

RE: 99 Bow St

Meeting: Conservation Commission 09/15/21



Dear Conservation Commission,

September 14, 2021

Please review the NHDES Application for 99 Bow St carefully. There seem to be some discrepancies in the wording and what is presented. The application does show true professionalism in presenting even the negatives as positives.

On page 2 of the narrative it states "There is no emergent vegetation or eel grass present in this location." Reviewing the pictures (pg 35) it is plainly visible that all the rocks are covered in important emergent vegetation. The lower picture on page 38, shows it struggling due to lack of light however in the upper part of the picture the vegetation which receives light is remarkable and retaining a healthy color. This Rock Weed is very important in maintaining dissolved gases and water quality. It provides food and protection for smaller organisms as it floats at high tide and helps to maintain the food chain for the Atlantic and Short nose Sturgeon and other larger species. The proposed deck will remove more light from this area causing the rock weed to struggle to provide an important balance to the eco system of the Old Harbour.

On page 5 of the narrative the written consents of 109-111 Bow St are presented. According to the letter written by John Samonsas (pg 56) only 5 of the 7 condo owners of 109-111 Bow actually support this enlargement. 113 Bow St, not within 20', pointed out many negative concerns with this enlargement.

The Clean Water Act may be violated by the storage of trash containers within a few feet of the water. The area between 109-111 and 99 Bow St is normally packed full of them. What will happen when even more trash containers are needed to accommodate 120 more customers, much less the employees to wait on them? Lest no one forget the level of trash and cigarettes which will be added to the already impaired Piscataqua River by normal use and wind.

This proposed addition was 2191 sf. The latest rendition is 2127 sf, a mere decrease of 64 sf. The environmental impacts on this recovering wetland should not be dismissed. Avoidance, minimization and mitigation would be to reduce the size of the existing deck back to what it was. The existing deck is an enlargement of what was there and was to include 20 X 26' area for the public. This lot built a building which entirely removed all access to public views which existed for over 100 years. The then City Manager supported it, in 2015, based on the creation of public access which was promptly removed when they didn't get everything they wanted. Now a 20 X 15' public area is presented which will lose 5' due to the planter and bar needed to separate drinking customers from the general public.

It would serve the community better to NOT allow this enlargement of an already enlarged deck, then to allow the addition of 2127 sf of more decking, 7 to 9 more pilings, 120 or more people, the covering of important vegetation, the covering of rock resting and protective areas for seabirds and the increased amount of trash, noise and pollution to the water.

Please do not allow this NHDES Wetland application to move forward.

Sincerely,

Elizabeth Bratter

Portsmouth Property Owner

159 McDonough St

September 1, 2021

Via email

The Historic District Commission
City of Portsmouth
City Hall, 3rd Floor
1 Junkins Avenue
Portsmouth, NH 03801

RE: Petition of Martingale, LLC
Subject Property: 99 Bow Street, Portsmouth NH, Tax Map #106, Lot #54

Dear Commission Members:

This office represents a direct abutter to the above identified property, BowPorts EV, LLC (“BowPorts”) which is the owner of Unit 2 at 111 Bow Street. We understand that the Applicant sent the individual members a letter regarding its application. We ask that this please be provided to each of the members prior to the work session scheduled for tonight. Please consider the following:

1. When the Martingale created the existing deck in 2011 it did so while advising that it would not ask for more. (See Exhibit 1, Page 1 – Page 3, Minutes of Conservation Commission Meeting, May 9, 2012)(stating that the deck was “limited to building along the shoreline” and “docking structure would ***not extend any further out*** than the other docking structures in the area.”)

This is why in 2015, the first time that the Martingale requested expansion despite its representations just a few years earlier that it would not, the Conservation Commission ***denied*** approval of a request to recommend that the DES approve a Dredge and Fill permit. (See Exhibit 1, Page 4 – Page 6, Minutes of Conservation Commission Denial, “the motion to recommend approval of the application to the State Wetlands Bureau failed to pass)

A re-hearing of the HDC’s 2015 decision was scheduled. The Applicant withdrew their request which “invalidates the Certificate of Approval.” (Exhibit 1, page 7).

