

APPROVED ON JUNE 1, 2015

## **CONSERVATION COMMISSION MEETING**

**62 FRIEND STREET, AMESBURY, MA, MAY 4, 2015**

**CITY HALL AUDITORIUM - 6:30 P.M.**

**Meeting called to order at 6:35 P.M.**

**PRESENT:** Alan Corey, Kinsey Boehl, Michael Bik, Steve Langlois, Suzanne Egan

**ABSENT:** None

**ALSO PRESENT:** John Lopez, Agent; Paul Bibaud, Recording Secretary.

**MINUTES: April 6, 2015 - Motion by Kinsey Boehl to approve minutes as presented. Motion was seconded by Michael Bik. AIF.**

**John Lopez: Late addition to agenda tonight:** As a follow up to an anonymous complaint for **103 Whitehall Road**. Alleged unauthorized activity within the 100 foot buffer zone to the lake (Gardner). The unauthorized activity does include regarding of the site in preparation for the installation of an above ground pool, approximately 25 to 30 feet within the buffer zone. The site has an open OoC on it for 103-107 Whitehall Road for the reconstruction of a boat house. This took place a few years ago. Upon hearing of the alleged violation, I contacted the environmental consultant who is still representing the property owner. I informed him of the alleged violation. He looked into it and got back to me with some details. He is here tonight, ready to address the ConCom and make a request. Also, he supplied me with a photograph of the activity. The ConCom is tasked tonight with deciding what the next steps will be.

**Kinsey Boehl recuses himself as a neighbor.**

**Tom Hughes, Hughes Environmental Consulting:** The boat house crosses the property line, which is why the boat house, which is really 107 but because it crosses over the property line, the OoC for that does include a portion of 103. We also did an RDA for an addition on 103 for Mr. Morrill, who owns 103. For the pool, I'd delineated the wetlands, walked them with John, written a letter, and we staked off an area outside the 100 foot buffer. Now the work that has been done was the preliminary work that would normally happen for an above ground pool, where you remove the sod and a little bit of the topsoil, then you put down sand. It really has not been re-graded, it's more removing sod and a little topsoil. Unfortunately, there was a miscommunication between the property owner and the pool installer. The removal of sod occurred at about 75 feet from the wetland instead of the 100 feet required. The pile that you see in the photos is outside the buffer, but the area that was cleared in that area was between 75 and 100 feet. The activity is actually exempt under the wetlands protection act, because you are allowed to convert lawn to pool in an area outside of 50 feet in the buffer zone, under an exempt minor activity. However, under the ordinance, it is not exempt. So what I'd like to do is, rather than having him try to patch this area up, which would just create more problems and frankly, it's a better location for the pool, being flatter, is we'd like to just file an after-the-fact RDA, which is what we'd normally file an RDA, for a pool that is exempt under the wetlands protection act, file it under the ordinance and we can have that filing into you by next week, in time for the June meeting. In the meantime, silt fence is up and was up before they did the work. The installation needs to be patched up a little bit, and I've talked to the owner about that. We'll get that taken care of. We can either mulch the area,

or depending on how ConCom feels, if you're ok with that, the best way to stabilize a site is to get the pool on top of it. We could put the pool on after but only after we get the filing in to you, so you know and are assured that we are following up on it. It was an inadvertent error. The applicant is willing to re-grade it and put it back right where it was. It'd be a mess and he would have to disturb an area outside the buffer zone for the pool. Seems like it's probably better to put it in a place where a pool more properly belongs.

**Suzanne Egan:** Typically, what we'd do in this matter is issue an Enforcement Order for a Cease and Desist, requiring that the filings be submitted to ConCom by a certain date, and if they are not, then there would be a fine. Is that what you're suggesting?

**Tom Hughes:** There are a number of different routes to consider: one would be in lieu of issuing an Enforcement Order, you give me until next week to get an RDA in, and the application would be in. You could do more of a friendly version of an Enforcement Order, which would essentially say "cease work until such time that an RDA has been filed for after-the-fact." Then give John the discretion to allow the pool work to go forward, and I could offer to monitor the site and make sure erosion controls are in place and that nothing goes out of whack. It really is a minor activity. We can just stabilize the site...

**Steve Langlois:** A minor activity, but the applicant was educated with the lake.

**Tom Hughes:** They were educated, they fully intended for this to be outside the jurisdiction. The homeowner works in Somerville, so he's not home much. He just talked to the contractor about where the stakes were, where to do it, and two ships passed in the night and it didn't go in the right place.

**Steve Langlois:** How was the applicant able to delineate the 100 foot buffer?

**Tom Hughes:** I put in the stakes, I taped off the area, put out stakes just last year when John and I walked the site, wrote a letter confirming that if we built outside the buffer, it would be exempt. John confirmed that. Unfortunately, between then and now, when the guy hired someone to put in the pool, communication wasn't clear and it went in the wrong place.

**Suzanne Egan:** I'd feel more comfortable just for our record, because there is a statement tonight that there was all this activity but we had no record before us. So I'd feel more comfortable if it is on the record that an enforcement order be issued for a Cease and Desist, so that there is no question as to whether or not someone did the wrong thing, so we'd have an Enforcement Order in place, Cease and Desist, and they must file by the time before the next meeting, and if they don't then the penalties will issue. Then there won't be any question at the next meeting whether or not you understood what...

