but not for what we are talking about.
- Greg St. Louis: What about water quality?
- Matt Moyen: We don't get pulled in for that. It is just you guys.
- Judith Kohn: Did you get a water quality certificate for the water side?
- Matt Moyen: Yeah, there would have been.
- Judith Kohn: So, it is just the grading is not completed. Is this something we want to refer to Council?
- Greg St. Louis: The Commission allowed it and now it is a paperwork exercise. At the time this was being permitted DEP was talking about changing the standards for Land Subject to Coastal Storm Flowage, which didn't happen. When we were talking about the bowl then, that was coming the pipeline. But the future condition is going to be hard packed impervious material and they will say that the Commission allowed for no storage and retention on site without treatment.
- Judith Kohn: But that is what DEP allows.

Greg St. Louis: There is no pre-treatment on site at all right now?

- Judith Kohn: I don't think it is the burden this applicant has to bare. They weren't required to provide flood storage in an order, right?
- Greg St. Louis: There was a condition of 0 discharge from the demo site.

- Judith Kohn: Is there discharge now?
- Matt Moyon: There was no condition, that was just the result of the collection area.
- Greg St. Louis: But there is no revised hydro clad either.
- Matt Moyon: No, we wanted to receive approval for the Notice of Project Change since the need for the bowl wasn't required under regulations in the first place. The bowl really didn't need to be in there. It was presumably going to be less work.

Greg St. Louis: All these various improvements will eventually have an effect on other residences. If this prevents flooding or a series of other projects build off of this, we want to take credit if it is useful and we want to document all the projects correctly. So, when do we want to release Lot 2 from the existing order?

- Dan Ricciarelli: All this grading wasn't in that original order, so can't we give him a COC?
- Greg St. Louis: We didn't receive an amended order, or a new Notice of Intent for it. The question is, do we want to keep it or are we fine getting rid of it.
- Judith Kohn: So we issue it or we deny it?
- Matt Moyon: And the regulations require a letter to be documented for why it is not issued for Lot 2.

Greg St. Louis: We could tell Crowley to file for an amended order on the original one, but that keeps Footprint in it and doesn't solve your issue. But Lot 1 is absolved of any further comment from the Commission, so from my perspective you are off the hook since you no longer own the land. I have asked the new applicant to see A to B to C and they can take it from the original or the interim condition. When the new developer comes in and ignores the FEMA floodplain, it implies that they are unaware of the transfer of the condition of the active construction site, which makes me nervous.

- Matt Moyon: Putting the fill aside, you will be reviewing the entire Crowley project, so what is the end goal knowing that they will have to file a Notice of Intent anyways?
- Greg St. Louis: I don't want to get into a situation where the new applicant says the existing site is gravel, it is untreated, and discharged into the water and they are going to maintain that process. Then I will get a letter from a City department saying that I can't require engineering controls, since it would then be impacting Zoning, or some other argument. I do think I should be able to require water quality practices where I deem appropriate since that is in my purview.
- Greg St. Louis: I will get rid of the current order if the 4 of you will but the responsibility on the new owner to make the site whole.
- Dan Ricciarelli: I will, but their attorney might have a problem with it.
- Greg St. Louis: And their attorney can fight that.

Dan Ricciarelli: There was fill put in that was not part of the amended order?

- Matt Moyon: It was part of the Notice of Project Change.
- Bart Hoskins: So, if we have a problem, it is that we approved the Notice of Project Change which we shouldn't have. Why can't the new owners come in off the Notice of Project Change and use that condition?
- Greg St. Louis: That is what they did do since they said it wasn't in the floodplain because of the fill. But that was an interim fill approval.
- Bart Hoskins: But they seem to be willing to do what they need to do. They should come to use and say this is what they will do, and start from the conditions of the amended order, noting that it doesn't reflect current conditions, and it will make something that was floodplain into not floodplain. I can imagine them being a bit hesitant if we don't approve it, since they would have

walked into a trap.

- Judith Kohn: They are going to be required to meet the stormwater standards irregardless. We are going to have peer review and be looking at this. I don't see how holding this is relevant.
- Greg St. Louis: We went through this with the soil testing, and they were aware, and now we have the full plan, and they didn't hear us.

Greg: St. Louis It sounds like we should release the Certificate of Compliance, but not accept Notice of Project Changes in the future that do not come with amended orders.

