

December 15, 2021

Dexter Legg
Planning Board Chair
City of Portsmouth Planning Board
1 Junkins Avenue
Portsmouth, New Hampshire 03801

RE: OBJECTION to Application for Site Plan Approval
Tax Map 106, Lot 54, 99 Bow Street

Dear Planning Board Members:

BowPorts Ev, LLC (“BowPorts”) the record owner of the 111 Bow Street, Unit 2, Portsmouth New Hampshire is a direct abutter to the Martingale LLC at 99 Bow Street. BowPorts objects to the Application for Site Plan Approval and asks that the Planning Board deny it for the following reasons:

I. THE MATTER IS PENDING BEFORE THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES WETLANDS BUREAU

The matter is currently before the New Hampshire Department of Environmental Services for consideration. (Exhibit 1, page 09). The Martingale requested an extension of time to address the issues NH DES identified. Its response is now due December 23, 2021.

Several issues to be addressed are directly relevant to the Planning Board’s consideration including:

- (a) the projects’ environmental impact,
- (b) its direct impact on endangered species, and
- (c) abutter concerns.

This is the third time that the Martingale has addressed this deck with City boards.¹ Its proposal, just in this 2021 effort, have changed multiple times.

On Tuesday December 14, 2021, Mr. McNabb sent communication indicating that the Plan has changed again. (See Exhibit 2, pg. 10). Because **none** of the owners at 111 Bow Street consent

¹ It first requested a deck in 2011-12. At that time it represented to the Conservation Commission that it could not “wharf out” into the Piscataqua because they were in the federal navigable project setback.” (Attached, pg. 20) It requested expansion of the deck in 2015. After the Conservation Commission denied approval, it withdrew its application to the NH DES. This 2021 proposal is the third – and largest.

to or support this proposal, the Martingale has “decided to pull [its] deck expansion 20 feet away from the lot line” because he believes that approval from 111 Bow Street Condo Association will not be required for their NHDES Dredge and Fill permit if he does this.

On Wednesday December 15, 2021, Mr. McNabb provided another proposed changed architectural rendering of this massive deck expansion. (See Exhibit 3, pgs. 11-13) We, as abutters, were not formally notified of this change. We do not know if the City was advised of it. There is no indication that the Historic District Commission was made aware of it. So any approval that presently exists is, it appears, of a *different* plan.

It seems reasonable that the proposed plan will change again depending upon the NH DES determination. Given this last-minute change, the lack of review and approval by other boards, and the unresolved questions being address by NH DES, it is premature for the Planning Board to address this project at this point. The Board should know the environmental impact and concerns, if any, that the NH DES identifies before considering this proposal.

II. ALL 111 BOW STREET OWNERS OBJECT; AS DO OWNERS AT 113 BOW STREET

All of the owners of condominium units in the 111 Bow Street Condominium Association (“Association”) now oppose and Object to this proposal.

BowPorts (Unit 2) objects. George Bailey and Marjan Frank (Unit 3) object. John Samonas, who is a member of entities that own the five remaining units (Units 1, 4, and 5, **6 & 7**) has advised—and authorized us to convey—that he too objects to the proposal.²

At least two owners and residents of 113 Bow Street also objects to the proposal explaining their concerns regarding: (a) trash storage and collection, (b) emergency evacuation plan, (c) adverse impacts of outdoor lighting and noise, (d) congestion created by loading/unloading trucks, and smoking by Martingale employees who are directed to do so in front of 113 Bow Street – and not the Martingale. (See Exhibit 4, pgs. 14-15 a letter from David and Patricia Mansfield). Another, John Hare, also objected at the first HDC meeting sharing these same concerns.

III. THE CONSERVATION COMMISSION DENIED APPROVAL TWICE

On September 15, 2021 the Portsmouth Conservation Commission *denied* approval of the Martingale LLC proposed deck expansion. (See Exhibit 5, pgs. 16-17).

This was the second (2nd) time that the Conservation Commission denied Martingale’s request to expand its deck. The history of this deck before the Conservation Commission provides important context.

² Previously, Mr. Samonas expressed that he consented to the Martingale LLC building in the 20-foot side setback. Mr. Samonas, however, has now withdrawn his consent and opposes it in its entirety.

When the Martingale created the existing deck in 2012 it did so while advising the Commission that it would not ask for more expansion because additional expansion was not possible. (See Exhibit 6, pgs 18 - 20, 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.”)

Despite this, only four (4) years later, in 2015 the Martingale proposed an expansion similar to what the Planning Board is now considering. During the hearing on this 2015 request, members of the Conservation Commission noted that in its 2012 proposal the Martingale represented that it would *not* and could *not* further expand. The Commission *denied* approval of a request to recommend that the DES approve a Dredge and Fill permit. (See Exhibit 7, pg. 22 stating “the motion to recommend approval of the application to the State Wetlands Bureau failed to pass).

The present proposal is *bigger* and *wider* than the one the Conservation Commission denied in 2015.

Finally, and perhaps most importantly, historical documents show that the Martingale is directly contradicting itself with its present proposal. As reported in the Conservation Commission meeting minutes of 2012 Martingale specifically stated that:

They were limited to building along the shoreline instead of wharfing out because they were in the federal navigable project setback.

* * * * *

The docking structure would not extend any further out than any other docking structures in the area.

(See Attached page 20)(emphasis added). Nothing has physically changed about the site after the Martingale constructed its existing deck. It remains in the “federal navigable project setback.” It is just choosing to ignore this – or not focus upon it – with this proposal.

IV. ADVERSE IMPACT ON THE ENVIRONMENT

The Martingale identifies in its own submission that it is requesting “2,910 square feet of ***permanent impact of tidal wetland*** for an overwater deck expansion.” It is entirely for its commercial use. There is no other identified purpose for this expansion.

A. Adverse Impact Endangered and Threatened Species

As is required at the NH DES, the project will impact an endangered species – the shortnose sturgeon and a threatened species – the atlantic sturgeon. The magnitude of this impact should be determined by the experts at NH DES *before* there is any further consideration by the Planning Board.

The Martingale references that the tidal area of this deck is part of a “larger marine system that provides eleven principal [environmental] functions.” They then just claim, without proof, that they have “minimized [the impact] to the greatest extent practicable.” (See Applicant’s Wetland Functions and Values Assessment, pg. 4). They are *not* indicating, therefore, that they are eliminating the adverse environmental impact just that they have tried to minimize it.

B. “Vibratory Hammer” of Pilings Into Shoreline

As an explanation, the Martingale claims that its construction process minimizes impact allegedly because its methods “will not result in any contact of construction equipment with the environment.” This is a hollow statement.

In the very next sentence, they explain that they will use a crane on a barge to drive pilings along the shore-line into the ground using a large “vibratory hammer.” (See Wetland Functions and Values Assessment, pg. 4) Please fully consider this.

Despite representations to the contrary, it is inescapable that forceful hammering of pilings deep into the ground will impact:

- (a) the shoreline,
- (b) the abutting historic buildings,
- (c) animal species along the shoreland
- (d) the roads and other surrounding structures

111 Bow Street, along this same shoreline, is the oldest building on Bow Street. It will be only 20-30 feet from this “vibratory hammering.” At a minimum, the Planning Board should require *independent assessment* of the impact of this hammering before it is further considered.

V. THIS PROJECT EXCEEDS THE SCOPE OF THE URBAN EXEMPTION THE MARTINGALE RECEIVED

The existing deck is within the Shoreland Protection Area. Federal and State law *forbids* construction within this area without Federal and State approval.

As referenced within the Martingale’s submission, it required and received an Urban Exemption to the Shoreland Protection Act. The materials that it submitted and the *only application approved* was the plan for the existing deck.

As far as the abutters know, they have *never* submitted further requests for amendment to what was approved. They apparently have never requested and received approval from Federal or State agencies for this massive deck expansion they now propose. So this expansion further out into the Piscataqua River lacks approval or an exemption under the Shoreland Protection Act.

