

A Conservation Easement Saves a Working Waterfront Dock
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Background

York Harbor in York, Maine, is an old fishing community, dating back to the early 1600s. It is located between Boston, Massachusetts and Portland, Maine and consequently the real estate pressures are extremely high. Some of the traditional working waterfront has been converted to other uses. None the less, York Harbor continues as a vibrant fishing community with approximately 35 lobster boats, 4 tuna boats, and 3 draggers.

A Challenge Arises

In 2003 a commercial pier (2290 square feet) on the York River, was listed for sale with a small piece of adjoining land (.15 acre). The asking price for the entire property was somewhat over \$800,000 and the estimated business value was \$300,000. The owner of the property had obtained a building permit to construct a very substantial house, thus justifying the high asking price. Two local lobstermen wished to buy the property, but knew that from a business perspective it could not work for the asking price.

At another location in 2000 a substantial pier, which dated back to the 1700's, became available. It was purchased and converted into a personal residence. In 2002 that residence sold for over \$2 million. The community did not wish to see that happen again.

Two Lobstermen Take a Risk

The two local lobstermen approached Joey Donnelly, a member of the Harbor Board, to inquire about possible sources of funding. This began a series of conversations. An email to Paul Dest, at the Wells Estuarine Reserve, identified two important names: Elizabeth Sheehan at Coastal Enterprises Inc., a Maine Economic Development Agency, and Jim Connors in the State Planning Office. Because of the significant difference between the asking price and the business value, if this project were to come to fruition, a clever approach was needed. In a telephone call to Elizabeth, she mentioned that Coastal Enterprises had funds to loan for a project such as this. In addition, she also was intrigued with the idea of having an easement on a working waterfront property.

An Exploratory Meeting Takes Place.

On an extremely cold January day, the two lobstermen, Jeff Donnell and Mark Sewall; Elizaabeth Sheehan of Coastal Enterprises; Ed Bradley, a maritime lawyer from Portland; Gordon Moran, a trustee of the York Land Trust; and Joey Donnelly, a member of the York Harbor Board met on the dock to discuss its potential for a permanent working waterfront project. Because the wind was howling down the river, those present have dubbed it the "coldest day in history." After a few minutes they adjourned to the George Marshall Store, an 18th century building owned by the Old York Historical Society. There Scott Stevens, Executive Director of the Old York Historical Society (OYHS) joined the group. The group discussed that if this project were to come to fruition, the lobstermen would have to develop a partnership with a non-profit organization. There

was no way revenues from the wharf could pay back limited investors. The two most logical partners were in the room. OYHS owns the historic Elizabeth Perkins house and boathouse, immediately across the street from Sewalls Bridge Dock. Sewalls Bridge itself is an historic landmark as it is the oldest pile drawbridge in the country. Directly across the river from Sewalls Bridge Dock is the York Country Club original club house, which is in the process of being put on the National Register. Immediately down river from the York Country Club are the George Marshall Store and adjacent John Hancock Wharf, both properties of OYHS. Above Sewalls Bridge dock, perched proudly on the hillside is a handsome Federal period house. The dock is clearly located in the middle of an historic and significant area. In addition, its location is such that by keeping it open and as working waterfront, the views of the York River are enhanced from a mile east to a mile to the west of the dock.

The Project Begins to Take Shape

OYHS was just about to undertake a multi-million dollar campaign and didn't see how the dock would fit into their priority list. The York Land Trust was a partner in a ten organization coalition that was about to launch the Mt Agamenticus to the Sea Conservation Initiative. Maintaining Sewalls Bridge Dock as working waterfront insured maintaining existing view corridors along the York River, which the proposed new house would block. After extensive conversations with the York Land Trust, the land trust agreed to consider the project. Because the land trust is a 501(c)3 organization, they can only undertake projects for a value that is less than or equal to a certified appraised value. One of the first things needed was an independent appraisal of the proposed easement. Because of the real estate boom in this area at that time, it was the end of May before the appraisal was completed. The easement appraisal came in at \$530,000. Jeff and Mark had agreed to pay \$300,000. After much discussion the collaboration decided to offer \$710,000 for the property. Informal discussions began between the owner's lawyer and the York Land Trust. The owner's lawyer sat on the board of the Land Trust and suggested to the owner that he should step down as their lawyer. The owner was intrigued with the idea of maintaining the working waterfront aspects of the property, so asked the lawyer to continue representing him. Negotiating with a sympathetic seller is always helpful.

