

Newburyport Waterfront Trust
April 24, 2013
Police Station Conference Room
Minutes

1. Call to Order

A special meeting of the Newburyport Waterfront Trust was called to order by Chair Doug Locy at 5:00 p.m.

2. Roll Call

In attendance were members Doug Locy, Catherine Russell, Joe Brown, Si Morrill and Scott Sutherland.

3. Merrimac Ale House Plans for a Riverside Park

The conditions for the improvements to Riverside Park, formerly titled Exhibit A, have been revised into a charitable donation agreement for public access and land conservation. Doug Locy said he met with Andy Port, Doug Trees, Joe Leone and Joe Brown to amend the terms of the agreement, which were then reviewed by Chip Nylan. Under the new agreement the owner shall be responsible for the maintenance of the improvement area and shall submit a maintenance plan for approval by the Trust before or upon the completion of the work. The Trustees shall review and approve the maintenance plan every three years beginning in 2016. The steps at the side of the building have been removed from the Trust property and will be located inside the building. The Trust will provide light fixtures for the improvement area and the owner shall install the underground conduit and foundations for the fixtures.

Bill Harris made the following modifications to the version of the agreement prepared by Attorney Nylan:

- 1) "walkway" became "walkways"
- 2) under item #8 the width of the walkways was change from 6 to 7 feet rather than 7 to 8 feet
- 3) item #16 was changed from "approved by the Trustees" to "approved by the affirmative vote of the majority of Waterfront Trustees"

The following additional changes are to be made to the agreement:

- 1) under item #11 "any and all parking spaces" will be changed to "any and all of 13 parking spaces"
- 2) under item #13 the words "and rules and regulations of the Newburyport Planning Board" will be added following the date of 4/24/13
- 3) the paragraph that followed item #17 was not numbered and will become #18. Item #18 will be changed to #19 and item #19 will become #20
- 3) under item #20 the word "Trusties" will be changed to "Trustees"

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The following changes were be made to the plan:

- 1) the word "public" was added to the walkway label
- 2) the grades were changed for accessibility
- 3) the location of the Waterfront Park sign was added
- 4) the locations of four single-arm light fixtures and one double-arm fixture were added and the conduit was shown extending to the island
- 5) the easement for New England Telephone will be attached to the plan.

Doug Locy said the light fixtures that might be acquired are like the ones that were installed at Newbury Village. Scott Sutherland said he would like the fixtures to be discussed further at the next meeting.

Doug Locy moved to approve the letter to Joseph Leone dated April 24, 2013 regarding the proposed 40 Merrimac Street Ale House LLC walkways and landscaping at Riverside Park and the Charitable Donation Agreement for Public Access and Land Conservation Improvements to Riverside Park as amended and the revised landscape plan dated April 24, 2013 as amended, with the reference documents of the New England Telephone easement and the Declaration of Public Trust. Si Morrill seconded the motion. Joe Brown said that while the plan might be in best interest of the city he is not willing to vote in favor of it because he does not believe it is in the best interest of the Trust or the users of Riverside Park. He said the location of the structure on the property line puts it too close to the park. Catherine Russell said that while she appreciates the amount of effort put into the process, it would be best if the building were smaller and not on the property line. She added it would be cleaner if the owner landscaped his own property rather than Trust property. Si Morrill said while it would be preferable to have the building set back from the property line, the owner has the right to utilize the existing condition. He thinks the plan is in keeping with the obligation of the Trust to provide a park-like atmosphere. Doug Locy said the plan results in a donation to the Trust and Mr. Leone would have the right to construct the building on the property line without making any such donation. He added the agreement is a favorable opportunity for the Trust and the Green Street view corridor. The motion was approved with Doug Locy, Scott Sutherland and Si Morrill voting in favor of it and Joe Brown and Catherine Russell voting against it.

Chip Nylan said permission must be received from DEP to perform new work on property under Chapter 91 jurisdiction. He said because the Trust is the property owner, it is the entity that must make the request. The improvement plan would be a part of the licensed activities for the property. His said his position is the walkway on the Trust property is not necessary for the license and should not be a condition of the license. The Trust has reserved the right to remove the walkway and he would not want the potential removal to jeopardize the license.

Bill Harris said this is the first day of a 30-day Chapter 91 process. A public hearing is scheduled for May 2 and comments must be received by May 23. He said the plan presents an excellent set of public access improvements, as the landscaping enhances the

access, but he does not believe the five-foot walkway on the west side of the building would satisfy Chapter 91 requirements. He said the Chapter 91 Citizens Group would prefer a Chapter 91 license that includes as a condition of the license that both walkways and the landscaping are a part of the license. He said the license would be valid for 30 years and future Trustees might decide for some reason to remove the improvements. The group wants improvements to be a condition of the license in order to prevent them from being removed at some point in the future. Chip Nylan said he would not want the license to be jeopardized by a condition of the license being placed on land that is not owned by Joe Leone. Andy Port said it is unlikely the Trust would remove the improvements and access. He suggested the license could reference the Trust and indicate it might amend the improvements provided access would be maintained. Chip Nylan said a conditional license would not be satisfactory to lenders. He said he does not believe the Trust is able to bind future Trusts. Scott Sutherland said the Trustees have been under the impression that the walkway and improvements on the east side of the building would be not needed for the license. Si Morrill said he is not comfortable with a significant decision being made at the last minute. The Trustees tabled the discussion about tying the improvements to the Chapter 91 license until the May 6 meeting. Independent of the license issue, Chapter 91 permission must be received in order for the work to take place on the Trust land. The Trustees requested that a draft be provided a week before the next meeting for any items for which approval is being sought.

4. Adjournment

Scott Sutherland moved to adjourn the meeting at 6:45. Si Morrill seconded the motion. The motion was unanimously approved.