

May 14, 2009

The regular monthly meeting of the Oxford Board of Port Wardens was called to order by the chairman, Thomas Campbell, on Thursday, May 14, 2009 at 7:00 p.m., in the meeting room of the Oxford Community Services Center.

Other board members in attendance were Larry Murray, Stanley Bright, and Nancy Cook.

The minutes of April 2, 2009 were approved and accepted as distributed.

A consultation was held with Skip Case, property owner of 101 Oxford Road, and representative for the Oxford Landing Homeowners Association. Mr. Case met with the board to again review the association's project for bulkheading. Also with Mr. Case were Corey Hubbard and Kelly Wright, engineers with Andrews, Miller, and Associates. Since last meeting with the board on April 2, Mr. Case stated that he had further investigated the association's proposed project. At the last meeting with the board, Mr. Case was asked to: 1) record on the association's plans the riparian rights as it was established by the Town of Oxford Harbor Management Plan (which the association has now done), and 2) to hold one section of bulkhead in a replacement in kind which would mean tearing out the existing bulkhead and replacing it as it is because of the proposed encroachment on the Wilson property line. Mr. Case stated that it has become apparent that the association would be improving for the State and for the Town 6.8 feet of bulkhead because it runs past the association's property line and the association is prepared to do that for the betterment of the Town and State because, according to Mr. Case, "it is the right thing to do." The State Highway Association is located on the southwest corner and the Wilson property is located on the northeast corner on either side of the associations' properties. The association looked at doing the standard approach for bulkhead replacement by pushing it out 18" and also pushing Wilson's out 18". The encroachment on the Wilson property line is quite minimal if the Wilson estate does the same thing as the Association. The Wilson estate has not come forward and said they would do that, but Mr. Case stated that when looking at their bulkhead, anyone who is going to buy this property is going to say they want a bulkhead and dock and the association is prepared to make this return and stop so that the association would set up the Wilson property for the same bulkhead replacement that the association is proposing. In researching this project, Mr. Case found that property rights and riparian rights are not consistent with each other so that as long as the association is within the riparian rights as described in the Harbor Management Plan of Oxford the association has the ability to utilize the bulkhead replacement as they have proposed it without encroaching on the property lines of either the SHA or the Wilson Estate property. The reason for tonight's consultation is because 1) the Association has the letter from the SHA and Wilson Estate property that they

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have no objections to the original plan as submitted on April 2, 2009, and 2) the Association feels they are doing a betterment not only for the SHA, but also for the Wilson property in terms of finishing the area for the SHA and creating a set up for the Wilson property that would be easier for the SHA and Wilson Estate when they get ready to do the bulkhead replacement for what they have there. Mr. Case also explained the environment impact on the proposed work. To replace the bulkhead in kind would mean taking out the existing bulkhead and replacing the bulkhead as it sits. In order to do so, one would have to excavate an area of property back in order to have room to do the work. The environmental disturbance created by this type of work, as explained by Mr. Case, is the reason why everyone customarily does the 18" extension in order not to create a disturbance which would spread out into the rest of water area created by the excavation work. Another factor with excavation is the cost factor.

Mr. Campbell's only concern with what Mr. Case had presented dealt with riparian rights. Mr. Campbell's belief was that riparian rights were meant to establish a perimeter for a pier and its poles and was not designed to allow people to build fast lands across a line. Mr. Case responded that property rights would remain intact and that the Associations' property rights would only extend to the association's property lines. One of the engineer's from Andrews Miller stated the riparian right's owner would own the backfill and any structure built on top of that but that property would remain the same. Mr. Case stated that the next step for this project would be to get a permit application based on this plan but we wanted to get the board's consensus now rather than redo the application. Mr. Murray asked about the Wilson estate. Mr. Case stated that the Wilson estate had not seen this new plan but that he (Mr. Case) would be willing to go back to the estate and ask if the new plan would be acceptable and secure a letter from the estate of "no objection." The engineer from Andrews Miller added that the new configuration allows for a better connection by the Wilson estate when they decide to install a new bulkhead. The Port Wardens were in agreement that the Association's application should be based on this night's presentation with a new letter included from the Wilson Estate. Both Mr. Murray and Mr. Campbell stated they had no problems with what was presented at this night's meeting.

The following permits were then reviewed:

Permit #09-01, Thomas Egan, 111 First Street, place two pilings outboard of existing pier per attached modified plat. Mr. Egan was unable to attend this night's meeting. Mr. Murray recused himself from this application as he is a neighbor of Mr. Egan. A letter was read from the Estate of Elaine McWhorter stated that they had no objections to the request. Mr.