Fund Raising Starts

The Land Trust hoped that this project would attract some donors to give more to it than to some other projects. An effort was made to approach people who were interested in the waterfront and fishing, rather than just conservation. Within a short period of time the land trust had commitments for about \$100,000 from three families. They then submitted a few foundation proposals, receiving good support from the Libra Foundation, the Island Foundation, and the Maine Community Foundation. As the commitments began to accumulate, confidence in the project's possible success increased. Throughout the summer, fund raising efforts continued. At the same time, the Land Trust and its partners had begun the Mt Agamenticus to the Sea Conservation Initiative. Some of the major prospective donors, very impressed that the land trust was exploring ways to put a conservation easement on a dock, thought that this was a very clever idea, and gave generously to the Initiative, perhaps more generously than they would have otherwise.

Developing Easement Language - Complications Begin

In the early summer a meeting was held in the Land Trust office with the Doreen MacGillis, the Executive Director of the Land Trust, some Land Trust trustees, Mark, Jeff, and Joey. Ed Bradley, the maritime lawyer from Portland, had prepared a draft document for us to review. The goal was to develop a conservation easement that required the property only be used as working waterfront, provided public access on a portion of the property, and protected its scenic beauty. It became apparent that conservationists and lobstermen do not always view certain issues the same way. The land trust individuals liked looking at the clear dock. The lobstermen would need to have bait barrels on the dock as well as lobster traps and gear. A pristine dock may look nice, but it wouldn't qualify as working waterfront. When developing easement language, the goal is not to state what can be done, for then you are always making a qualitative judgment as to whether or not the goals are being met. Rather the easement should spell clearly what can not be done.

The result was a series of conversations to discuss what the lobstermen would need to be able to have a successful business. This included offloading catch, keeping bait barrels, traps and other gear in a convenient spot, tying up their boats, working on their boats. Many of the areas crucial to lobstermen are similar to what is accomplished at a marina. Because of the location of the dock, the neighbors and the land trust wanted to make certain that Sewalls Bridge Dock would never become a marina, however they really wanted the dock to continue to have working lobster boats tied alongside. Suddenly the land trust lawyer was involved, Mark and Jeff had their lawyer, and Ed Bradley continued with his involvement. The end result is an easement that we have shared with others and is available from the York Land Trust (207-363-7400) or by emailing the York Land Trust web page and requesting a copy. It contains an extensive definition of "Working Waterfront Uses."

Among the uses, which allow the lobstermen to continue to their traditional fishing, while preventing any eventual usage as a marina, are provisions that prohibit charges for tying up to the front of the wharf or float, charges for repairs to a boat, or locating a restaurant on the property. The lobstermen are permitted, however, to sell lobster, lobster rolls and other products they may catch.

Another concern of the land trust was the possibility that boat repairs and painting might cause damage to the water quality. This was quickly resolved by having the lobstermen agree to abide by the State's "Best Practice" policies.

The lobstermen knew that eventually they would like to have a small bait shed and a utility building. The location, size, and descriptions of those buildings were agreed upon by the lobstermen and the land trust. A local architect and neighbor of the dock, Bill Ross, has designed the proposed buildings, to have a close resemblance to the existing

Perkins boathouse, immediately across the street. Thus the new buildings will fit into the neighborhood.