**Steve Langlois:** So, an enforcement order, they have to go for an RDA next meeting, and you have to protect the site with a Cease and Desist to protect the site.

**Tom Hughes:** So the question would be, is the Cease and Desist until the RDA is filed, or until we have the meeting and it is voted on?

**Suzanne Egan:** Until the meeting. It has to be before the ConCom because that is the record that we have to establish. We need a proper record.

**Tom Hughes:** There will be. There is a correspondence record between John and myself, if it had gone in the right place, on the exempt pool. So we can stabilize the site. I would ask that he do is to get the pile of loam and turf that is piled up there removed from the site, so it is easier to bring the loam back and seed it, if we end up for whatever reason not getting the pool approved in that location. Then we'll make sure erosion control is

properly installed, probably will beef it up with hay bales, stabilize it, and we'll be here for the next meeting.

**Suzanne Egan:** You're going to do all of this prior to coming back before the ConCom? I'd say that we would do a Cease and Desist for all the activity.

**Tom Hughes:** Usually, a Cease and Desist excludes stabilizing measures.

**Suzanne Egan:** Then we would want that monitored by John. A plan would have to be submitted to John, and approved.

**Tom Hughes:** Because if you do a total Cease and Desist, and we get a rain storm, it makes a big mess.

**John Lopez:** So the Cease and Desist would be limited to stabilization efforts.

**Suzanne Egan:** Right, then you would have to plan off of that, so stabilization.

**John Lopez:** So, Mr. Hughes will then be tasked, under the enforcement order to submit a stabilization plan, for my review and approval.

**Tom Hughes:** And it'll be consistent with what I have presented here tonight. I should add that if I'm filing an RDA next week, it is going to be a mark up on a GIS plan, as opposed to an actual survey base plan. I'll see if I can get a survey base plan, but it'll be something that is usually acceptable for an RDA. It's already delineated and the stakes are still there. We will make sure erosion control is functional and beef it up with hay bales. I will have the owner take care of it in the next couple days...before rain.

**John Lopez:** So to summarize: the ConCom will vote on the issuance of an enforcement order. The enforcement order will stipulate that the request for Determination of Applicability will be submitted by May 11 for the June 1<sup>st</sup> meeting. The enforcement order will also include that Mr. Hughes submit a stabilization plan to me for review and approval. That plan will include an erosion control and the removal of loam pile.

**Tom Hughes:** It should properly reference that the owner is responsible for all that. I will be representing him, but ...

**Suzanne Egan:** It will be an enforcement order to the owner, not to Mr. Hughes.

**Tom Hughes:** I'd also request a copy. In the past, we've had some issues where the owner doesn't get it right to me.

**John Lopez:** Also for the commission, our OoC has somewhat of a standard template, which item #1, requires that the property owner (the violator) to acknowledge the enforcement order, and to submit a letter to ConCom stating that they will comply with the order. Then after that, the enforcement order will require the violator to provide proof that an environmental consultant has been retained, and that they will comply with the orders of the enforcement order. That is our standard language. Is that what the ConCom would like to include?

**Steve Langlois:** Yes, standard language of an enforcement order.

**Tom Hughes:** I'd like to add that the fact that I'm here tonight kind of answers those first questions. I'll get you something quickly for that.

**Suzanne Egan** makes a motion of "so moved." Seconded by Kinsey Boehl. AIF.

#### **NEW BUSINESS (TAKEN OUT OF ORDER)**

#### **REQUEST FOR EXTENSION FOR ORDER OF CONDITIONS (002-1032)**

#### **284 ELM STREET (SEARS)**

**Steve Langlois:** This is to be coupled with the briefing on the Elm Street hotel. We'll take the briefing first, and then the request after (next on the agenda)

**ADMINISTRATIVE:**

**BRIEFING: ELM STREET HOTEL / RETAIL APPROVED PROJECT**

**John Lopez:** This is an OoC which was approved for a 92 room hotel and a second OoC approved for an abutting retail outlet at Elm Street on the corner of Rt. 110 and Elm Street. It has taken a few years for the applicant to arrive at this point. The construction team is here to introduce themselves and to reiterate that the proposed project will proceed as approved and the applicant's environmental consultant, Mr. Young from WPI, is here to lend his description to what will occur within the next few weeks and request the extension.

**Tim Dainyo, OPG Construction, the general contractor for the project:** With me tonight is Bill Price, from Turf Pro, he is our mitigation contractor and our landscaping contractor and our site contractor, R+D development. We're here to say hello. We understand the concerns people have as we get into this type of project. Curtis, who did the wetland mitigation / approval process for the town is also on board with us. We're here to say that we'd like to get going. We're hoping to have the site contractor go in and put in their erosion / sediment control in that isolates the site components away from the wetlands and have our other contractor, Turf Pro, go down and add additional mitigation to where he's going to be working to take care of the invasive species for his control area, to keep them from going back into the wetland areas. The project is a very linear process that will be adhered to but in concurrent with the site work commencing up on the plateau, as we call it. So we're ready to proceed, having done our due diligence and checking with Dig Safe. We're having erosion control measures delivered to the site tomorrow for the construction components, to isolate that pad away from the wetlands, and are looking for your support in moving forward. We have tentatively scheduled a pre-con meeting with John on Monday to review our implementation of our erosion controls for both aspects of the job, and to get moving forward. We have posted 2 signs out there, but we will re position them, as they are not placed in full sight of motorists. We'll work with BSC to get the best location for the signs, so everyone has good visibility to the component when its time to start.

