

Newburyport Waterfront Trust

March 5, 2014

City Council Chambers

Minutes

1. Call to Order

A meeting of the Newburyport Waterfront Trust was called to order by Chair Doug Locy at 7:00 p.m.

2. Roll Call

In attendance were members Doug Locy, Jody Fraser, Si Morrill, Joe Brown and Scott Sutherland.

Doug Locy moved to change the order of the agenda and address items of new business at the beginning of the meeting. Si Morrill seconded the motion. The motion was unanimously approved.

3. Park Use Applications

Fuel Training Group

The Fuel Training Group submitted an application for the use of the 25-foot area at the west end of the boardwalk for ten minutes at the beginning and end of its classes. The classes are held on Monday, Wednesday, Friday and Saturday mornings. Participants pay FUEL either a \$16 drop-in fee or for a six-week program. The fee paid to the Trust will be raised to \$600. Doug Locy moved to approve the FUEL application. Joe Brown seconded the motion. The motion was unanimously approved.

Team Paul and Eve Spinathon

Team Paul and Eve is a supporter of the Pan-Mass Challenge, which raises money for the Jimmy Fund. The event would be held on May 17, with a rain date of May 18. Six 50-minutes spin classes would take place on 25 bikes that would be set up on the boardwalk behind the stage. All of the money raised from the spinathon would go to team Paul and Eve, who will be riding in the Pan-Mass Challenge. Doug Locy moved to approve the application and waive the associated fee. Jody Fraser seconded the motion. The motion was unanimously approved.

Precision Chiropractic

Dr. Sean Carey said he would like to set up a table in the park two Thursday afternoons and some Saturdays during the summer to evaluate individuals for a predisposition to spinal problems. Participants would receive a gift certificate to Dr. Carey's clinic and he would make a \$50 donation for each new patient. The Trustees did not approve the application because the park is not to be used for commercial ventures.

Weddings

Doug Locy moved to approve the wedding applications that have been received. Jody Fraser seconded the motion. The motion was unanimously approved.

Sewer Line Easement

Geordie Vining spoke about an application for an easement for a sewer line that would run from Water Street to the Fish Pier along the boundary of the Trust property and under Custom House Way. He said the proposed Harbormaster's facility would provide restrooms for staff, the general public and boaters. A water line extends to the existing building, but a sewer line does not. The new sewer line would be installed six feet below ground. The AUL requires that a soil management plan be put in place for any activity that disturbs the soil below a two-foot depth. Scott Sutherland moved to approve the plan in concept. Jody Fraser seconded the motion. The motion was unanimously approved.

4. DCI Boundary Survey

Doug Locy reviewed the history of the work to prepare a survey of the boundaries of the Trust property. In June 2012 the Trust entered into a contract with DCI for the replacement of pins that could not be found. The NRA agreed to split the cost and have the same right as the Trust to the deliverables, but was not to be named on the contract. When the first boundary plan was received in November 2012 many unexpected issues were found. A subcommittee began working with the NRA to resolve the issues. The NRA consented to reimburse the Trust for past maintenance expenses and entered into an agreement for the joint landscape maintenance of the groups' properties.

Over time the scope of the survey work expanded beyond the original contract. The principles worked together and a plan was presented to the Trust on January 29, 2014. The Trustees were led to believe the NRA would not oppose the addition of language related to the rights of the Trust and the obligations of the NRA. Doug Locy said because the attorneys advising the Trust and NRA had opposing views, he consulted a third attorney, Jim Connolly. He concluded by saying the goal of the Trust is to have the survey recorded and the AUL removed from its property.