2. It is important to note that the Applicant’s existing building and deck required many variances. What the Applicant ultimately requested and the City approved ***eliminated*** the public view and access to the waterfront from Bow Street. So the issue that the Applicant now purportedly seeks to address (lack of public access to the waterfront) is something that it created.

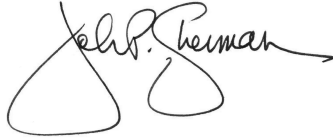
Similarly, if it was truly the Applicant's motivation over the last ten (10) years it could have and would have provided public access and/or handicap access to its deck. It raised this issue in 2015. Clearly, this is something that it has considered. Rather than implement it, though, it is again using this as a way to color what is obviously the true intent of its project – to massively expand its existing business which is already over scale for the area. The Applicant already advertises itself as the “***BIGGEST DECK IN PORTSMOUTH.***” (See Attached Exhibit 2, page 10, Photo of Martingale Sign).

3. The Applicant's identification of abutting properties that allegedly are of equal or greater mass is perplexing. *Some* of these entities have small decks. These are generally smaller than the existing Applicant deck which, again, is the “Biggest deck in Portsmouth.” Several of the properties (i.e., 111 Bow and 113 Bow) do not have decks at all.
4. There is not consent of the abutters. The Applicant knows this. Yet it continues to represent otherwise. All that has occurred is that one individual, John Samonas, privately conferred his consent. Two other owners, BowPorts (Unit 2) and Marjan Frank and George Glidden (Unit 3), object. One individual's position does not represent that of the 111 Bow Street Condominium Association (“Association”). Its By-Laws state that all action that may occur at a meeting may ***only*** be taken without a meeting with the approval of and in writing signed by ***all*** unit owners. (By-Laws, Art. III, Sec. 5) There is no writing – signed by ***all*** unit owners—conferring consent.
5. Erecting “visual buffers” such as large statues and sculptures does not rectify the harm that such a massive expansion causes to abutting properties. In many ways, it makes it worse because rather than seeing existing nature and existing waterscape, abutters will be seeing the *backs* of these sculptures – that purportedly depict waterscape images. So, we again ask that the HDC consider the propriety of taking away nature and replacing it with one person's artistic images of nature.

September 1, 2021

We welcome the opportunity to address these issues further with the Commission. If there are any questions or we can provide further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Sherman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John P. Sherman

Cc: Client
Sherry Young, Esq. counsel for Martingale, LLC (via email)
Nick Cracknell, City of Portsmouth (via email)
Peter Britz, City of Portsmouth (via email)
Marjan Frank and George Glidden (via email)
John Samonas (via email)
David Price, NH DES (via email)
Stephanie Giallongo, NH DES (via email)
Juliet Walker, City of Portsmouth (via email)

**REGULAR MEETING
CONSERVATION COMMISSION

1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
CONFERENCE ROOM "A"**

3:30 P.M.

MAY 9, 2012

AGENDA

I. OLD BUSINESS

- A. Approval of minutes – April 11, 2012

II. CONDITIONAL USE PERMIT APPLICATIONS

- I. 545 F.W. Hartford Drive
Kenneth M. Buttermore, owner
Assessor Map 250, Lot 97

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

- A. Standard Dredge and Fill Application
200 Grafton Road, Pease Golf Course
Pease Development Authority, owner
Assessor Map 320, Lot 0
- B. Standard Dredge and Fill Application
99 Bow Street
Martingale Wharf Limited Partnership, owner
Assessor Map 106, Lot 54
- C. (Work Session) Standard Dredge and Fill Application
NH Department Of Transportation
Lafayette Road Improvements
Assessor Map 244, Lot 3
Lafayette Road Right-of-way

IV. OTHER BUSINESS

- I. Discussion of Conservation Commission vacancies

V. ADJOURNMENT

Chairman Miller asked if there were anymore questions for the applicant. Hearing none, he asked for a motion.