VI. THE HISTORIC DISTRICT COMMISSION DENIED THE ORIGINAL 2021 PROPOSAL BECAUSE OF ITS SIZE AND THEN APPROVED AN EVEN LARGER DECK

On July 7, 2021 the HDC denied Martingale’s proposal. (See Attached Exhibit 8, Meeting minutes, pages 25 - 27).

1. “massing is huge”

The HDC identified that the deck’s “massing was huge.” Members also objected to a curved design on the ends of the proposed decks.

The Martingale submitted another proposal. Although it eliminated the curved deck ends, it *expanded* the total square footage – making the deck even more massive.

2. Larger Deck = Greater Adverse Impact

The expanded version – which the HDC ended up approving—causes greater problems. The larger deck has more tables and seats. This means greater adverse environmental impact regarding light, noise, traffic, delivery congestion, parking, and trash.

a. Trash Is A HUGE Problem and Will Only Get Worse

Trash storage in particular has been a problem at 99 Bow Street since it was built. (See Exhibit 9, pgs. 28-37). The Martingale has used the narrow space between 99 Bow and 111 Bow for trash storage. Since 2011 it has stored its trash in dumpsters that it placed directly against 111 Bow Street – a historic wooden structure that is the oldest building on Bow Street. Because this was causing damage, it was necessary to nail a wooden plank against 111 Bow to protect it from the damage the dumpsters were causing.

It was only weeks ago that 99 Bow had a welder work directly next to 111 Bow Street’s wooden exterior. A metal barrier was installed so that *now* the dumpsters are not damaging 111 Bow Street. (Exhibit 10, pg. 38). Although we welcome this long overdue work, it is surprising that we as abutters received absolutely no notice of this work performed in the alley directly against our wooden building.

In addition to the smells and noise, the storage of this trash has consistently caused problems *for* 111 Bow Street which has seen seepage, grease, and debris along this border and under our historic building. There also has been a noticeable increase in rat and other rodent infestation, we just found a dead rat in our basement yesterday directly next to where 99 Bow Street stores all their food trash (111 Bow Street does not store garbage anywhere near this area). Allowing the Martingale to massively increase its deck is just going to make these already serious problems much, much worse.

***b. Proposed Metal Screening Is Necessary
Because of Increased Light and Noise***

It is telling that the Martingale proposes screening that is large sheets of metal. This is similar to what was installed along the sidewalk around the Martingale's trash area. They took away the public's view of the water from Bow Street and then installed a metal fence depicting a water view that it took away.

The reason this screening is necessary is because the proposed expansion will jut much further out into the river. It will greatly increase the noise and light to neighboring properties.

This screening on the proposed decks will, like the screening on the street, stick out from and in no way blend in with the environment. The metal screening will do little to rectify or mitigate the problems from this expansion.

What the Martingale is in reality doing is introducing these sculptures to give their customers a more private feel while giving the neighbors less.

c. Metal Screening "Art" Is Only for Customers

The Martingale repeatedly refers to these large metal screens as "art". It cannot be overlooked, however, that only the Martingale customers on the proposed deck will actually see any artistic aspect of these metal screens. One side – the restaurant side—has what is referred to as base relief imagery. The other side – the ones facing the neighbors—is just flat metal. At the top, this will appear jagged due to the imagery on the restaurant-side. So, neighbors and recreational users of the river will be staring at large flat metal barriers.

Seemingly to address this, the Martingale proposed putting "plantings" on the blank flat sides of these metal barriers. This obviously will **not** work during the cold fall/winter/spring months. It is only, at best, a temporary and seasonal mitigation. It is **not** a permanent solution to the unsightliness created. Moreover, who is going to enforce this and how?

In short, the Martingale proposes a massive deck expansion. It is SO big that it needs some level of intimacy for ambiance. So it proposed art work – only on the restaurant side of the large screens that it agrees are necessary because of the increase in noise and light. This is all to the detriment of the neighbors and the public using the river for recreation who will all be left staring at the back side large metal privacy screens.

d. Increased Public Access is A Ruse

Both the HDC and the Conservation Commission also recognized that the purported claim that this project will increase public access appears disingenuous.

i. Public access was required as condition in 2011

As the Conservation Commission noted, it was a condition of the original deck in 2011 that the Martingale had to provide public access in an existing public access area. It has not been doing this. During a recent HDC meeting, its representative acknowledged that it has used what was supposed to be a “public area” as a location for customers waiting for tables and where its waitstaff can congregate. So, since the deck began there has not been any area on this deck for the non-Martingale-customer-public to access or view the river.

ii. Only Minimal Increase to Alleged “Public” Area

Although the proposed deck expansion significantly increases the total square footage, it does **not** increase the size of the proposed “public area” proportionally. So while the Martingale repeatedly emphasizes public access in its submitted documents, the reality is that this expansion is about increasing the number of tables and customers that the Martingale can serve at a time when it already cannot adequately address all of the noise, trash, parking, and smoking by patrons and staff.

iii. Martingale Created The Lack of Access

The Martingale also portrays itself as something of a savior in that it is allegedly addressing the lack of public access to the waterfront. This problem, though, is something the Martingale created!

As members of the Board likely know, the massive Martingale building did not previously exist. On the land there was a much smaller historic building surrounded by open space. (See Exhibit 11, pg. 39 (historic picture of site before the Martingale)). The public could see the Piscataqua just by walking or driving along Bow Street. The building erected required many variances. The Martingale, however, did nothing to preserve or protect public views or access. It entirely eliminated them. Thereafter, it was supposed to be allowing the public to access its deck in a very small area. It used this instead for waiting customers and waitstaff.

So, it is exceedingly disingenuous for the Martingale to now demand a massive expansion of its deck based on it allegedly addressing a problem, the lack of public access to the river, that the Martingale created.

Similarly, if providing public access was truly its motivation the Martingale could have and would have provided it over the last many years. It used this same argument with its 2015 proposal so it is clearly something it has identified. Rather than do something about it, however, it is again using this issue as a way to color its obviously true intent – to massively expand its

existing business which is already over scale for the area as evidenced by the fact that it advertises itself as the “***BIGGEST DECK IN PORTSMOUTH.***” (See Attached Exhibit 12, pg. 40, Photo of Martingale Sidewalk Sign).

iv. It is NOT Public If It Is Only Open During Restaurant Hours

The alleged public portion of this deck appears to be something that the Martingale can “open” and “close” at its own discretion. It is realistically inescapable that this small portion of the deck will only be open when the restaurant is open. It is not a public deck. It is deck that the Martingale may allow members of the public, especially its customers, to use. There’s a big difference between the two.

VII. CONCLUSION

Nothing compels approval of this unprecedented construction project out into the Piscataqua River. Obviously it will privately benefit this commercial entity, but this is at the expense of the public due to its obviously adverse impacts upon the natural river environment. Please deny approval.

Sincerely,

BowPorts EV, LLC

By and through its Attorneys,

/s/ John P. Sherman
John P. Sherman
Sherman Law, PLLC
111 Bow Street
Portsmouth, NH 03801
(603) 570-4837
jsherman@johnshermanlaw.com

cc: Client
Planning Board members
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)



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Water - Wetlands and Shoreland Permit Application Query

Tuesday, Dec. 14, 2021

[Return to Query Results](#)

File Number	<input type="text" value="2021-02150"/>	Application Type	<input type="text" value="STANDARD DREDGE AND FILL APPLICATION"/>
Date Received	<input type="text" value="07/06/2021"/>	Preliminary Category	<input type="text" value="MAJOR IMPACT PROJECT"/>
Owner Name	<input type="text" value="MARTINGALE LLC"/>	Application Status	<input type="text" value="MORE INFORMATION REQUESTED"/>
Site Address	<input type="text" value="99 BOW STREET PORTSMOUTH, ROCKINGHAM"/>	Final Category	<input type="text" value="MAJOR IMPACT PROJECT"/>
Site Map/Lot	<input type="text" value="106"/> <input type="text" value="54"/>	DES Reviewer	<input type="text" value="David Price"/>
Waterbody Name	<input type="text" value="PISCATAQUA RIVER"/>	Agent	<input type="text" value="AMBIT ENGINEERING INC"/>

Project Description: Construct an overwater deck expansion, a public wharf deck, and a tidal docking float expansion resulting in 2,901 sq. ft. of permanent impact to tidal wetlands.