Bob Wolfe, appearing on behalf of the Friends of Newburyport Waterfront, said he and Bill Harris found through research that there has been a long history of conflicts over the land along the waterfront. The Declaration of Public Trust was written with the intent of isolating the Trust from the City and the NRA in order to protect the valuable waterfront land from competing interests. The Trust was set up to control the land and the income that is derived from it. Obligations were placed on the NRA to convey certain parcels to the Trust. Some parcels remain yet to be conveyed. The work to repair the bulkhead places the Trust at risk to lose its control of the waterfront. The interests of the Trust must to be protected so it may continue to control the waterfront, which is the primary source of its income. He said the Trust should have not tied its ability to define its property to the consent of the NRA. The surveyor was hired by the Trust and should answer only to the Trust; working for both parties would create a conflict of interest.

Mr. Wolfe went on to say that an agreement involving land is only enforceable when a written contract exists. The Trust has a contract for Somerby's Way and Ferry Wharf Way but not for the new two feet of the bulkhead that will now separate the Trust from the water. The City has not signed a contract that recognizes the Trust's ownership of these two feet. He added the City is obligated to cover the cost of maintaining the Trust property, but has not done so. The maintenance has totaled \$140,000 over the past four years. He concluded by saying the

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survey represents an opportunity for the Trust to indicate it owns Somerby's Landing, Ferry Wharf Way and the bulkhead.

Mayor Holaday said the purpose of the survey is to delineate the metes and bounds and it should not be used to identify future conveyances. She said she would work with the Trust to make sure the property is conveyed after the bulkhead repairs have been completed. She added that the City has contributed to the maintenance of the Trust property by not charging for water, electricity or snow removal. She said the City and Trust work cooperatively to maintain the property for the residents of the city.

Elizabeth Heath said it is stated on the City website that the "Newburyport Waterfront Trust was established to hold, manage, maintain, conserve, and utilize the land for the use and enjoyment of the citizens of Newburyport, Newbury, and West Newbury in perpetuity, allowing the public free access forever." She said the Trust is powerful and responsible for protecting the property that makes the city what it is. She asked the Trust to stand up for the rights it was formed to protect.

Joanie Purinton said she is one of the original litigants that fought for the Ways to the Water. She said the mission of the Trust is to protect the land that was saved. She thinks the conveyances that are to be made should be included on the survey in order that they might be identified in the future.

Doug Locy moved to approve and record the survey that was agreed to by the principals on January 29, without amendments. He said the Trustees will enforce the Declaration, but the scope of the survey was the setting of the metes and bounds. Si Morrill seconded the motion.

Joe Brown said four critical issues must be addressed. First, only four of the six Ways that were to be conveyed to the Trust have been shown on the survey. Second, the ability of the Trust to lease on the waterside of the bulkhead is being left off of the document, which is the source of the majority of the Trust's income. He said thirdly the plan should indicate Somerby's Way is to be conveyed to the Trust. Finally the survey does not address the AUL or indicate the AUL impacts Custom House Way. He asked for a joint meeting with the NRA to reconsider the two votes that were taken at its last meeting. He said if the NRA does not agree to include the rights of the Trust on the plan, the two groups must part company. He added that he does not believe that all pertinent documents were sent to Jim Connolly.

Doug Locy said the Trust must enter into an agreement with the City and the NRA for the conveyance of the land, but the information does not belong on an existing conditions survey. The issues about which Mr. Brown is concerned will not be overlooked because they are a part of the Declaration.

Scott Sutherland said the joint arrangement with the NRA was for the determination of the boundaries and this has been done. He agrees that other issues must be addressed but the survey is not the correct vehicle for this. He said the scope of the survey is limited and the objective of it is not to solve all of the issues concerning the rights of the Trust. They need to be addressed but he does not believe the survey is the correct place. The property rights are referenced in other documents.

Si Morrill said he agrees the Trustees must pursue the obligations to convey the land to the Trust, but this should not be done through the survey. He said he would not be in favor of signing the survey until a commitment to convey the land has been made. He would like a joint meeting to take place between the NRA and the Trust so that a MOA might be reached on the transfer of the land.

