

**Newburyport Waterfront Trust**  
September 16, 2015  
Police Station Conference Room  
Minutes

**1. Call to Order**

Chair Scott Sutherland called a regular meeting of the Newburyport Waterfront Trust to order at 7:00 p.m.

**2. Roll Call**

In attendance were Trustees Scott Sutherland, George Ellison, Joe Brown, Wilbur Shenk and Steve Hines.

**3. Minutes**

George Ellison moved to approve the minutes of the August 19 meeting as submitted. Wilbur Shenk seconded the motion. The motion was unanimously approved.

George Ellison moved to approve the minutes of the September 2 meeting as submitted. Wilbur Shenk seconded the motion. The motion was approved with Joe Brown abstaining.

**4. Treasurer's Report**

The income for August was \$21,692 and the expenses totaled \$13,252, leaving a balance of \$199,506. An invoice was received in the amount of \$5,036.84 for the planting of trees near the restrooms and hydroseeding. Wilbur Shenk recommended that \$3,390 of this bill, the amount due for the hydroseeding, not be paid until the Trustees are able to observe the results of the work. George Ellison moved to approve the payment of invoices from McCarthy Landscaping in the amount of \$1,238.95 for repairs to the irrigation system in the berm area; the Greenskeeper in the amount of \$80 for monthly maintenance, \$1,646 for the planting of the trees near the restrooms; The Handyman in the amount of \$1,425 for the installation of benches and plaques and repairs to the boardwalk; and Edith Heyck in the amount of \$18.55 for miscellaneous materials. Wilbur Shenk seconded the motion. The motion was unanimously approved.

Joe Brown asked about the percentage of the bill that should be passed on to the NRA for the hydroseeding and the trees that were planted to screen the view of the restrooms. One of these trees is on NRA property but the planting was initiated by the Trust. One quarter of the hydroseeding took place on NRA land. Wilbur Shenk moved that the Trust be responsible for the cost of the trees and the NRA be asked to pay for 25% of the cost of the hydroseeding. Joe Brown seconded the motion. The motion was unanimously approved.

**5. Parking Contract Renewal**

At the August 19 meeting the Trustees voted to enter into a six-month agreement with the City beginning October 1 at the rate of \$16,000 per quarter and to renegotiate the contract on April 1, 2016 based on the current rates at that time. Scott Sutherland, Steve Hines,

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Richard Jones and Mayor Holaday subsequently met to discuss the renewal of the contract. Mayor Holaday proposed that the revenue to the Trust be increased to the annual rate of \$35,000. The contract shall be extended for seven months rather than six to give time for a clearer picture of the parking garage to emerge.

Scott Sutherland moved to extend the parking contract with the City for seven months beginning October 1 for the annual rate of \$35,000 with the stipulation if the rate structure is modified within this period the amount paid to the Trust would be reviewed and adjusted accordingly. Wilbur Shenk seconded the motion. The motion was approved by a four to one vote, with Joe Brown voting against it.

Scott Sutherland had agreed to a request from Richard Jones that up to nine parking spaces be set aside for use by the tenants that are being displaced due to the culvert construction. He acknowledged this decision is contrary to the provisions of the Trust. Joe Brown moved to ratify the Chair's decision to set aside up to nine parking spaces. George Ellison seconded the motion. The motion was unanimously approved.

#### **6. Riverside Park Reconfiguration**

Scott Sutherland and Steve Hines met with Jon-Eric White on site. They found the traffic is orderly and the detour is well signed. Direct access into the lot will be permitted when work is not taking place. An LSP is on site to examine the soil as it is being excavated. Mayor Holaday said the City would be prepared to complete the loam work, mark the pavement, reset the signs, install the street lamp bases and poles and install the PVC conduit. She estimated the value of the work would be \$35,000 and while it is not all of the work that the Trust requested, it is the amount the City would be willing to commit to at this time. Scott Sutherland said the offer is generous.

#### **7. Subcommittee Appointments**

Mayor Holaday said the meetings with the Trustees about the Trust documents have been very productive. She added the Harbor Commission has agreed to designate two members to a subcommittee that would meet with the Trustees to discuss revenue sharing. The next step would be to bring the NRA into the meetings. She said she is very pleased with the progress that is being made in bringing the stakeholders on the waterfront together.

Scott Sutherland moved to appoint Steve Hines and George Ellison to a subcommittee to work with the Harbor Commission. Wilbur Shenk seconded motion. The motion was approved by a four to one vote with Joe Brown abstaining.

The subcommittee would be charged with working with a subcommittee of the Harbor Commission to develop a revenue-sharing agreement that would place the operation of the day-to-day activities of the waterfront and its safety under the direction of the Harbormaster and the Harbor Commission, would meet the current and future financial requirement of the Trust to maintain its assets in a first class manner and would meet the obligations of the Trustees as set forth in the Declaration of Public Trust. The subcommittee should work to provide a progress report at the November 18, 2015 Trust meeting and to execute a revenue agreement by the end of December 2015. Wilbur Shenk moved to accept the three objectives of the subcommittee. Steve Hines seconded the motion. The motion was approved.