Designated River:

	Letter Name	Owner	Document Signed Date
View	ACCEPT_WETSTD	WDBLH1	07/07/2021
View	RFMI_WET	WSDAP	09/24/2021
View	TIME_EXT_AGREE	WSDAP	11/16/2021

Total Documents Returned: 3

New Hampshire Department of Environmental Services | PO Box 95 | 29 Hazen Drive | Concord, NH 03302-0095
603.271.3503 | TDD Access: Relay NH 1.800.735.2964 | Hours: M-F, 8am-4pm

[NH.gov](#) | [privacy policy](#) | [accessibility policy](#)



From: John Samonas John@SamonasGroup.com
Subject: Fwd: Change of Plans
Date: December 14, 2021 at 10:47 AM
To: Sherman, John jsherman@johnshermanlaw.com

----- Forwarded message -----

From: **Mark A. McNabb** <house@mcnabbgroup.com>
 Date: Tue, Dec 14, 2021 at 10:28 AM
 Subject: Change of Plans
 To: John Samonas <john@samonasgroup.com>
 Cc: John E. Ricci <jricci@ricciconstruction.com>

We are disappointed you pulled your support for our deck expansion after we got so far down the regulatory approval process. Regrettably, we have decided to pull our deck expansion 20 feet away from the lot line to address your concerns and not require any approval from your Association for NHDES.

Mark



Mark A. McNabb
President

T: 603.427.0725

E: house@mcnabbgroup.com | www.mcnabbgroup.com

3 Pleasant Street, Suite 400 | Portsmouth, NH 03801



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John Samonas
 (603)-234-3400
 Lic. Broker: NH, ME, FL
 Samonas Realty
 111 Bow Street
 Portsmouth, NH

From: Katy crosby888@comcast.net
Subject: Fwd: Revised Deck Plan
Date: December 15, 2021 at 12:18 PM
To: jsherman johnshermanlaw.com jsherman@johnshermanlaw.com



Begin forwarded message:

From: John Samonas <john@samonasgroup.com>
Subject: Fwd: Revised Deck Plan
Date: December 15, 2021 at 12:11:53 PM EST
To: Katy Sherman <crosby888@comcast.net>, George Glidden <baileyfrank@comcast.net>, Marjan Frank <baileyfrank@comcast.net>

Sent from my iPhone

Begin forwarded message:

From: "Mark A. McNabb" <house@mcnabbgroup.com>
Date: December 15, 2021 at 10:04:50 AM EST
To: John Samonas <john@samonasgroup.com>
Cc: "John E. Ricci" <jricci@ricciconstruction.com>
Subject: Revised Deck Plan

Attached is the revised deck plan for Martingale, which has pulled the deck 20 feet away from the lot line. This plan results in no meaningful change to your property. We will be modifying our plan with the Planning Board for this change.



Mark A. McNabb

President

T: 603.427.0725

E: house@mcnabbgroup.com | www.mcnabbgroup.com

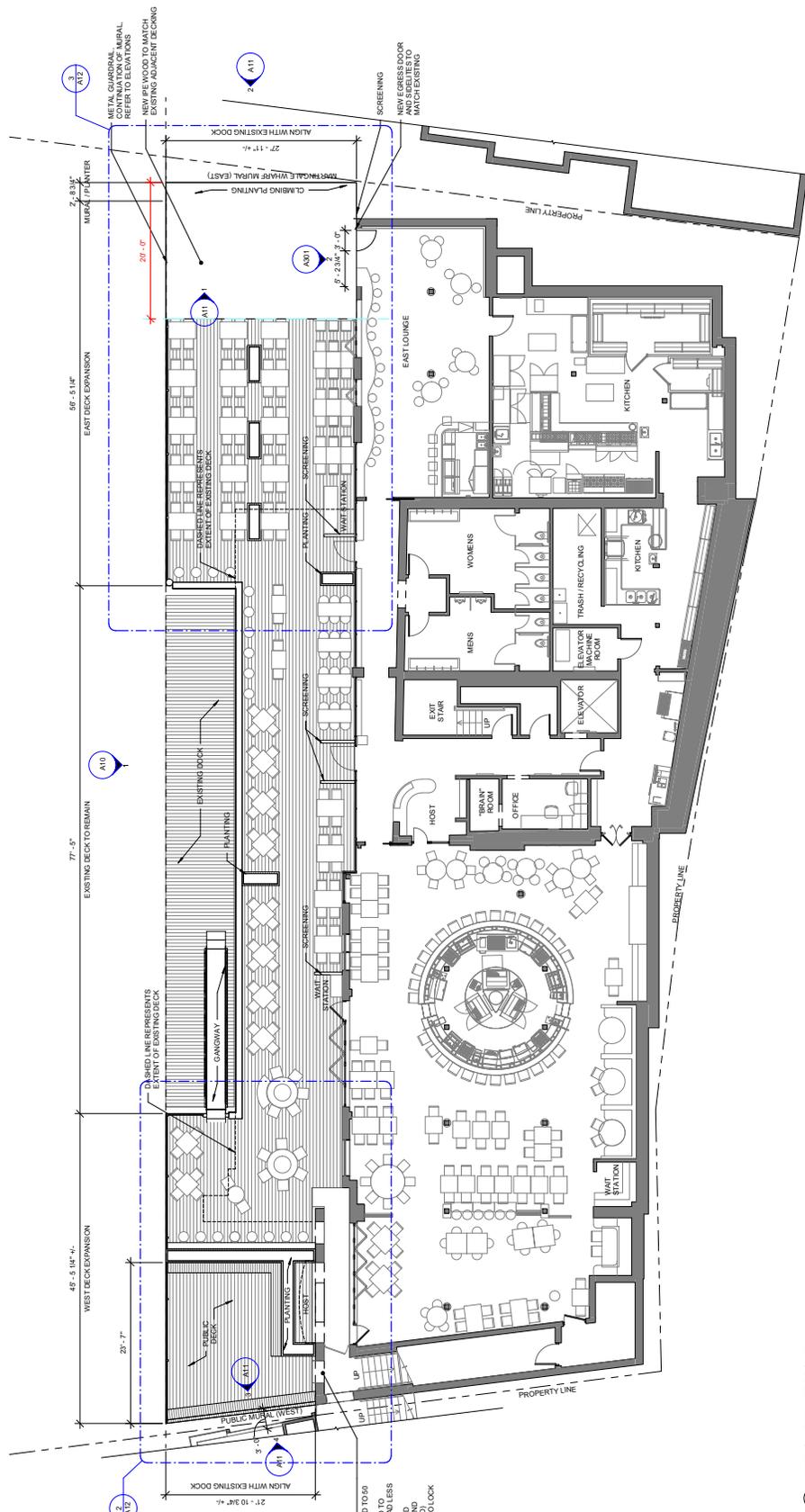
3 Pleasant Street, Suite 400 | Portsmouth, NH 03801



■ ■



211213-
MARTI...CH.pdf



PUBLIC DECK NOTES:
 1. PUBLIC DECK TO BE LIMITED TO 60 PERSONS PLANTERS AND TO SATISFY AN OCCUPANT LOAD LESS THAN 50 LBS PER SQ FT. STORAGE WILL BE PROVIDED IN THE FORM OF GARBAGE AND RECYCLING BINS. GATE WILL BE INSTALLED TO LOCK AT ALL TIMES.

1 MARTINGALE WHARF DECK PLAN
 1/8" = 1'-0"



DECK EXPANSION PLAN
 OPTION 2

From:
David and Patricia Mansfield
113 Bow Street, Unit 2
Portsmouth, NH 03801

To:
Members of the Portsmouth Historic District Commission

RE:
Historic District Commission, City of Portsmouth Public Hearing on July 7, 2021 on
Petition of Martingale, LLC at 99 Bow Street permission is requested to allow expansion of
existing structure (expand existing deck and dock structure).