Si Morrill moved to amend the motion so that the approval of the survey is postponed until a joint meeting to resolve the outstanding property issues has taken place. Jody Fraser seconded the motion. The motion was unanimously approved. Sandy Small requested that the public be allowed to observe the discussion.

5. Parking Agreement

Joe Brown moved to approve the amended parking agreement with the City for one year, beginning April 1, 2014. He thanked Scott Sutherland for addressing the concerns that were expressed at the last meeting. Doug Locy seconded the motion. The motion was unanimously approved.

6. Firehouse Lease

Mayor Holaday said the Firehouse, which is at the center of the City's new cultural district, operates at an annual deficit between \$18,000 and \$20,000. She said the organization is not able to afford the \$5,000 lease it has with the Trust. She added the Trust does not contribute to the cost of maintaining the restrooms, which are used by visitors to Trust property. She said the Trust should convey the patio to the Firehouse or contribute the lease money from this area to the upkeep of the restrooms. Joe Brown responded the Firehouse operated rent-free for seven years and the Trust is required by its declaration to receive full and fair market value for the use of its property. He added the restrooms are a part of the lease between the City and the Firehouse. Mayor Holaday asked him and Fred Hufnagel to meet with her about the subject.

Scott Sutherland said he received a quote of \$1,000 for a lease opinion for the patio and the land to the west of the Firehouse. Joe Brown moved to receive a lease opinion for a cost of \$1,000. Si Morrill seconded the motion. The motion was approved with Doug Locy voting in opposition.

7. Signage

The Trustees voted at the February 3 meeting to approve a totem-style sign for the harbor tours, the whale watch and coastal sailing for the entrance to Riverside Park. After speaking with Building Commissioner Gary Calderwood the boat owners decided to install a similar sign near the east lot rather than the one they had previously wished to install. A request to install a sign on the ticket booth had been denied because of the size of the sign. The sign will be made smaller. These two changes would make ZBA approval for the signage unnecessary.

Doug Locy moved to extend the meeting by 30 minutes. Si Morrill seconded the motion. The motion was unanimously approved.

8. Minutes

Joe Brown moved to approve the minutes of the February 3, 2013 meeting as amended. Doug Locy seconded the motion. The motion was unanimously approved.

9. Treasurer's Report

Joe Brown said the account balance is \$186,599. Activity in February included the receipt of \$375 for the last winter lease, the payment of the insurance bill and a payment to Doug Locy in the amount of \$50 for miscellaneous materials.

Jody Fraser moved to approve a payment to Sonora Designworks in the amount of \$31.25. Si Morrill seconded the motion. The motion was unanimously approved.

Joe Brown moved to approve a payment to Scott Sutherland in the amount of \$91.64 for postage and the recording fee for the sign that was installed at the entrance to Riverside Park. Jody Fraser seconded the motion. The motion was unanimously approved.

10. Landscape Maintenance Contract

The bid package has been completed and will be advertised on March 12. Bids are due March 26. The next regular meeting of the Trust will be moved from April 7 to April 2 so the Trustees might vote to award the contract.

Joe Brown moved to approve the amended MOU with the NRA. Scott Sutherland seconded the motion. The motion was unanimously approved.

11. Fueling Agreement

The contractor for the bulkhead repair project has requested permission to fuel its construction equipment at the Transportation Dock. The Fire Chief has signed the permit. Joe Brown moved to permit the fueling of the construction equipment at the Transportation Dock until May 31, 2014 provided the necessary permits and insurance certificates are obtained. Jody Fraser seconded the motion. The motion was unanimously approved.

12. Other Business

Scott Sutherland said he has been working with DCI on the configuration of the Riverside Park parking lot. He has contacted Andy Port about addressing the conduit under the Murphy building.

Scott Sutherland said the electrical meters for the tour boats have been received and he would like them to be installed within the next 30 days so that initial readings might be taken before the boating season begins.

13. Adjournment

Joe Brown moved to adjourn the meeting at 9:30 p.m. Si Morrill seconded the motion. The motion was unanimously approved.