Campbell stated that he had gone down to Mr. Egan's dock and found that the two existing mooring pilings that he had are now shown on Mr. Egan's plat. Mr. Bright questioned why Mr. Egan wanted the additional pilings. Mr. Murray responded that the owner wanted to put his boat outboard of his finger pier adding that he had helped Mr. Egan with his plat drawing. Mr. Campbell stated he did not see any problem with the proposed pilings but that the plat was missing the two existing pilings. Ms. Cook stated that she thought the applicant should submit a drawing showing the two existing pilings. Mr. Campbell then stated that the Port Wardens make a request that a completed drawing of the pier and its existing mooring pilings be shown to be on file and that then the Port Wardens could approve. A motion was made by Ms. Cook to approve the application subject to the corrected plat drawing. The motion was seconded and was carried with one abstaining vote.

Permit #09-03, E. S. Whelan Co., LLC, 808 S. Morris Street, construct a 150' x 6' timber pier to include a 20' x 10' "L", two mooring piles and a boat lift extending 135' channelward. Mr. Whelan was represented by Mark Hill of Bailey Marine. Mr. Hill explained to the board that currently the property does not have a pier. The proposed pier was moved to the left hand building restriction line because when Mr. Whelan bought the property there was an easement agreement with the property owner on the other side of the Whelan property. Mr. Campbell questioned the application which shows the pier as being 135'. Upon looking at the application more closely it was discovered that the plans shows the pier out at 135' from mean high water with an additional 15' coming landward. Neighboring property owner Robert Shattuck expressed his concern that he hoped the proposed pier would be built going directly out, not right or particularly to the left. He added that when his neighbors at 704 S. Morris Street installed their pier it did not get built straight out as their plans showed and thus ruined his view. Mr. Hill explained the reason why the pier at 704 S. Morris Street, which his company installed, did not go straight out was because of the way in which the property was laid out. It was staked out by a professional and built correctly. Mr. Hill added that the Whelan pier would be staked out by an engineer as well because it was going to be built close to a building restriction line. Mr. Hill couldn't guarantee the pier would be perfectly straight because though the lot looked relatively square it may not be. Mr. Campbell added that the board members want to make sure the setbacks are met because this property abuts a public access to the water. Mr. Hill stated that the pier

would be staked out. Mr. Shattuck added that he just wanted to be assured that if the pier does not get built right that it would be pulled out and corrected. Mr. Campbell stated he did not know he had the authority to issue any assurance but that he did have the authority to tell Mr. Hill that when they construct the dock that they honor the setback because the town would be interested in the placement of the pier because of the public access. Mr. Hill stated that prior to construction he would get a stakeout drawing and contact the board members to come out and look at it for approval. Mr. Campbell stated that he would be willing to come out and investigate when Bailey Marine is ready to drive the first piling to check the two site lines. Mr. Murray made a motion that the board approve the permit based on the receipt of the required MDE permits and Corp of Engineer permits. The motion was seconded by Mr. Campbell and unanimously carried with all in favor.

Permit #09-02, Tom Campbell for Campbell's Boatyard at Jack's Point, 106 Richardson Street, request for dredging; bulkhead replacement; covered storage dock; replacement and construction, and relocation of travel lift. Mr. Campbell recused himself from the board in order to present his application. Mr. Murray took over as the acting chairman. Mr. Campbell explained to the board that the bulkheads around his entire facility are in bad shape and are in need of major repairs. He described the boatyard as being old and antiquated. Currently it has a covered storage area which is quite low. Though temporary repairs have been made to the travel lift, it is failing and Mr. Campbell stated he wanted to move it further inside the facility. Mr. Campbell noted he was not gaining any slips as there were some concerns from letters received by neighboring properties about an increase in traffic, and that, in fact, they would be decreasing by a small degree. "A" dock, which is the fuel dock, would be replaced in kind for the most part. The docks would be squared up and the fuel pier-T made longer. Mr. Campbell added that he has applied to do maintenance dredging for the entire facility and has permits from the Corps of Engineers and the Department of the Environment to do this project. Mr. Campbell also showed on his plans some covered slips. He noted that it would be an open structure that would not have walls. It would be taller than the covered slip area he has now. Mr. Campbell admitted that though covered slips in Oxford do not make a lot of sense, he does have covered storage area now and wanted the idea of preserving the storage because once it goes away in the Town of Oxford, it will go away for good and there will be no more covered slips/boathouses. He

added that this new, proposed covered area is smaller than what he currently has existing.