#### **8. Upper Custom House Way Dedication Document**

The Trust was asked to execute a dedication document for the installation of a utility corridor under Custom House Way. Georgie Vining said the permitting process for the project has been underway for almost two years and the Trust had submitted a letter of support for a boating infrastructure grant for the project as designed. The dedication document the Trust is being asked to sign was modeled on the one used for the culvert project in Riverside Park and Doug Bolick approved document. The Newburyport Historical Commission and the Massachusetts Historical Commission both determined the work to install the utilities corridor would have no adverse impact on historic or archaeological resources. The sewer trench would be four feet deep and 1.5 feet wide and the telecommunications trench would be three feet deep and 2.5 feet wide. Once the utility trenches have been excavated and the underground lines installed, the brick would be restored to its original condition.

The Public Settlers are concerned about archaeological, vibration and contamination issues and would like the utilities corridor to be installed along the eastern side of the Custom House, which is being referred to as Lower Custom House Way. Scott Kelly spoke on behalf of New England Development, which contends that its land extends to within a short distance of the Custom House and does not support the installation of the utilities in this area.

Bill Harris and Bob Wolfe discussed the reasons the Settlers do not approve of the dedication document. They said Upper Custom House is in a National Register-eligible archaeological district. The use of Lower Custom House Way would avoid the disturbance of potentially contaminated soils, would improve the view corridor to the water and would allow for public access to the waterfront. Michael Mroz said he is concerned vibration caused by the construction of the utility corridor along Upper Custom House Way would damage the Custom House.

Scott Kelly responded he does not find the objections of the Public Settlers compelling and his opinion differs from theirs on the existence of public rights to the east of the Custom House. He added engineering services would prevent any vibration from damaging the Custom House. In addition, an existing electrical transformer located to the east of the Custom House would create a problem with regards to the need to separate utilities.

Georgie Vining said an alternatives analysis was undertaken. The registered plan shows that while there may be some public rights to the east of the Custom House, they do not extend all the way to the water. He added the work to install the utilities corridor does not include horizontal drilling. A similar trench was dug when the lights were installed along Custom House Way. Trenching was done along Custom House Way in the 1970s as a part of a study on the archaeology of the central waterfront. The study concluded the trenching areas would not be worthy of further exploration because they were located in an area that was thoroughly reworked and would be unlikely to yield meaningful historic artifacts.

George Ellison said the Public Settlers had first requested only that an archaeologist be on site during the work. In his opinion the objection to the use of Upper Custom House Way stems from their desire to create an additional public way. Any materials to be reviewed at the October 21 meeting should be forwarded to the Trustees by October 14.

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Written approval has not yet been obtained from the Fish and Wildlife Service. The dedication document should be perhaps more strongly worded in terms of providing protection from vibration and contamination and safeguarding archaeological resources. Joe Brown said consideration for the Trust beyond the use of public restrooms should be included. Scott Sutherland moved to table the discussion until the October 21 meeting. Joe Brown seconded the motion. The motion was unanimously approved. The Trustees should receive any materials on the issue in advance of the October 21 meeting in order they might have sufficient time to review them.

**9. Parks Committee Report**

Wilbur Shenk reported the Riverfront Music Festival was successful. DPS added four trash barrels. Edith Heyck said she was satisfied with the event but questioned if the park is the right venue for it. Joe Brown said he would like the fee for this event and Yankee Homecoming to be increased to \$3,500 next year. At the March 13, 2015 meeting the Trustees voted to increase the fee for the Riverfront Music Festival to \$4,000 in 2016. A notice that the rate is to increase will be sent to the Chamber of Commerce so that it might be included in the budget for 2016. At the October meeting the Committee will make a recommendation on the fee to be charged for Yankee Homecoming in 2016.

Wilbur Shenk moved to approve an application from the Chamber of Commerce for five one-hour exercise sessions during Savor Newburyport and to waive the fee. George Ellison seconded the motion. The Chamber would charge participants \$8 per half hour session, half of which would be donated to the Newburyport Education Foundation. If this were to become an annual event the Trust would consider charging the Chamber a fee. The motion was unanimously approved.

Wilbur Shenk moved to approve an application for a September 2016 wedding. George Ellison seconded the motion. The motion was unanimously approved.

**10. Park Manager's Report**

Edith Heyck submitted a written report.

**11. Waterfront Committee Report**

Wilbur Shenk moved that the package to be used for the winter leases to go into effect October 15 should be the same as used last year with the deletion of the section concerning the bulkhead. Joe Brown seconded the motion. The motion was unanimously approved.

**12. Ways to the Water**

At the July 30 meeting the Trustees voted to ask Doug Bolick for a legal opinion on the Ways to the Water. Wilbur Shenk moved not to proceed with the action at this time. George Ellison seconded the motion. The motion was unanimously approved.

**13. Adjournment**

Wilbur Shenk moved to adjourn the meeting at 9:00 p.m. Steve Hines seconded the motion. The motion was unanimously approved. The next meeting of the Waterfront Trust will be held on Wednesday, October 21 at 7:00 p.m.