Date:
July 7, 2021

Dear the Members of the Historic Commission:

We are owners and residents of 113 Bow Street in Portsmouth New Hampshire and we oppose the above mentioned expansion due its mass and scale and its negative impact on the street- and river scapes due to its lack of compatibility with existing structures. Moreover, the proposal has the largest portion of the deck at the edge of the property that abuts predominantly residential property, which will be most negatively impacted by this proposed expansion.

We also are opposed to the curved shaped portion of the proposed dock that was not on the plan that was approved in 2015 and should not be approved. A curved dock will be impractical for boats to tie up to and have its passengers embark and disembark, especially in the very strong running currents of the Piscataqua river. In addition architectural renderings of this dock show people in lounge chairs. Because there are no railings, we feel that this type of recreational activity is dangerous and lounge chairs should not be allowed on the dock.

In addition there are other serious issues that the City of Portsmouth should be taking into consideration that may or may not be in the purview of the HDC. These issues have been ongoing and will only be made worse with the proposed addition of another 114 seats. Specifically, questions that we would like answered and or the HCD to consider are:

a.) Trash storage and trash collection. As it is now there are foul odors on Bow Street in the area where Martingale and Surf store their trash and the sidewalk and street area where the trash is loaded onto the trucks is blackened with grease grime. The workers currently wash out the trash cans on the street and the foul water runs down Bow Street to a storm drain in front of Poco's restaurant. This is an unresolved public nuisance and public health issue that will only be exacerbated with the proposed increased seating capacity. This is clearly a negative impact to the area's streetscape.

b.) Emergency Evacuation Plan. In the case of a fire or other emergencies is there safe egress from the expanded deck and dock areas when the restaurant is at its full capacity?

c.) Impacts of outdoor Lighting and Noise. Will there be restricted hours of operation for outdoor seating and outdoor lighting? The existing restaurant clatter already creates a nuisance and this will only be made worse with the proposed expansion. Any music playing on the deck will also negatively impact the riverscape as there are no sound barriers and noise will carry up and down the river and create a nuisance.

d.) Loading. Loading trucks already cause lots of congestion on Bow Street. It will only become worse with increased demand for restaurant supplies. And finally;

e.) Smoking. The staff at the Martingale and Surf restaurants do not have an appropriate area to take smoking breaks. They currently congregate on the side of Bow Street across from our property. This is not only a health and safety issue but it is also unsightly with the cigarette butts littering the street. The proposed expansion will require additional staff and will only make this issue worse.

Sincerely,

David and Patricia Mansfield

**ACTION SHEET
CONSERVATION COMMISSION**

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

3:30 P.M.

**September 15, 2021
Reconvened from
September 08, 2021**

MEMBERS PRESENT: Chair Barbara McMillan; Vice Chair Samantha Collins Members: Allison Tanner, Thaddeus Jankowski, Andrew Samonas, and Henry Mellynchuk

MEMBERS ABSENT: Jessica Blasko

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

.....
I. APPROVAL OF MINUTES

1. August 11, 2021

*After due deliberation, the Commission voted to **approve** the minutes as amended.*

II. CONDITIONAL USE PERMIT APPLICATIONS (NEW BUSINESS)

4. 910 Sagamore Avenue
Karen Butz Webb, Owner
Assessor Map 223, Lot 26A

*After due deliberation, the Commission voted to recommend **approval** of the Wetland Conditional Use Permit Application to the Planning Board with the following **stipulations**:*

III. STATE WETLAND BUREAU APPLICATIONS (OLD BUSINESS)

- A. 99 Bow Street
Martingale, LLC, Owner
Assessor Map 106, Lot 54

*After due deliberation, the Commission voted to recommend approval of the State Wetlands Bureau, however, the vote (-) failed to pass and therefore, the recommendation was **denied**.*

IV. OTHER BUSINESS

There was no other business discussed.

V. ANTICIPATION OF NON-PUBLIC SESSION

The Commission closed the Public Hearing portion of the meeting and moved to a Non-Public Session.

VI. ADJOURNMENT

*At 5:40p.m., the Commission voted to **adjourn** the meeting.*

**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 Map244, 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

**MINUTES of
THE HISTORIC DISTRICT COMMISSION**

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

6:30 p.m.

July 07, 2021

MEMBERS PRESENT: Acting Chairman Jon Wyckoff; Acting Vice-Chair Margot Doering; City Council Representative Paige Trace; Members Martin Ryan, David Adams, and Dan Brown, Alternates Karen Bouffard and Heinz Sauk-Schubert

MEMBERS EXCUSED: Reagan Ruedig

ALSO PRESENT: Nick Cracknell, Principal Planner, Planning Department

.....
Alternate Sauk-Schubert took a voting seat for all petitions except where otherwise noted.

I. APPROVAL OF MINUTES

1. June 02, 2021

The June 2 minutes were **approved** as presented by unanimous vote.

2. June 09, 2021

The June 9 minutes were **approved** as amended by unanimous vote.

Acting Chair Wyckoff stated that Petition 3 for 12 South Street and Administrative Approval Item 1 for 14 Mechanic Street were postponed.

II. ADMINISTRATIVE APPROVALS

Note: the items were not reviewed in sequence.

It was moved, seconded, and passed unanimously to pull out Administrative Approval Items 2, 7, 11, and 13 for separate review.

1. 14 Mechanic Street

The item was postponed.

2. 32 Pickering Street

Ms. Trace said it was an acceptable design to the neighborhood because it would be on a building that wasn't a historic one and would speak to a current issue. She said it was an expression of a group of people, it was a non-profit project, and it was something appropriate for that particular building.

The motion passed unanimously, 7-0.

2. Petition of **Martingale, LLC, owner**, for property located at **99 Bow Street**, wherein permission was requested to allow new construction to an existing structure (expand existing deck and dock structure) as per plans on file in the Planning Department. Said property is shown on Assessor Map 106 as Lot 54 and lies within the Downtown Overlay, Character District 5 (CD5) and Historic Districts.

SPEAKING TO THE PETITION

Architect Jeremiah Johnson was present on behalf of the applicant, along with project designer Terence Parker and Attorney Sherilyn Burnett Young. Mr. Johnson reviewed the petition and said two separate decks were proposed: the west end deck expansion would be a public wharf deck and the east end deck expansion would expand the outside dining and also include a floating dock. He noted that there would be no increase in occupancy.

Acting Vice-Chair Doering asked who was in charge of how much the decks could go over the water. Mr. Johnson said it was the State. In response to further questions, Mr. Johnson said the right section of the left deck expansion would be an extension of the drink rail and a hostess stand, and the other side would be a public 504-sf deck and another slightly larger deck. He said there would be appropriate signage and the decking material would be similar to the existing decking, with a new rail design. Mr. Adams asked for more explanation on why both additions to the current deck were curved toward the waterfront. Mr. Johnson said it was a nice way to soften the sharp corners. It was further discussed. Mr. Brown asked what the deck's current capacity was changed to. Mr. Johnson said it was currently 100 and would increase to just under 200, making the total restaurant capacity 333. City Council Representative Trace noted that there were multiple points of egress into the restaurant and onto the deck and asked how it was known that the ebb and flow would work properly and that there would be only 200 people at most on the deck. Mr. Johnson said it was a seasonal operation and that people would be counted at the door. He said people could only access the deck by coming down the stairs from the interior or from the tiny pinch point at the far end of the dock.

Mr. Parker spoke to the proposed murals, noting that they were based on a book written by the University of New Hampshire professor Jeff Bolster about the history of Afro-American sailors. He said the murals would be bronze sculptures and would be located near the 32 linear feet of seating on the public dock. He noted that the murals were scaled back from 27 feet to 17 feet and from 16 feet to about seven feet at the request of Harpoon Willy's so that they wouldn't obscure their views. He said the east mural would have planter boxes and a green wall on the back side.