Neighboring property owner Walter Patton addressed the board stating that he had some concerns with Mr. Campbell's original plan that had slips facing onto his property. However, Mr. Patton stated that the plan in which Mr. Campbell was presenting at this night's meeting addressed those past concerns and that he appreciated the changes. He added that he was comfortable with the plan but that he had one question with regards to the setback line. Mr. Patton asked the board if the setback line is truly a setback or is one allowed to use the setback area as a slip area? Mr. Murray asked Mr. Campbell if he would be putting boats between the pilings and the docks. Mr. Campbell responded that if the neighbors agreed upon it for temporary use he probably could, and "if the neighbor's had an issue about it, it would probably be an issue." He added that he would not have any problem putting boats there if it would not cause a hardship. Mr. Bright asked how it would be used. Mr. Campbell responded that it would be basically a long boat slip with the possibility of one boat in front of another. He added that this was a working boatyard and not a marina. Mr. Patton again stated how pleased he was that Mr. Campbell worked with him on addressing his concerns.

Another neighboring property owner, Robert Turner, spoke to the board. He stated that the proposed changes would block his view dramatically. He also added that he was not keen on the covered slips coming out as far as they were shown on the site plan.

Mr. Murray's primary concern was that the harbor line cut through Mr. Campbell's boatyard. He stated that as far as the board was concerned this would limit them as to what they could approve relative to the application. His thoughts were that the only way the application could be approved was through an appeal process whereby one had the harbor line changed to be on the outside of the envelope that Mr. Campbell has at this location. Mr. Campbell stated he knew this was a big concern and that he had tried to find records on when it was established. He added that when he applied for this application, the MDE and the Army Corps were more interested in the federal channel than the harbor line. Mr. Campbell was also aware that the town wants only placement in kind beyond the harbor line. When the Corps looked at his plan, Mr. Campbell stated that they had looked at the boatyard as it appeared as a footprint and considered the dock as a structure. Mr. Campbell noted that when he came up with his plan he was not trying to extend any further out into the channel but

basically using the footprint of the existing marina with its established perimeter. Mr. Campbell then asked for the board's opinion as to whether or not they viewed his proposed changes as favorable or unfavorable. Ms. Cook asked if the other governing bodies had approved the covered storage and questioned whether or not the board had the right to approve that since they were aware that boat houses could not be built anymore. Mr. Campbell replied that the other governing bodies (MDE/Corp. of Engineers) did not have concerns over the covered storage. Ms. Cook then asked if it was the board that should look at the covered storage or some other body since it is a structure. Mr. Campbell responded that he thought it may have to go through a building permit process since the structure will have to be inspected by an inspector and approved by the State Fire Marshall. He thought that if he did build it, it would be built on a small scale and that he was "prepared to hit a wall" with the town because of the town's restrictions and the expense of trying to meet local building codes which may result in making this portion of his application economically unfeasible. Ms. Cook stated that she did not feel comfortable handling the boat storage without knowing more details such as whether or not it had to be reviewed by other bodies. Ms. Cook's thoughts were that Mr. Campbell should appeal his application to get clarification about the harbor line and that he should be grandfathered to build within the envelope the boatyard currently has, but not include the boat house as she thought it needed to be reviewed by more bodies for approval. Mr. Bright thought if Mr. Campbell was thinking about keeping the covered slip area and amending the existing covered slip area at the same size or smaller, then he would feel his footprint idea was a reasonable thing. He added that it sounded like Mr. Campbell was not committed to the covered slip idea. Mr. Campbell replied that he was not, but that if he ends up having to go with a replacement in kind concept it would make more sense to go back, rethink the project, and reclaim the covered storage area and keeping it in the same location if he could adjust it. He added that he just wanted to be able to change the slip sizes in there to make them more marketable. Mr. Murray stated that the board should make a motion to send a letter of recommendation to the Commissioners stating that the board would recommend approval (of the project) staying within the footprint of this particular operation, specific to this very yard. Mr. Bright added that assuming Mr. Campbell decides to keep the covered slip area within the existing slip area he would see no reason not to have him be able to do what he wants as far as slip sizes as long as there is no expansion of the covered storage beyond the existing

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structure. The motion of recommendation was seconded by Ms. Cook with all those in favor (with the exception of Mr. Campbell who had recused

himself from voting).

There being no further business, the meeting was adjourned.

Respectfully submitted,

Lisa Willoughby
Assistant Clerk