Vice Chairman Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Mr. DiPentima. Chairman Miller asked for discussion.

Vice Chairman Blanchard stated that she had expressed her concern about the general nature of the business which was golfing and the way the turf was managed. She said that she appreciated the fact that the engineering was better but that she would like to see an improved system of monitoring the run off. On the merits of what was in front of them, the project would improve the site.

Mr. DiPentima commented that the golf course has existed since 1901. He felt the project seemed to improve what was there in terms of run off and discharge from the site. It might not be perfect but he felt it was worthy of approval.

Ms. Tanner agreed with what had been said but added that she wondered if there was any way to recommend monitoring and that the latest best practices are used. Chairman Miller commented that he would like to see something like that. At this point, there was considerable discussion as to what monitoring would be recommended.

Vice Chairman Blanchard amended her motion to include the following stipulations:

- 1) That turf management practices are consistent with best management practices and evolving scientific improvements to reduce nitrogen loading.
- 2) That any mitigation plans include monitoring the input and output of nitrogen and other nutrients and pesticides to and from the site.

Mr. DiPentima stated that he felt the stipulations were reasonable. He said that the PDA was a State entity and they should be setting the example for the rest of the industry especially in such a sensitive area.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the State Wetlands Bureau with the following stipulations passed by a unanimous (7-0) vote:

- 1) That turf management practices are consistent with best management practices and evolving scientific improvements to reduce nitrogen loading.
- 2) That any mitigation plans include monitoring the input and output of nitrogen and other nutrients and pesticides to and from the site.

- B. Standard Dredge and Fill Application
99 Bow Street

Martingale Wharf Limited Partnership, owner
Assessor Map 106, Lot 54

Mr. Zach Taylor of Riverside and Pickering Marine Contractors was present to speak to the application. He stated that they would like to construct a new dock along the shoreline. It would be a floating dock structure approximately 10 feet wide and 143 feet in length but it would be designed a bit differently than the traditional dock. It would be a pie shaped structure. He pointed out that the ramp and float would be seasonal structures.

Mr. Taylor explained that the existing wharf has gone through the Department of Environmental Services a few times. The wharf has been **permitted for five boat slips** but currently there are no boat slips. It was now just a wharf that can only be accessed at high tide and on a calm day. Mr. Taylor said that the purpose of the project was to provide that access.

Mr. Taylor told the Commission that they were **limited to building along the shoreline instead of wharfing out because they were in the federal navigable project setback. He said that the new wharf system would provide access down to the supporting dock system and landing.** He explained in detail the conditions of the area that warranted a different approach to the project.

According to Mr. Taylor, the impacts would be minimal since there was no emergent vegetation or eel grass in the area and was essentially a previously disturbed site. He pointed out that it was a historical area and a maritime location. **He added that the docking structure would not extend any further out than any of the other docking structures in the area.**

Mr. DiPentima asked if the harbormaster was included in the planning process. Mr. Taylor replied yes and added that the Army Corp of Engineers had reviewed the project as well.

Vice Chairman Blanchard commented that it would be wall to wall wood down on the river. Mr. Taylor told the Commission that he looked at old photos of the area that showed an entire strip of wharf that wrapped down to what was now Harbour Place.

Ms. Tanner commented that she recently saw a **Moran tugboat go right by the area where the structure was proposed to be built.**

Ms. McMillan asked how large the boats would be that would be accessing the dock. Mr. Taylor said that the size would be limited to a 20-25 foot boat in order to use the five slips. Mr. Vandermark asked if larger boats would be restricted. Mr. Taylor said no but it would reduce the number of slips available when a larger boat was docked there.