City Council Representative Trace noted that the public had not seen the handouts given out to the Commission. Mr. Johnson suggested pulling the murals out of the petition and resubmitting them at a later date. It was agreed to remove the murals component from the petition.

Acting-Chair Wyckoff opened the public hearing.

SPEAKING AGAINST THE PETITION

John Sherman of 111 Bow Street said he owned Unit 2. He said he submitted some materials to the Commission about how the border in the 20-ft side buffer between his building and the applicant's was being used for trash storage and that the trash would increase because the restaurant size would double. Acting-Chair Wyckoff said trash wasn't in the Commission's purview. Mr. Sherman said the Commission previously approved a much different plan. He said the applicant went before the Conservation Commission in 2012 and had said they would not extend the docking structure any further into the water. He said the Conservation Commission did not approve the project and neither did the Department of Environmental Services (DES). Acting-Chair Wyckoff said the applicant would have to go before the Conservation Commission again, but that the HDC was a design review board. Mr. Sherman said the proposed project was massive for the waterfront.

John Hare of 113 Bow Street said he was strongly opposed to the proposed expansion due to concerns about noise and light and also added congestion to Bow Street from more delivery and trash removal trucks.

David Sands of 113 Bow Street said the project was killing the historic character of the building and the area.

Katy Sherman of 111 Bow Street, Unit 2, said when the existing wharf was approved, the owner said he wouldn't ask for anything more. She said the garbage was being pushed against her building already and would be doubled with the expansion. She said the dock was within her 20-ft buffer, and she was concerned about how the tugboats would navigate around the expanded wharf. She said the project was a huge impact to the shoreland and wetlands and should have a site review. Mr. Cracknell said the project would be reviewed by the Technical Advisory Committee and a site plan would get approved, which would capture all the issues of waste disposal and zoning buffer compliance. He said the ecological impacts on marine life were a Conservation Commission issue, and lighting, noise and traffic impacts were not the HDC's purview. He offered to meet with her and her husband to further discuss the issues.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Sherilyn Young said the building was redeveloped in 2012 but now had greater flexibility. She said the structures on the waterside were consistent with other waterfront commercial structures in the area. She said the applicant received the approval of the condominium association at 109 and 111 Bow Street to consent to the 0-ft setback and would also go before the DES but wouldn't have to go before the Army Corps of Engineers. She said two of the Commission's review purposes were to strengthen the local economy and to promote

the use for education, pleasure, and welfare of the community. She said the project would offer the public a unique view of the waterfront.

No one else rose to speak, and Acting-Chair Wyckoff closed the public hearing.

DECISION OF THE COMMISSION

*Mr. Adams moved to **grant** the Certificate of Approval for the petition as presented, for purposes of discussion. Mr. Ryan seconded.*

DISCUSSION

Mr. Adams said he had a problem with the deck's optics because it looked like a pleasure dock instead of a historic working one and he was uncomfortable with having it be the signature of the City. He said he was also bothered by the curved nature of the decks. He said the applicant was throwing a bone by making a portion of the dock public. He said he was in support of much of the project conceptually except for the actual design of it. Mr. Ryan said the waterfront wouldn't ever be a working dock again and that the existing dock was already a pleasure dock. He said concerns about noise, trash, odors, and so on were not the Commission's purview. He said he saw nothing more than an expansion of what was already there and thought it was a good expansion and a lot was done to provide artwork. He said it was where the public got access to the waterfront, and he said it was also his way of experiencing the waterfront by going there and having a drink because he didn't have access to any waterfront from his home. He said he would support the project and looked forward to it. He noted that it would bring in more tourism and might be more intense but it was just the nature of what currently existed on the waterfront.

City Council Representative Trace said the massing was huge and said she felt she was looking at something in Monte Carlo. She said she couldn't get behind the project because it was just too large. Acting Vice-Chair Doering agreed. She said she appreciated that the applicant was trying to give the public some access but thought that access was relatively small compared to the mass requested for the restaurant's use. Mr. Brown agreed and said a smaller and tucked-in deck in the first half would fit in better. Mr. Sauk-Schubert said he agreed that the public access portion was a bone the developers were throwing to the public and thought it should be enlarged. He said he didn't know of any other decks that were segmented like that. He said he saw it as a pure commercial enterprise that didn't really give back to Portsmouth. Ms. Bouffard agreed that the massing was too much and thought the public offering wasn't large enough to make a difference.

DECISION

*The motion **failed** by a vote of 5-2, with Acting Vice-Chair Doering, Mr. Adams, Mr. Brown, Mr. Sauk-Schubert, and City Council Representative Trace voting in opposition.*

3. **REQUEST TO POSTPONE** - Petition of **William T. & Susan Manfull, owners**, for property located at **12 South Street**, wherein permission is requested to allow new construction to an existing structure (construct a 1-story addition at the rear of the structure) as per plans on



BOW ST

DO NOT STOP



WARNING



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IMPACT
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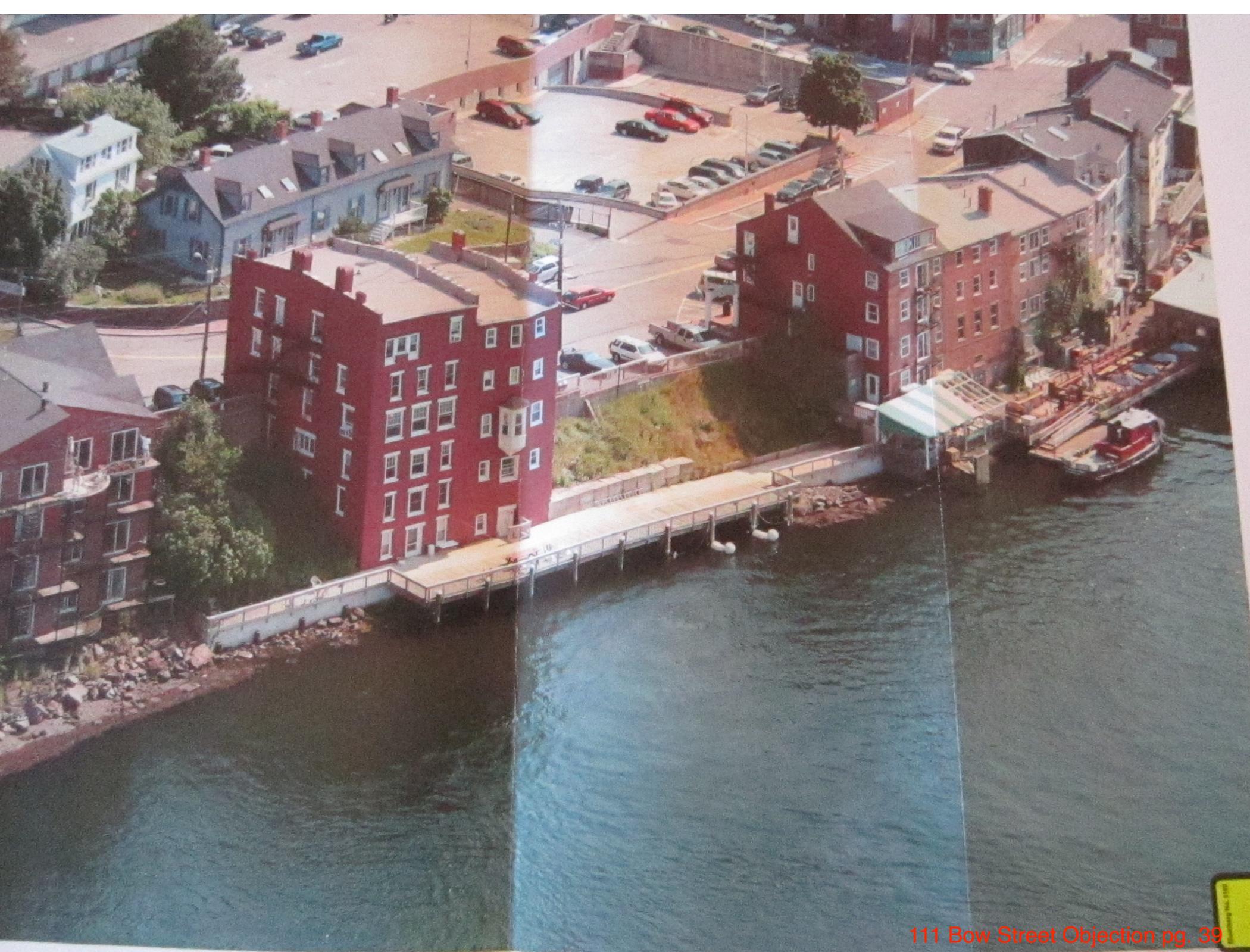