**John Lopez:** Again, when this project was approved, it was approved in the OoC stipulating that identifying BSC (Jillian Davies) to serve as the monitor. We've received a proposal, its been ratified and signed, so I'm in the process of providing Ms. Davies with all the documents, per the OoC, to review all the documents, because this is a relatively older project approved about 3 years ago, to bring herself up to speed and ensure that she is familiar with the approved project and she'll also be involved in the construction site visit, working with Mr. Young.

**Curt Young, Wetlands preservation Incorporated:** Over the past month or so, we've been working with Tim and his staff to bring the mitigation program up to date, because we didn't have a start date. In the documents that you've received, you'll see some implementation schedules, those are new schedules. You had generic ones before. These are keyed to a May 1<sup>st</sup> start date. They should work fine. There is a hotel site and a retail site, two different lots, two different OoC. We are implementing the invasive species control program on both projects simultaneously. The reason is for access and also the fact we have the equipment and manpower there. The first year, those will be the

responsibility of the hotel site developer. Subsequently, they become the responsibility of the individual lot owners. But the heavy work, removal of existing invasives, is going to be taken care of this year and then we'll do plantings next year, but we'll have a major effort this year and it will be initiated within the next two weeks, once we get the pad on the site to basically charge the site, so that the soils are suitable to hold the foundation. We'll be bringing machinery in and pulling the invasives out, treating it with herbicide where appropriate, then stabilizing those specific areas where we pull a plant out with seed and erosion control matting. So I think we've got a pretty good plan set up. The only modifications that we made in the program that we distributed was the implementation schedule and secondly, the herbicide application approach. Because in the last 2-3 years, there's been some niche changes in that. Everybody has a better focus on what works best when you're cutting stems of various species, and what will keep them under control the best. You'll see a table on the application with herbicide applications that are much more extensive than what we had in the original mitigation program, so a contractor can have something specific to work with. Associated with this work, the OoC are still valid at this time, however they will run out before the project is completed and certainly before the mitigation program is done, because the mitigation program goes through 2019. John and I have discussed this and we realize we can only extend the OoC three years, and so we'd like to request that extension for three years, and we'll have to come back to you before the end of the wetland related work and invasive species work, and request a subsequent continuation or extension of that permit at that time. Right now, as part of this effort, if you have questions we'll address them. But what we'd like tonight is to get a three year extension to both orders, so we can move forward on the work on both sites.

**Suzanne Egan:** So you'd like a three year extension, with the understanding that if you have any changes at all, you'll be back?

**Curt Young:** Sure. If there is any need for amendments or modifications, then we'd come back. At this point, we don't see those. We'll work with Jillian Davies, environmental monitor that you have, and I'm sure she'll be keeping a good eye on things. There are no wetland impacts directly associated with the project. It is buffer zone work, so it is a little less of a real issue. We've got a defined perimeter that shouldn't have to change, but things happen. If it has to happen, that administrative feature is there to use if needed.

**Steve Langlois:** So before us is the granting of a three year extension to the OoC for the hotel and the retail space. The order expires Aug. 20<sup>th</sup> of this year, so the 3 year extension takes you until Aug. 20, 2018.

**John Lopez:** We do have the DEP file number... #002-1032 for the hotel. It is 002-1026 for the retail site. So in a motion, I would ask that you identify the specific DEP file numbers.

**Michael Bik makes a motion to extend the contract for three years for DEP numbers 002-1032 and 002-1026 on the OoC. Alan Corey seconded that motion. AIF.**

**BRIEFING: WOODSOM FARM OPEN SPACE INITIATIVE (BOEHL / EGAN)**

**Kinsey Boehl:** We've had some meetings with Essex County Greenbelt and Mass Audubon, and it appears that we have some resting nesting habitats, essentially for some

grass land birds at Woodsom Farm. Over the years, there has been some issues with citizens over the haying practices that the city is doing there. So we requested that the Greenbelt work with Audubon to come up with a potential management plan for the city. They've approached us now, at our request, with a management plan, and also a conservation restriction to put the land into permanent habitat status, essentially. There would be no change to the regulated use of the property, so any use that is allowed there now wouldn't change in the future, under new plans. I think it would be prudent for our next meeting to invite them, June 1<sup>st</sup>, and have them present their plans, put it in the public record and have the public here and available.

**Suzanne Egan:** One of the things that we had also discussed was the importance of having a public hearing on it, to invite the public and all the different parties interested in the use of Woodsom Farm to come to that meeting, because one of the issues, obviously, is to maintain it as open space. That would be our first discussion. So we'd like to invite Audubon, Greenbelt, and any other people in the community that have an interest and have an open public forum to discuss the process. Then the ConCom could make a recommendation to the city Council regarding the issues. The haying issue has been in the paper for decades now. We need to come up with a plan to fix this, once and for all.

**Kinsey Boehl:** The property right now is attracting these nesting grassland birds. Then they are being killed off before the young can fledge. It also may be one of the only one of these habitats in Massachusetts. From a state conservation perspective, it's important.

**Suzanne Egan:** So we can put a **notice** of a **public hearing** and then actually ask John to send out letters and do a **press release** regarding the public hearing. If we get to the point where we have a management plan, and we will, to protect the open space for the public's interest and the birds, then the public will have a chance to be on board from the outset, discuss it and understand what is going on. That'd be helpful as a public hearing. Have specific people invited, do a press release, put it in the newspaper, etc. because there is a Trails Association, too, to invite.