While the negotiations on the easement were continuing, so were conversations with the owner's lawyer. In September of 2003, the Land Trust made an offer of \$710,000 for the property, which was accepted. The agreed upon arrangement was that Jeff and Mark would own the property outright, with the York Land Trust would hold the conservation easement on the property. The agreed upon closing was to be December 1. Jeff and Mark had extensive discussions about ways they could finance their portion of the cost. The cleverness of the project caught the attention of several local banks. Rather than use a local bank, Farm Credit stepped up to the plate and provided the funding that Jeff and Mark needed. While fundraising for the project had been successful; it had not totally closed the gap between the \$300,000 that Jeff and Mark were paying and the \$710,000 agreed price. The land trust decided that it needed to borrow \$150,000 from Coastal Enterprises. The money could be paid back over a five year period. The kicker here was that Coastal Enterprises wanted to have guarantees against the money they would loan. Thus guarantors needed to be found. Five individuals guaranteed the \$150,000. One of them, who with his wife, had guaranteed \$50,000 said, if they call this guarantee, that takes care of my next contribution to the land trust. The final easement language was not totally agreed upon until the morning of the closing. That afternoon was the local celebration: donors, lobstermen and their families, neighbors, others interested in the working waterfront all came together. Jeff and Mark had provided many lobsters to a group of volunteer pickers several days before. The result was huge quantities of lobster rolls for all to enjoy.

The Project Attracted Much Favorable Press

Representatives from local newspapers and the Island Institute's *Working Waterfront News* attended the closing celebration. This provided great and broad news coverage of the project. In March of 2004, the project participants were asked to be part of a presentation at the Maine Fishermen's Forum. A few months later, Peter Mehegan, of the *New England Chronicle*, a Boston television news program called. In May of 2004, Peter and his crew met Jeff, Mark, and Joey on the dock, interviewed them, continued on Jeff's boat through the harbor, filming current and former working waterfront sites, and put together an excellent narrated video about working waterfront and this particular effort to preserve a piece of it. It was shown initially somewhat after the filming and has been shown many times since. In January of 2005 representatives of the Land Trust Alliance, CEI, and the Island Institute suggested that we have a meeting to discuss the project a year later. Representatives from several land trusts attended. The plan was to have a reception for invited guests and the press on the dock, then adjourn, and have a Q+A session for the land trust, conservation, and working waterfront members. The purpose of this was to review what had been learned and ways others could undertake a similar project, but perhaps involving less time and proceeding forward more smoothly.

Mt Agamenticus to the Sea Project has been a Great Success

The Mt A2C project, which began just after the initial discussions were taking place about preserving Sewells Bridge Dock, has been a fabulous success. Mt Agamenticus, a

landmark on the coastal plain, is surrounded by the largest expanse of unfragmented coastal forestlands (40,000 acres) between Acadia National Park and the New Jersey Pine Barrens. These large forest blocks include portions of three major rivers' watershed: the York, the Ogunquit, and the Great Works – and allow for extensive public access. The goal of the Mt A2C project was to preserve land surrounding the mountain, down the seven mile long York River, and going west along the coast to Gerrish Island.

This project has shown that large partnerships will work if the goals are clear and compatible. While working waterfront and conservation groups start from different viewpoints, their overall objectives and goals can be melded once both groups are aware of what the others needs are. One of the projects that MTA2C frequently showcases is the success of the dock. It has preserved a working waterfront and provided a view and image that could be found in any of Maine's remote harbor. To the best of our knowledge, this is the first time a conservation easement has been placed on a dock.

What Have We Learned?

Unlikely partners can work together if they take the time to see how their goals are similar, even if their original objectives seem far apart. Try to enlist as many partners as possible.

When undertaking a project it is very important to develop the case, determining what is special about this effort.

A well executed project will continue to bring good will. This project finalized over three years ago and is frequently referred to throughout Maine as an excellent way to preserve working waterfront.

In efforts to preserve landscapes, don't overlook "working landscapes." They provide much of the character to your community.

Turn to many types of funding partners when trying to secure a project. This session will discuss the pros and cons of this method of preserve working waterfront property.