MARTINGALE
WHARF
 AN AMERICAN BISTRO

Voted Best Deck

Firepits, Blankets
 and Cocktails

Join us on the
Biggest Deck in Portsmouth

“Join us on the
 Biggest deck in Portsmouth”
 (6/7/15)



December 30, 2021

FOR BOARD MEMBERS AND PUBLIC COMMENT

Dexter Legg
Planning Board Chair
City of Portsmouth Planning Board
1 Junkins Avenue
Portsmouth, New Hampshire 03801

RE: OBJECTION to Application for Site Plan Approval
Tax Map 106, Lot 54, 99 Bow Street

Dear Planning Board Members:

BowPorts Ev, LLC (“BowPorts”) which is the record owner of the 111 Bow Street, Unit 2, Portsmouth New Hampshire a direct abutter to the Martingale LLC objects to the ***Revised*** Plan that the Martingale LLC has now submitted to the Planning Board for the following reasons:

I. *REVISED PLANS NOT SUBMITTED TO OR APPROVED BY THE HDC, CONSERVATION COMMISSION, OR ANY OTHER CITY BOARD*

The Martingale has now submitted ***revised*** plans for approval to the Planning Board. This is a new design—even from the one that the Applicant provided to the Board for the scheduled 12/16/2021 meeting.

This ***revised*** plan has never been submitted to or approved by the HDC, or the Conservation Commission (which denied approval of the now older version), or, to our knowledge, any other City Board. (See page 3 of revised submission)

Any consideration by the Planning Board, therefore, needs to start from the premise that there are ***no*** existing approvals of any kind for this proposal.

II. *BOWPORTS’ OBJECTION AND ATTACHMENTS NOT INCLUDED IN PUBLIC COMMENT FILE*

On the morning of December 16, 2021 BowPorts submitted to the Planning Board an Objection with Exhibits to the Martingale LLC proposal.

In preparation for tonight’s meeting, we tried to locate the Public Comment file. BowPorts Objection with Attachments were not on the City’s website or the Planning Department website.

A representative from the Planning Department directed us to the link for “Revised Public Comment” from the 12/16/2021 meeting. This connected to a large PDF file that included objections to other proposals up for consideration. BowPorts’ Objection and attachments, however, were not there.

The Planning Department then advised that BowPorts’ Objection was provided to the Board members, but was not included in the public comment file.

The Martingale submitted a Response to BowPorts’ Objection after BowPorts provided its Objection. Yet, the Martingale Response, including attachments, were part of the public comment file.

So, over the last two weeks the public comment file has not been complete. It has *not* included BowPorts’ Objection and attachments but has included the Applicant’s Response. This has deprived BowPorts of the opportunity to have others learn the issues raised and comment regarding them.

It appears there is no just remedy to rectify this other than, at a minimum, continuing the hearing regarding the Applicant’s submission to allow at least some public review of BowPorts’ submission before the Planning Board votes on this newly revised submission.

III. BOARD SHOULD LET THE NH DES EXPERTS IDENTIFY THE ENVIRONMENTAL IMPACT BEFORE FURTHER CONSIDERATION OF THE APPLICATION

The Applicant’s revised submission also references the Applicant’s NH DES submission.

As a reminder, the process is *not* complete. Indeed, just as with this Board, the Applicant just submitted *another* revised proposal.

There is now at least a thirty-day process for objections followed by a period of time for NH DES to deliberate and reach a decision.

The Applicant places great emphasis on the DES. It *again* characterizes that whether this project proceeds ultimately depends on what NH DES decides. (See revised application, page 2 (stating “the final decision regarding the deck expansion rests with the NHDES”).

Since the Applicant acknowledges that NH DES are the experts regarding the impact this project is likely to have on the environment, the Planning Board should table this matter. It is not reasonable for this Board to consider and vote upon the full impact of this project – particularly upon direct abutters like BowPorts – until the experts at DES conclude their assessment.

Respectfully Submitted,

BowPorts EV, LLC

By and through its Attorneys,

/s/ John P. Sherman
John P. Sherman
Sherman Law, PLLC
111 Bow Street
Portsmouth, NH 03801
(603) 570-4837
jsherman@johnshermanlaw.com

cc: Client
Planning Board members
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)

Portsmouth Planning Board Meeting

December 16, 2021

99 Bow Street – Wharf Expansion

Application for Site Plan Approval

Outline of Sherman / 111 Bow Street Objections and Responses

I. THE MATTER IS PENDING BEFORE THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES WETLANDS BUREAU

The matter is currently before the New Hampshire Department of Environmental Services for consideration. The Martingale requested an extension of time to address the issues NH DES identified. Its response is now due December 23, 2021. Several issues to be addressed are directly relevant to the Planning Board's consideration including:

- (a) the projects' environmental impact,
- (b) its direct impact on endangered species, and
- (c) abutter concerns.

Responses: Martingale, LLC submitted its application on July 1, 2021 for NHDES approval which was accepted as administratively complete on July 7, 2021. Martingale received a Request for Information from NHDES on September 24, 2021 and responses, per granted extension, are due on December 23, 2021. In response to abutter comments and in response to NHDES questions, the project has been altered and the East Deck expansion will no longer be located within 20 feet of the property line abutting 111 Bow Street. Martingale received consent from its abutters to the West Deck at 68 Bow Street.

Pursuant to RS 482-A:3,XIII(a) the East Deck is in compliance with the 20 feet setback and no abutter consent is required. Prior revisions to the plan have been made to address concerns raised by the HDC and public during three public meetings with the Historic District Commission which approved the project on October 6, 2021.

Martingale expects to submit revised plans, address prior abutter objections and submit updated environmental impacts (including endangered species report) with NHDES by December 23, 2021. Approval by NHDES does not depend upon Planning Board approval, nor should approval tonight be dependent upon NHDES review of the project.

Despite the objection, the revised plans were provided by email to Mr. Samonas and to Mrs. Sherman (forwarded by Mr. Samonas) on December 15, 2021, as attached to Attorney Sherman's objections. This is evidence that Martingale has been open and provided updated plans to its direct abutter, despite their ongoing objections.

II. ALL 111 BOW STREET OWNERS OBJECT; AS DO OWNERS AT 113 BOW STREET

All of the owners of condominium units in the 111 Bow Street Condominium Association (“Association”) now oppose and Object to this proposal. BowPorts (Unit 2) objects. George Bailey and Marjan Frank (Unit 3) object. John Samonas, who is a member of entities that own the five remaining units (Units 1, 4, and 5, 6 & 7) has advised—and authorized us to convey—that he too objects to the proposal.

Responses: Notwithstanding the objections by the Owners of 111 Bow Street, there are no other objections in the Public Comments posted on the City of Portsmouth’s Planning Board. The objections cited by the owners of 113 Bow Street are to the HDC meeting and are not relevant or on record with the Planning Board. To reiterate regarding abutter consent on the East Deck expansion, the consent of 111 Bow Street is not necessary because the East Deck will have a 20 foot setback as required by the Wetlands Act. As stated above, the plans as altered will minimize the impacts on the abutters both at 111 and 113 Bow Street.

III. THE CONSERVATION COMMISSION DENIED APPROVAL TWICE (2015 and September 15, 2021) also points regarding the original deck approval in 2012 limiting expansion, alleged federal navigable setback.