**John Lopez:** We've been provided with two specific names of people in Audubon, one of which is the PhD who did the grassland bird survey and provided the city with recommendations. That individual would be good to invite. I ask the ConCom to provide me with names of individuals that you would like to be invited to attend, like the Coastal Trails Coalition, etc.

**Steve Langlois:** For something like this, maybe we should schedule it a little earlier, like say 6 PM, even though it's a public hearing, and the regular meeting to start at 6:30 PM as usual. Who knows who will show up or what our agenda will be next month.

**Suzanne Egan:** That's a good idea.

**Steve Langlois:** So 6 PM would be the official start of the meeting on June 1<sup>st</sup>, but we'd not take any other applicants until at least 6:30 PM.

**Kinsey Boehl:** Also, specific to the management plan, it only pertains to a certain couple selected areas. It doesn't apply to the hill where the July 4<sup>th</sup> fireworks are and places like that. They have selected some areas that are 1. areas important for the nesting, and 2. areas for the use of the public.

Commissioners willing to help John with the press release were Suzanne Egan and Steve Langlois. Planning for the release would include notice in the paper of record, the Newburyport Daily News, to serve the legal requirement. The press release would be up

to you, with sufficient time to allow the public to digest it. If it got posted by the standard deadline of May 11<sup>th</sup>, or the Tuesday after Memorial Day.

**Motion was made by Kinsey Boehl charging John to draft some sort of communication to Essex County Greenbelt and to Mass. Audubon to get the important people in the know as far as types of species, the contracts and conservation restrictions, here at city hall, and also for Commissioner Egan and Chairman Langlois and John to write up a press release. Motion was seconded by Suzanne Egan. AIF.**

**ENFORCEMENT ORDER, 92 LAKE ATTITASH ROAD (RYAN)**

**John Lopez:** This is in reference to an enforcement order that was issued for the unauthorized repaving of a driveway within the buffer zone to Lake Attitash.

**Commissioner Bik has recused himself as an abutter.**

**Tom Hughes, Hughes Environmental:** we have completed survey, the engineers are right now calculating the change in paved area and finding a place to provide for infiltration. We're putting a little bit of maybe 50 square feet over the amount that was added, to make sure if there was any error in the calculations, it would definitely infiltrate it enough in terms of calculations of how much pavement was done. So we're definitely infiltrating more. We're meeting John on site Wed. morning, to make sure that what we're showing on the plans and what we're coming up with for mitigation is consistent with what John expects, and we do expect to file on time for the June meeting.

**Steve Langlois:** Is this a natural infiltration ?

**Tom Hughes:** There's a couple grass areas down slope from the paved areas, so we're looking at probably a stone trench type thing that the water will sheet into, to offset any increase. DPW has agreed to put a burm at the top of the driveway to prevent the sand from coming down. We are making progress. I expect we'll file on time, unless John and I agree that we'll get a better result by any delay on Wednesday, but I don't expect that.

**ENFORCEMENT ORDER: CEASE AND DESIST- 37 MIDDLE ROAD (ANDERSON)**

**John Lopez:** This is for the Cease and Desist that was issued for the alleged filling in of an isolated vegetated wetland. An IVW is jurisdictional only to the ordinance, not the wetlands act. However, this project is so old, that it predates the ordinance to the wetlands bylaw. ConCom has been supplied with a copy of the bylaw. Further complicating the issue, we had a grading plan, which shows the IVW to be filled in. We have a site plan which has the IVW surrounded with erosion control. I met with the applicant's representative in the field in December. I was told that this would be addressed at the Jan. meeting. It was not. No one bothered to submit any paperwork. I met with the applicant's representative in Jan., who said this would be addressed at the Feb. meeting. We didn't have a Feb. meeting due to blizzards. Nothing was addressed at the Mar. meeting either. However, since then, the applicant has retained the services of an environmental consultant, who is here tonight to provide the commission with his findings. The ConCom has in its mini packet, the information that was supplied.

**Bob Prokop, Wetland biologist with Wetland Consulting Services in Merrimac, MA:** I was retained by the applicant in early April to try to respond to the enforcement order that was issued. I've met with Bill Sayer, one of the owners, who provided me with