Hearing no other questions, Chairman Miller asked for a motion. Vice Chairman Blanchard made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Mr. Vandermark. There was no discussion.

The motion to recommend approval of the application to the State Wetlands Bureau passed by a unanimous (7-0) vote.

**ACTION SHEET
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

3:30 p.m.

June 10, 2015

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman MaryAnn Blanchard;
Members, Barbara McMillan, Kimberly Meuse, Kate Zamarchi;
Alternates Samantha Wright, Adrienne Harrison

MEMBERS ABSENT: Allison Tanner, Matthew Cardin

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

I. APPROVAL OF MINUTES

1. April 8, 2015
2. April 29, 2015
3. May 13, 2015

It was moved, seconded, and passed unanimously to approve the minutes as presented.

II. CONDITIONAL USE PERMIT APPLICATIONS

- A. 200 West Road
Micronics, Inc., owner
City of Portsmouth, applicant
Assessor Map 267, Lot 22

The Commission voted to recommend approval of the application to the Planning Board as presented.

- B. 1163 Sagamore Road
Chinburg Builders, owner
Assessor Map 224, Lot 17

At the applicant's request, the Commission voted to postpone review of the application to the July 8, 2015 meeting.

- C. 3201 Lafayette Road
Hillcrest at Portsmouth, LLC, owner
Assessor Map 291, Lot 7

The Commission voted to recommend approval of the application to the Planning Board as presented with the following stipulations:

1) The applicant shall include in the Site Plan a comprehensive water resource management plan (utilizing tools such as pavers, drainage systems, drip edge, and other best management practices for stormwater) as well as invasive management to include potential restriction of further future development in the wetland buffer proximal to the Berry Brook Watershed.

2) The applicant shall install pervious pavers on all walkways.

- D. Borthwick Avenue (amendment)
Public Service Company of New Hampshire, owner
Assessor Map 234, Lots 1, 2, 3, 7-4A, 7-7, 7-3

The Commission voted to recommend approval of the application to the Planning Board as presented.

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
200 West Road
Micronics, Inc., owner
Assessor Map 267, Lot 22

The Commission voted to recommend approval of the application to the State Wetlands Bureau.

2. Standard Dredge and Fill Application
99 Bow Street
Martingale, LLC
Assessor Map 106, Lot 54

The motion to recommend approval of the application to the State Wetlands Bureau failed to pass.

IV. OTHER BUSINESS

A. Discussion about 6.6 acre conservation land donation

No action was taken.

V. ADJOURNMENT

At 7:35 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Planning Department Administrative Clerk



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7232

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

HISTORIC DISTRICT COMMISSION

Date: August 10, 2015

To: Keith Eveland
Bowports EV Corporation
111 Bow Street
Portsmouth, NH 03801

John P. Sherman, Esquire
Sherman Law, PLLP
155 Fleet Street
Portsmouth, NH 03801

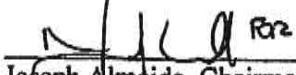
Re: 99 Bow Street request for Re-Hearing

The Historic District Commission considered your proposal at its meeting of August 5, 2015 wherein permission was requested to allow a re-hearing of the Certificate of Approval granted on June 3, 2015 as per plans on file in the Planning Department.

As a result of the above request, Martingale, LLC, owner for the property located at 99 Bow Street has withdrawn their Building Permit #15-409 from consideration at this time. This action invalidates the Certificate of Approval granted by the Historic District Commission on June 3, 2015. A new application and public hearing will be required if this project commences moving forward.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Respectfully submitted,



Joseph Almeida, Chairman
Historic District Commission

JA/lg
cc: Robert Marsilia, Building Inspector
Rosann Maurice-Lentz, Assessor
Martingale, LLC, Owner

1 Junkins Avenue
Portsmouth, New Hampshire 03801
Fax (603) 427-1593



"Join us on the
Biggest Deck in Portsmouth"
(6/7/15)

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