Responses:

1. With regards to the Conservation Commission meetings in 2015 and 2021, which did not recommend support of the application to NHDES. Since this project is located solely over state waters, the HDC and City of Portsmouth land use regulations apply in accordance with Env-Wt 513.07 (a-c) and the granted Urban Exemption in 2007; however, ultimately the State of NH through the Department of Environmental Services (NHDES) will have final approval of the project and can override the HDC and Conservation Commission decision. The state may grant a waiver of local approval if denied or not granted pursuant to Env-Wt 513.07(d).
2. With respect to the “federal navigable setback” the Chief Harbor Master sent a letter to NH DES on August 26, 2021, confirming that they examined the proposed site and found that the structure will have no negative impact on navigation in the channel.

IV. ADVERSE IMPACT ON THE ENVIRONMENT

“2,910 square feet of permanent impact of tidal wetland for an overwater deck expansion.” It is entirely Adverse Impact Endangered and Threatened Species As is required at the NH DES, the project will impact an endangered species – the shortnose sturgeon and a threatened species – the atlantic sturgeon. The magnitude of this impact should be determined by the experts at NH DES before there is any further consideration by the Planning Board.

Minimize impacts, vibratory hammer, impacts to shoreline, abutting historic building and roads, etc.

Responses:

The revised plans, as submitted, will reduce the overall square foot of the deck expansion from 2,910 square feet to 1,654 square feet, further minimizing impacts to the waterway. As stated above, Martingale will conduct the required endangered and threatened species review and submit to NHDES for their expert review (as noted by the objection), that review does not impact the Planning Board's review of the site plan or project here.

Martingale has planned to construct the proposed deck with the least impact to the shoreline and waterway. There are no abutting structures impacted by the proposed construction, as all work will be conducted entirely on Martingale property, at least 20 feet set back from the nearest abutter for the East Deck.

In a letter recommending approval of the Shoreland Exemption dated August 6, 2007, the NH Office of Energy and Planning wrote to Commissioner Thomas Burack the following:

“OEP also recommends that the exemption be granted. The property abuts existing high density, commercial uses. Because existing infrastructure is in place, the development will not require new roads or utility service. As an area that has been developed for over 100 years, its natural conditions have long been disturbed, and this development does not appear to make that disturbance any greater. If anything, development may improve rather than diminish the area, providing greater walkways along the waterfront, as buildings now divided will be joined.”

The argument that the impacts will be greater from use of a vibratory hammer to precisely install pilings supporting the decking are not factual or supported from prior statements underpinning that this is a well-developed waterfront and this project is consistent with an improvement by providing greater public access to the Piscataqua River.

V. THIS PROJECT EXCEEDS THE SCOPE OF THE URBAN EXEMPTION THE MARTINGALE RECEIVED

Responses: The Urban Exemption granted by the NHDES on September 7, 2007 pursuant to RSA 483-B:12 exempted the *entire Martingale property* at 99 Bow Street from the application of the Shoreland Protection Act. It was not a project specific exemption.

VI. THE HISTORIC DISTRICT COMMISSION DENIED THE ORIGINAL 2021 PROPOSAL BECAUSE OF ITS SIZE AND THEN APPROVED AN EVEN LARGER DECK

a. - July 7, 2021 the HDC denial

1. Massing is huge

Responses – The HDC approved the project on October 6, 2021.

2. Larger Deck = Greater Adverse Impact (light, noise, traffic, delivery congestion, parking, and trash)

a. Trash Is A HUGE Problem and Will Only Get Worse Trash

Responses: Martingale took steps, as described by Attorney Sherman, to address the abutters concerns with trash storage. Object to the characterization as “massively increase” since the reduced deck will be a seasonally operated, weather dependent deck and not likely to impact the quantities of trash generated. The restaurant and property are also located within the Downtown Overlay District which promotes mixed use and commercial properties, this project will promote and strengthen the local economy.

b. Proposed Metal Screening Is Necessary Because of Increased Light and Noise

Responses: Martingale has taken great lengths to not only beautify the decks aesthetics with planned bronze bas relief sculptures, but installation of planted screens to minimize light and noise from the seasonal use of the deck (not used during winter months). With the deck moved back 20 feet from 111 Bow Street, the screens will further minimize any impacts. The abutters are objecting to improvements done for their benefit.

c. Metal Screening “Art”

Responses: - Attorney Sherman’s or his client’s personal tastes and subjective views on artwork installations are their own; however, they were designed to create a buffer to his client’s property.

d. Increased Public Access is a Ruse

- i. Public access was required as condition in 2011 As the Conservation Commission noted, it was a condition of the original deck in 2011 that the Martingale had to provide public access in an existing public access area
- ii. Only Minimal Increase to Alleged “Public” Area
- iii. Martingale Created The Lack of Access / “BIGGEST DECK IN PORTSMOUTH.”
- iv. It is NOT Public If It Is Only Open During Restaurant Hours

Responses:

Martingale has proposed expansion of the West Deck, at its sole expense, for the benefit of the public. The public have continued access to the existing deck as the restaurant is open to the public, weather permitting. Martingale is under no obligation to provide the additional West Deck will increase existing public access and we object to the characterization as “disingenuous” or nominal. This is a great benefit, funded privately, for the public providing greater access to the Piscataqua River. Martingale repaired an existing deck in 2011 and now seeks to install a new public West Deck and East Deck for restaurant use (also open to the public). It will provide handicapped access to the deck (not provided elsewhere) and expand access.

The Martingale deck, even if expanded will not be the “Biggest Deck in Portsmouth” as cited by Attorney Sherman, using a photo from 2015. There are many adjacent and other decks in the Inner Harbor (Harborside) which are much larger and expansive than the planned expansion project here. Martingale requested the right to provide a gate for safety reasons, not to limit access.



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

September 11, 2007

Steve Marchand, Mayor
City Of Portsmouth
1 Junkins Ave
Portsmouth, NH 03801

RE: File # 2007-01869, Urban Exemption per RSA 483-B:12, 99 Bow Street, Portsmouth

Dear Mayor Marchand:

The Department of Environmental Services (DES) has reviewed the request dated July 23, 2007 from the City of Portsmouth (the "City") to exempt a portion of the developed area along the Piscataqua River from the requirements of the Comprehensive Shoreland Protection Act, RSA 483-B. DES concurs with the Office of Energy and Planning's August 6, 2007 recommendation for approval. This Urban Exemption is granted in accordance with Rule Env-Wq 1408.05 based upon the following findings:

1. The City has provided evidence of the current and past building density and the commercial and industrial uses of the area to be exempted, as required per RSA 483-B:12, II, (a) and (b).
2. The City has provided documentation that the site is serviced by municipal and public utilities, as required per RSA 483-B:12, II, (c).
3. The City has land use regulations in place affecting the area to be exempted, as required per RSA 483-B:12, II, (d).
4. The City has met the requirements of Part Env-Wq 1408 of the Shoreland Program Administrative Rules.

The area and specific land parcels exempted from the requirements and minimum standards of RSA 483-B are shown on the attached map. A copy of this map will be kept on file in the Shoreland Program at DES. If you have any questions or need any further assistance, please contact the DES Shoreland Program at (603) 271-2147.

Sincerely,

Thomas S. Burack
Commissioner
Department of Environmental Services

cc: David Holden, Portsmouth Planning Board
Portsmouth Conservation Commission
~~Malcolm R. McNeill Jr., McNeill, Taylor, & Gallo, PA~~

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

RECEIVED

JUN 14 2007

KELLY A. AYOTTE
ATTORNEY GENERAL

ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL



June 13, 2007

Malcolm R. McNeill, Jr., Esquire
McNeill, Taylor and Gallo P.A.
180 Locust Street, P.O. Box 815
Dover, New Hampshire 03821

RE: DES File No. 2006-02493

Dear Attorney McNeill:

I am writing to you with respect to application No. 2006-02493 for the RRJ Properties Limited Partnership ("RRJ Properties") project located on Bow Street in Portsmouth, New Hampshire. The New Hampshire Department of Environmental Services ("DES") has indicated that section 483-B:12 is the appropriate exemption to request in a case such as this one. Section 483-B:12 was developed to accommodate exactly the type of situation presented in the request from RRJ Properties. This section allows the local community to recognize the unique characteristics of its urban areas and apply for an exemption from the strict requirements of the Shoreland Act. The area in question exhibits high current and historic building density, is a commercial area, is supported by public utilities, and is governed by local zoning restrictions. All of these factors are considered when evaluating a proposal under RSA 483-B:12. The decision of whether or not to grant an exemption resides in the DES Commissioner after consultation with the New Hampshire Office of Energy and Planning. However, without knowing what the outcome will be, it appears appropriate and consistent with the purposes of RSA 483-B:12 for the City of Portsmouth to request an urbanized exemption in this case.