a set of plans for the project, and I also met with John Lopez shortly thereafter, to review the plans. After I reviewed the plans and did several site visits, I had a question regarding whether there was actually a violation at all. I won't dispute that some wetland may have been impacted, but this wetland may have originally been approved one way or another. In the package I provided you, I provided six figures. These figures are taken directly off the site plans that I have. These plans were stamped by the PLB in 2014. They also have a date of 2014, having been registered at the registry of deeds. So I assume these are the correct plans. I'd like to go right to the figures in the small report I sent, to figure one. These come right off the original site plans. The cross hatched areas on this plan are areas where the wetland boundary were apparently revised by Mary Rimmer back in 2008, or thereabouts. What they show in the middle of that plan, here is the isolated wetland that had been impacted. All the dark shaded areas, those are slopes not relevant to the project. So this shows the wetlands that had been revised way back when. Figure Two shows the wetland boundary highlighted in green along with the erosion control proposed at the time. That shows that the wetland in the center of the site, the isolated wetland, which is the wetland really of interest that was impacted, shows erosion control around the entire wetland, suggesting that it would not be impacted. Figure Three: This is the grading plan for the site, taken directly off the plan. On Figure Four: I highlighted the area of wetlands taken from figures one and two. It shows that the isolated wetland, particularly the northern tip of the isolated wetland, is the subject of the enforcement order. That area was to be regarded anyway, as part of the project plan. Similarly, which was not accounted for, the very top of that sheet, there is a small section of bordering vegetated wetland that would also be impacted as part of the berm that was to be constructed for the storm water management area. So we have a conflict here. One last sheet, Figure five: this is the landscape plan for the project, which also shows the isolated wetland, technically not being planted, and then the small area of IVW, at the tip of the plan, also outside of the landscape plan. In the enforcement order, the ConCom was seeking that the applicant restore that northern tip of that isolated wetland, because it had been partially regarded, cleared of most of the vegetation, but hadn't been filled at this point. The issue is that, in the grading plan for the site, that particular wetland area was to be regarded anyway. Somehow, these plans were originally prepared by Merrimac Engineering back in 2008, but the conflict, if you refer back to figure four, it shows that the tip of that wetland would be regarded anyway. I'm sorry, it's the SOUTHERN tip, my error. But it's the pointed part, up by grade 84, 86, those contour lines. It has not been filled in. It's been driven over by construction equipment, but has not yet been filled in, only disturbed. I have photos of it to pass around. The largest section of the isolated wetland is still contained with erosion control and still protected. It is the southern tip of the wetland that has been driven over and cleared of vegetation. So we have a conflict: we have an approved grading plan showing the wetland to be impacted, but the erosion control plan and the landscape plan suggest that it is not to be impacted. What I'd propose is that, if we continue with the approved grading plan, in figure six, I provided a preliminary replanting plan, putting in approx. a dozen shrubs to be placed over that disturbed area, once it is regarded. That would complement the existing landscape plan. I'd also point out on figure six, as part of the approved grading plan, there is a small outlet structure that hasn't been constructed, that is also part of the approved plan. So there will still be an additional small impact to that isolated wetlands.

**Steve Langlois:** On the picture here, it shows raised gravel around the...

**Bob Prokop:** Yes, that is at the southern end of the site, where the detention basin is constructed. That area has been filled... in my sketch plan, it would be figure four, and that is part of the berm that surrounds the detention basin.

**Suzanne Egan:** It sounds like there were a couple different plans that were approved by ConCom, and they are in conflict with each other. One shows that this jurisdictional area is protected, and one shows that it is not. (Prokop= correct). So you are proposing to do some planting?

**Bob Prokop:** Because we have an approved grading plan...

**Suzanne Egan:** You also have other plans that show that...

**Bob Prokop:** The other plans show that this isolated wetland in particular would not be impacted. But the grading plan shows it WOULD be impacted.

**Kinsey Boehl:** Does the PLB maintain their own official copy?

**Bob Prokop:** I don't know if ConCom has a separate set of plans or not.

**John Lopez:** No, it's the same plans.

**Bob Prokop:** I have the plans, you can look at them yourself. They are signed by the PLB on all eleven sheets, and stamped at the registry of deeds.

**Suzanne Egan:** But it's the ConCom's jurisdiction.

**Kinsey Boehl:** What I'm asking is, because there is a discrepancy in the prints, you said if yours are signed by the PLB, then they likely are the official plans.

**Steve Langlois:** But this little area has been run over already. So its either we ask for it to be put back to where it was, is that something you'd be willing to do?

**Bob Prokop:** Well, we can put it back, but then it's just going to be regarded again. But there's one other issue involved, and that is whether there is actual jurisdictional under the Amesbury Wetlands ordinance. The NOI for this project was filed and an ordinance in place I think in 1995, but it did not specify wetland sizes. It appears to assume that it followed the wetlands protection act. It wasn't until 2008 that you guys actually quantified areas for isolated wetlands such as this. And this wetland that was impacted would've been too small and would've been considered an isolated area subject to flooding and too small to be jurisdictional by the state law, and probably by your bylaw, at that time. The bylaw was passed in 2008. So this may not have even been jurisdictional.

**Steve Langlois:** So we can't force you or your contractor to put it back.

**Bob Prokop:** It's pointless, because we're going to regrade it anyway. So I thought the easiest way would be to let them build it, because that's part of the storm water management plan now, is regarding that, but let us include that area as part of the landscaping plan. Plant it with trees and shrubs, but the detention pond out there is going to provide some nice habitat even though it's not considered part of mitigation. You're going to have a nice little pond out there as well. That will be significantly bigger than the area being impacted. So if we can expand the existing landscape plan to plant stuff based on the grading plan, also plant stuff on the berm which was filled, that's about an impact on about a thousand square feet of IVW, but not shown on the plan. Given the size of the detention basin being built, and the extensive landscaping plan, it seems like more than enough mitigation, plus he's rebuilding the stream crossing further down the site, off of Middle Road, about 300 feet from the site. The site has been dead and quiet

since I've been involved, which is since April. Erosion control is still there, functional but in need of repair. No work is occurring right now.

**Suzanne Egan:** So you'd be willing to submit a plan to ConCom of a landscaping plan that shows that the wetlands are going to be replicated? We'd want to see that it would serve the same function on the site.