- Kate Kennedy: I think we should not add Notice of Project Change into the permit. Our problem is we did in that order and accepted it.
- Dan Ricciarelli: It is in the order, we agreed to it, they complied, I am set. We are all hearing that that is the situation, right?
- Kate Kennedy: The state liaison said that if any work was done in violation of the Order of Conditions on Lot 2 that should be addressed through an Enforcement Order before issuing a Certificate of Compliance, full or partial. But that does not include work that was approved but not completed. They recommended doing it before issuing a Certificate of Compliance. I don't believe that the Commission has to act on what that request was for. The Commission is still able to issue a partial if you feel that is the most appropriate action.

Matt Moyen: We are looking for a partial for Lot 2, which would cover the entire project.

- Greg St. Louis: So, if we issued a partial for Lot 2, saying the next applicant needs to take over for the filling and grading, that checks your box?
- Matt Moyen: It checks mine. Speaking with DEP they confirmed that two partials is equivalent to a full COC since it covers both parcels for the project.
- Greg St. Louis: But we would be issuing a partial for all work up to, but not to the filling and grading.
- Matt Moyen: Okay, so no that would not do it.

Greg St. Louis: Was any work or is there any fill material, or any work not performed, outside of the documents submitted prior to the Notice of Project Change?

- Matt Moyen: No. Land Subject to Coastal Storm Flowage doesn't have performance standards, so you aren't giving anything up if that is helpful.
- Bart Hoskins: That does make me feel better.
- Kate Kennedy: We do have a section on Land Subject to Coastal Storm Flowage.
- Judith Kohn: But they weren't in place when it was issued, so it doesn't matter. I think we need to keep the eyes on the goal of the wind turbine being permitted properly

*A motion to issue a Certificate of Compliance for Lot 2 is made by Dan Ricciarelli, seconded by Judith Kohn, and passes 4-0.*

## **B. 92 Orne Street - Emergency Tree Removal Request**

Kate Kennedy: It is a request to move two trees jeopardizing the bank. It was also looking to threaten some of the above wires.

- Judith Kohn: Is it in a resource area?
- Kate Kennedy: Right along a coastal bank.

Dan Ricciarelli: Did the arborist say it was an emergency?

- Kate Kennedy: They did not. I could have them come out, but usually the tree warden comes out if it is a public right of way.

Judith Kohn: Sometimes they are stabilizing the bank and if we remove them, it could cause them to slump.

- Kate Kennedy: We can ask them for an RDA. We had discussed other potential options for the bank since it is eroding, but the emergency certificate is only for the work that is an emergency. There is another one about 10 feet away that looked threatening as well, but that was left out.

Dan Ricciarelli: Who is the property owner?

- Kate Kennedy: Cabot Farms.
- Judith Kohn: They do look bad and like they would go over in a storm.
- Dan Ricciarelli: This isn't directly adjacent to the road, so the tree warden has no jurisdiction, so this is our call.

Judith Kohn: Can we ask them to stabilize the bank after they take the trees out? Plant something or do something that doesn't require a permit?

- Kate Kennedy: I was thinking about that too, but then when we had 435 Lafayette Street, we had asked the applicant to plant, and that State came back and said we couldn't do that.
- Greg St. Louis: I think they can plant in their lawn if they are willing to.
- Judith Kohn: We would just ask it to be stabilized with seed. If they cut them down and don't remove the root system, then they don't have to stabilize it. What if we asked for that?
- Dan Ricciarelli: They will die eventually.
- Bart Hoskins: What if we say don't take them out unless you plant something to replace it.

Kate Kennedy: On the emergency certificate, I said work would be performed on the land side and leave the roots within the bank for the purpose of stabilization. But if there is anything additional you would like to request, we can do that.

- Judith: I think it looks fine.

A motion to ratify is made by Bart Hoskins, seconded by Dan Ricciarelli, and passes 4-0.

#### **IV. APPROVAL of MINUTES**

January 17, 2023 Minutes

A motion to approve meeting minutes for January 17, 2023 is made by Bart Hoskins, seconded by Judith Kohn, and passes 4-0.

#### **V. OTHER UPDATES**

Collins Cove to Willows Resiliency Study

Kate Kennedy: The seconded community forum on February 27<sup>th</sup> and the Zoom information is on the public input site. It would be great if the Commission could attend. The project team will be looking at a resilient coastal park toolkit and using this for feedback, as well as looking at emergency access roots.

MACC Annual Conference

Kate Kennedy: It is coming up February 28<sup>th</sup> the March 9<sup>th</sup>.

- Greg St. Louis: We have preauthorized members of the Commission for this. If you sign up we can just do it, we don't need to vote.

**VI. ADJOURNMENT**

A motion to adjourn is made by Dan Ricciarelli, seconded by Bart Hoskins, and passes 4-0.

**Meeting adjourns at 9:41 pm**