Thank you for your time and attention to this matter. If you have any questions, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Allen Brooks".

K. Allen Brooks
Assistant Attorney General
Environmental Protection Bureau
(603) 271-3679

cc: Collis Adams, Administrator IV, Wetlands Bureau, DES
Darlene Forst, Shoreland Supervisor, Wetlands Bureau, DES



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

July 16, 2007

Hon. Steve Marchand, Mayor and
Members of the Portsmouth City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Re: Request for a municipal shoreland exemption (RSA 483-B:12)
for property at 99 Bow Street, Portsmouth, NH

Dear Mayor Marchand and Members of the City Council:

Please be advised that I have reviewed the materials to be submitted with the application for shoreland exemption which has been provided to the City Council, and the letter of K. Allen Brooks of the New Hampshire Attorney General's office. I am also familiar with the property which is the subject matter of the request.

As the Shoreland Section Supervisor of the New Hampshire Department of Environmental Services, and I am familiar with the Shoreland Protection Act and the intent of RSA 483-B:12. I agree with the letter of Attorney Brooks of the New Hampshire Attorneys Generals Office dated June 13, 2007 "that Section 483-B was developed to accommodate exactly the type of situation presented in the request from RRJ Properties Limited Partnership."

Given my knowledge of the statute and its application by NHDES, it is appropriate and acceptable to consider the application of the exemption to this property, and the exemption is clearly consistent with the intent of the statute.

Sincerely,

D. Forst
Shoreland Section Supervisor
NHDES Wetlands Bureau



JOHN H. LYNCH
GOVERNOR

STATE OF NEW HAMPSHIRE
OFFICE OF ENERGY AND PLANNING
57 Regional Drive, Suite 3
Concord, NH 03301-8519
Telephone: (603) 271-2155
Fax: (603) 271-2615



www.nh.gov/oeep

August 6, 2007

Thomas Burack, Commissioner
N. H. Department of Environmental Services
29 Hazen Drive
Concord, New Hampshire 03301

Re: Shoreland Protection Act Exemption Request
99 Bow Street, Portsmouth

Dear Commissioner Burack:

The Office of Energy and Planning (OEP) has been given notice, pursuant to RSA 483-B:12, of a request for exemption from provisions of the Comprehensive Shoreland Protection Act, RSA Chapter 483-B. The property in question is located at 99 Bow Street in the historic downtown area of Portsmouth.

The legislature authorized discretionary exemption from the shoreland protection standards when the Commissioner finds the special local urbanization conditions exist. OEP is charged with providing advice on exemption requests.

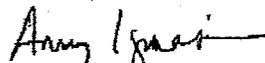
We have reviewed materials submitted by counsel to the property owner which includes proposed site plan, evidence of the property's current and prior uses, correspondence from the Attorney General's office and Wetlands Bureau, Portsmouth Planning Board approval and a recommendation by the Mayor of Portsmouth that the exemption request be granted.

OEP also recommends that the exemption be granted. The property abuts existing high density, commercial uses. Because existing infrastructure is in place, the development will not require new roads or utility service. As an area that has been developed for over 100 years, its natural conditions have long been disturbed, and this development does not appear to make that disturbance any greater. If anything, development may improve rather than diminish the area, providing greater walkways along the waterfront, as buildings now divided will be joined.

The property appears to meet the criteria set forth in RSA 483-B:12, justifying an exemption. Further, it is consistent with the principals of Smart Growth, as it takes two vacant lots caught between other developed properties and creates a unified view that is in keeping with the scale and style of the historic area.

OEP recommends that you exempt the property at 99 Bow Street in Portsmouth from the provisions of the Comprehensive Shoreland Protection Act.

Sincerely,


Amy Ignatius

AI:ml

cc: Malcom McNeill

TDD Access: Relay NH 1-800-735-2964



CITY OF PORTSMOUTH

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7200
Fax (603) 427-1526

Steve Marchand
Mayor

MEMORANDUM

FROM: Mayor, City of Portsmouth
TO: Thomas Burack, Commissioner of the Department of Environmental Services
RE: Shoreland Exemption request of RRJ Properties Limited Partnership
RSA 483-B:12
DATE: July 23, 2007

Dear Commissioner Burack:

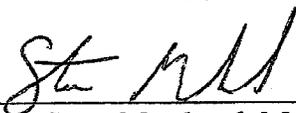
Please be advised that the City Council of the City of Portsmouth has reviewed the municipal exemption request of RRJ Properties Limited Partnership which is appended hereto, and has determined that the RRJ proposal meets all of the criteria of RSA 483-B:12 and respectfully requests that the Department of Environmental Services grant a municipal exemption to the premises as provided in RSA 483-B:12.

- It is the finding of the Portsmouth City Council that the current and past building density of the site support highly developed, urbanized activity and that the RRJ proposal is consistent with the historical uses of the site.
- The Council finds that there has been intense commercial and industrial historical usage of the development area.
- The Council further finds that the subject area is serviced by all necessary municipal and other public utilities.
- The Council further finds that current municipal land use regulations affecting the property have been thoroughly reviewed by all Portsmouth regulators, and that the site fully complies with the Land Use regulations of the City of Portsmouth and that the Applicant has received all necessary municipal approvals.

In conclusion, the City Council requests the granting of the municipal exemption.

Respectfully submitted,

Steve Marchand, Mayor
City of Portsmouth, New Hampshire

By: 
Steve Marchand, Mayor

December 30, 2021

To members of the Portsmouth, New Hampshire Planning Board

Unfortunately, we are unable to attend tonight's meeting, but we hope that this letter will sufficiently express our concerns regarding the size of the project to be built behind the Treadwell House at 93 Pleasant Street.

As owner's of the Captain John Loughton House, built in the mid to late 1700s, we are relieved that the developer has stated that the building will be 'all office'. However, we still believe that 34,000 square feet of building to be built on that location is still too large.

Firstly , the addition will sit atop a wall that is already 7' tall from street level.

Secondly, Treadwell House is at the corner of two of the largest and most visited historic museum properties in Portsmouth, The Governor John Langdon House and Strawberry Banke.

A building of that size on that narrow section of Court Street will overpower the surrounding properties and will set a bad precedent in that section of the city.

Please consider the impact that 34,000 square foot building will have in this location.

Thank you for time and consideration.

Janet and Peter Dinan
278 Court Street
Portsmouth, NH

93 Pleasant Street Project/Proposal

Planning Board 12-16-21

Dear Members of the Planning Board,

I am not in favor of the proposed development of 93 Pleasant Street property. This project should not be allowed to go forward for a number of reasons.

I have a problem with both the mass and the scale of the building. It will basically be sitting right on the street. Also, the design in no way even attempts to fit in with the surrounding historic properties, and that is especially disappointing given that the Langdon Mansion is directly across the street and one of the premier historic sites in the city. Frankly, the building is just plain ugly.

The idea that there is inadequate parking for this proposal should make this plan dead on arrival. A Conditional Use permit should not be granted and the use of these permits should be eliminated completely. The lack of parking spaces would put an enormous amount of stress on the abutting neighborhood given it already lacks parking for its residents. Many of the homes in this area have no parking. Allowing this project to go forward would overwhelm the area with people constantly looking for spaces.

This proposed project would bring in a constant flow of traffic that this neighborhood does not need given the high amount of tourism it already attracts.

In short, this project needs to find a new home and should not be approved.

Respectfully,

Judy Hiller

18 Manning Street