**Bob Prokop:** There's not a lot of function that this little wetland does now, anyway. It's a small area. But this plan, we actually have a small stream going through the wetland. There will be small burms in there. Those can all be replanted to provide habitat. When you go back to the landscape plan, they have a variety of trees and shrubs being planted around the site. I'm simply saying let's expand that to include the area with the existing grading plan, so we can replant this tip here, then this area here that was impacted for the detention basin that is here, that can also be replanted.

**Steve Langlois:** All we're saying is this: we'd like to see this on a plan, for our records.

**Suzanne Egan:** With the plantings, etc.

**Steve Langlois:** Obviously, the ordinance was after you took out the permit, so we're not going to push anything on that. We've come to an agreement on how things will move forward.

**Bob Prokop:** Again, I am proposing about a dozen shrubs to be planted in this area, which was not part of the landscape plan.

**Steve Langlois:** Then we need to include it in our motion.

**Suzanne Egan:** I would suggest that a plan be submitted setting forth these specific plants, before work commences.

**John Lopez:** Because this is under an enforcement order, we'd have to amend the existing enforcement order, to have the draft restoration plan submitted for review and approval, which can be done at the next meeting. Also of relevance is the Cease and Desist order. If ConCom is comfortable with this, you could either keep the Cease and Desist in place, pending approval of the restoration plan, or you could lift it to allow work to proceed but still require the restoration plan to proceed. Two options. As you consider amending the E.O., think about that.

**Steve Langlois:** So if we kept the Cease and Desist in place, we couldn't lift it until the next meeting?

**Suzanne Egan:** Correct. So I would make a MOTION to amend the EO, maintaining the Cease and Desist order, and that the applicant shall submit a planting plan noting the specific plants that will be planted, to be submitted by May 11. Motion was seconded by Michael Bik. Vote was unanimous.

**APPEAL: 68 LAKE ATTITSH ROAD (DOW)**

**APPEAL: 70 LAKE ATTITASH ROAD (DOW)**

**John Lopez:** This concerns an appeal on a superceding order of conditions for the approved removal of four trees along with the installation of 66 native non-hybridized plants to serve as mitigation. The superceding order also would include the restoration of an old stone wall in buffer zone to Lake Attitash. The abutter has appealed the superceding order. This has gone to the DEP office of dispute resolution. This has been before ConCom for quite a while now. On two occasions, the appellant was provided with very clear directives by the presiding court officer on how to proceed. Specifically the appellant claims that the trees are healthy and should not be removed. The presiding

officer has allowed her to retain a tree expert at her own expense, and to access the property of the abutter with very defined dates as to when this was all to take place. That first deadline came and went. The presiding court officer allowed her to have a second opportunity. She was to submit three proposed dates for this site visit by April 22. The site visit was to have occurred by May 1<sup>st</sup>. She missed that deadline. We received an e-mail today from her, actually sent to the police chief and I believe to the mayor's chief of staff, requesting police presence tomorrow at 9 A.M. so she could conduct a site visit. The ConCom has received the e-mail and I'd like to enter it into the record. The e-mail that I received from Mr. Kenney, the chief of staff for the mayor and also Mr. Ouellette, chief of police, was forwarded to DEP counsel, who responded, saying that the site visit as proposed is beyond the scope of the presiding officer's directives, is not relevant to this case, therefore it has no bearing. That was forwarded on to chief Ouellette, and to Mr. Kenney, for further proceedings. We also copied the ConCom's attorney, John Goldrosen from K+P. That is where things stand with this. Also, from the last meeting, I was subpoenaed and identified as a hostile witness by the appellant, along with a DEP analyst and a former member of the Amesbury Tree board. That subpoena was successfully quashed and the presiding officer denied its issuance. No further action is warranted on behalf of the ConCom.

**Kinsey Boehl:** We've been discussing this for a long time. The audience is not interested in it. We're not interested in it, at the state level. I think we should either stop briefing on it, or brief at the end of a meeting, if that is reasonable, unless we have something that we really need to get involved with.

**John Lopez:** It's been stated at the pre-trial hearing that I stated that the ConCom will defer all further proceedings to DEP counsel and support their further proceedings consistent with their opinion.

**Kinsey Boehl:** Let's continue doing that. 70 Lake Attitash is also considered the same way from here forward.

**VICE CHAIR: NOMINATE/ELECT A VICE CHAIR FOR CONCOM**

**Steve Langlois:** Kinsey Boehl has voiced interest in the position.

**Suzanne Egan:** I move to elect Kinsey as vice chair of the ConCom. Second the motion was by Alan Corey. Vote was unanimous.

**CONTINUED BUSINESS:**

**NOI #002-1088- OLD MERRILL STREET (TOTH)  
CONTINUED TO JUNE 1 MEETING.**

**NOI #002-1096- 127 KIMBALL ROAD (SCIMONE)  
CONTINUED TO JUNE 1 MEETING**

**NOI #002-1111- 60 Merrimac Street-HATTERS POINT – (SMITH)**

**John Lopez:** Since the previous meeting, this has undergone some changes pursuant to the Ma. Environmental Policy Act review with the removal of a number of parking spaces within the flood zone. The applicant's representatives are here and willing to go

into detail. Suffice to say that the ConCom's consultant, Jillian Davies, as well as a storm water engineer, Dominic Renaldi, have both reviewed the amended plans, and they both support the changes pursuant to DEPs request. If there are no further outstanding issues, I think this is ripe for approval of the issuance of an order approving the work.

**Kinsey Boehl:** If you look at the minutes from the last meeting, we were about to approve it, with a contingency based on the MEPA review. The applicant said that, if they have any comment, they'd have to come back anyway to resubmit paper, so we just deferred until this meeting.

**Charlie Wear, Meridian Associates, civil engineer for the project:** I have both Larry Smith, the applicant, and the developer for the project, as well as Scott David, the representative for the homeowner association. At the last meeting, that's correct, we knew MEPA, actually DEP had not yet issued through the MEPA process, but two departments in particular that did impact us. One was DEP waterways, and the other was DEP wetlands. DEP wetlands actually opined on the NOI filing previously, and then under the MEPA review, they opined on it a second time. Some of the issues were the same, but they had additional issues as well. Then also, waterways had some issues. Its resulted in what I consider very minor changes to the plans. The first one was us calling it a coastal bank. We call it that because this section of the river is tidal. Jillian agreed with that definition as well. But DEP looked at it and noticed that apparently there is a policy that states that they consider not basing it on it being simply tidal, but they tie it to flood and how the river floods with a storm surge.

**John Lopez:** Amesbury's section of the legally defined coastal zone is east of the chain bridge. Everything west of the chain bridge is coastal, but is considered tidally influenced.

**Charlie Wear:** So that point got clarified. We changed it on the plan, instead of calling it a coastal bank, we now call it was bordering land subject to flooding, as opposed to coastal land subject to flooding. Also, the bank is no longer a coastal bank, it is simply a bank and non coastal. We meet all the performance standards for the land subject to flooding, so it was really a moot point. We do have some minor filling in that, but we're compensating, so we meet that, and Jillian agreed in a letter. The second thing that DEP opined on was that they wanted us to get an infiltration system in the center of our site, and they wanted us to get more of our parking into that infiltration system. We accomplished that by raising this parking lot by about 18 inches, which allowed the catch basins in that area was to pull back into the infiltration system. Other than that, nothing is changed. DEP waterways pointed out, we wanted to do a row of 12 parking places along the river in this area. Six of those parking spaces were in what is considered to be historic coastal filled tidelands from the 1800s. Our idea was that we'd put public parking in that area. DEP waterways instructed us that it is not out of the question to do that, but we'd have to go through a very intense hearing with them and justify why we want to do that. It is their policy not to allow public parking within that area. So we simply removed those six spaces from the parking. We also did some additional soil testing, which DEP had recommended in the area. We only had one test for our infiltration system. We did three more tests bits, which all verified the soils that we had found previously, so there were no surprises there. Those are the changes that have been made. We did submit it to the ConCom about a week ago. Domenic and Jillian both reviewed that and their comment

letters came back today and concur that there were no issues and that we meet DEP storm water management policy and also the wetlands protection act.

**Steve Langlois:** I think from where we were last meeting, to where you've explained it now, unless anyone has anything, I think we are possibly ready to go.

**John Lopez:** I've been working on the draft Order of Conditions. Mr. Weare and his associate, Mr. Rokos have been helping me pull together a list of all the most recent plans to be approved, as well as some of the technical figures on posed and permitted alteration. Things have changed since the initial data was submitted. I think we're just about there.

**Motion to issue the order of conditions, conditions approving the work as amended as made Kinsey Boehl, approving NOI 002-1111, 60 Merrimac Street, Hatters Point.**

**Motion was seconded by Michael Bik. Suzanne recused, all others voted in favor.**

**Motion to close NOI 002-1111, 60 Merrimac Street, Hatters Point. Michael Bik seconded the motion. All in favor, other than recused Commissioner Egan.**

**NOI # 002-1116- 219 LIONS MOUTH ROAD #RR (MCCARTHY)**

**John Lopez:** This is for the proposed creation of a soccer field complex in buffer zone of a vegetated wetlands.

**Commissioner Egan** is using the Mullen Rule to become familiar with this project, so she can participate in the hearing.

**Tom Hughes, Hughes Environmental, on behalf of Amesbury Soccer Association:** I'm here with Margaret McCarthy and Chris Holmes from the ASA board, as well as Paul Avery, the civil engineer on the project. In brief, this is a soccer field complex, more of a consolidation of existing soccer fields and an improvement of them, rather than a whole new facility. We're taking soccer fields currently spread out over a larger area of Woodsom Farm, and consolidating them into an area right adjacent to the Cashman baseball fields. They will be natural turf fields. We've provided you with some follow up information, including a spec on the perforated pipe, as well as our plan to develop an integrated turf plan that is modeled after and complies with a standard which we provided you with, which is the turf management for municipal athletic fields, but also to be modeled after the plan that was prepared for the Cashman fields, by the city. I remind you that of the ten plus or minus acres field, there is only a handful of 3000 ballpark square feet within buffer zone. The majority of the fields are completely outside the buffer. The shaded area represents the jurisdictional area. So everything that is not within this shading is outside the 100 foot buffer, and I remind ConCom that the wetlands were actually approved as part of an ORAD that you approved and issued back in February. So the wetland lines have been reviewed and confirmed by BSC then adopted by the city as an official line. So there is no question in terms of where the wetland resources are. I'd also note that our fields are much further from the wetland than the Cashman baseball fields, which are right on the other side of the wetland on school property. Paul is here to answer questions and go over the drainage system with you.

**Steve Langlois:** Review the bottom right hand corner is where you actually go into the buffer zone?

**Tom Hughes:** The bottom right is really the only place where any measurable amount of field itself goes into the buffer. There are some areas where there is a little clip right here,

99 feet, but not much, and a little bit here in the runoff area, but not in the fields themselves. In general, this is pretty much it. We've got a little bit of the lease area that is in the outer buffer. The original lease area was based on a delineation done back in 1999, and was right at the 100 foot buffer. So what you are seeing is just places where the delineation has crept up. Otherwise, we wouldn't even need to be here for a permit. The other thing to note, looking at the cover sheet with the NOI, right up next to the ball field is this little tongue where the wetland comes along the fence. That is the area that we are closest to. In terms of valuable resources at Woodsom Farm, and there are many, that ranks about as low as you'd get in terms of wetland resources out there, in my mind. The pond is beautiful, lots of wetlands around there. The walking path around that pond goes right through wetland. Wetlands on the other side of the hill from the parking area, there's plenty of nice wetlands there. The one we get closest to is really a swale.

**Steve Langlois:** So the only big issue before us is the irrigation.

**Charlie Weare:** We've proposed irrigation and given you information on that.

**Steve Langlois:** Has the PLB asked you to go forward with something for them?

**Charlie Weare:** The PLB is undertaking a peer review of the storm water. The storm water standards that the PLB applies to are a mirror image of the wetland protection act ones. But they are reviewing them under the guise of the PLB regulations. They're a different set of regulations but identical. But we're waiting for a scope from the PLB on the full extent of their peer review. The irrigation system, there is a question about that last time. We have a well that is going to be a deep well here. That well is going to irrigate and we're going to use grain sensors...no to the NOI and also included in the correspondence that we sent in. There will be rain sensors and the timers will be set so that all we're doing is watering the root zone. We saturate the root zone and then everything shuts off, and they don't turn on when it rains. The idea here is, you're just making sure you don't have your grass die and not over-watering. By using well water, we're not introducing things like chlorine and other chemicals used to treat potable water to make it drinkable. We're also not introducing that to Woodsom Farm. I believe the Cashman fields I think they are actually using municipal water from the school. We have a lower impact soccer field than the baseball fields.

**Paul Avery, Oak Consulting Group:** This is the existing conditions. The topography here, looking at how it lays out, the majority of the site within the lease area drains to the northeast and into this area of bordering vegetated wetland. There is a portion in the southwest corner that goes southwesterly and flows into this lower wetland area and into the pond. There are no impervious areas. Everything within this area is either maintained agricultural fields as well as the portion of it that is actively used for soccer fields already. Under proposed conditions, we have basically the same thing. We had to regrade the fields, so there is no impervious either before or after. Its grass. There is affect the drainage pattern a little bit locally, because you are changing the grading, so the watershed areas will change just by virtue that you're altering the shape of the land. We set the model up by looking at the conditions in the northeast and southwest, peak runoff on both actually decreased under the proposed conditions, because the contributing watershed area going to the southwest is less, so there is less area that drains to the southwest on the proposed grading. There is a storm water retention area here. The fields will be crowned at like a 1% slope that is optimal for fields, and we did it in a way to allow for rotation of fields to be used in 90 degrees the other way, as is necessary to

reast6 certain fields between seasons. There are some swales and some under drains, but in essence the majority of the site works its way down to this basin here. Portions of it go up, then go as sheet runoff and go off into the wetlands. Re: storm water standards, the peak runoff decreases for both of these areas, because of what we just explained. The other design big ones are the ground water recharge standard and the water quality standard. Both of those are easily met, because the recharged volumes and water quality volumes are both zero, because we're not adding any impervious area. All that is elaborated on in the report. It is all very straightforward.

**Kinsey Boehl:** Is there a single discharge structure that goes to the basin?

**Paul Avery:** We have underground piping here, there is an area drain in this location, because we have a low spot, and then we have field under drains connected to the piping, so that field under drains will empty into here, along with a single outfall that goes into this basin as well as sheet runoff from the surrounding fields. Then we simply have a small spillway as an overflow.

**John Lopez:** At the last meeting, the commission asked me to draft a letter or memo to the PLB, asking them if they would include the wetlands portion into their review. The response was no, because they don't have the statutory authority to do so. You have 3 options: you could elect not to have a peer review done, you could have a peer review done on your own, or you could continue this and request a copy of the PLB's review, once it is done, to make your own decisions.

**Suzanne Egan:** I would suggest that we have our own peer4 review done, because it is under the jurisdiction of the ConCom and I think its appropriate for us to completely review it in order to issue a condition.

**John Lopez:** BSC Group's Domenic Renaldi is doing the review for the PLB. I think it'd be pretty easy if the ConCom get a proposal and have him submit comments to the ConCom.

**Suzanne Egan:** I would also like the turf management plan submitted before we could vote on this also. Because the note you submitted states that you're going to submit a turf management plan, but I don't think I can vote on it unless I have one.

**Paul Avery:** We can submit a turf management plan, but likely have to amend it once the fields are constructed, depending on details like whether we use sod or seed, and that depends on schedule.

**John Lopez:** Shouldn't you know that now?

**Suzanne Egan:** That's something ConCom would want to know because that is what we are issuing an order of condition on, as to how this would be managed. The other thing I'd say is that if it is going to be based on the turf management plan submitted, and then you wanted to amend that, you could file that with the ConCom.

**Tom Hughes:** My suggestion is that the turf management plan are iterative documents, so I think it would be more helpful is we submit one, then there be a provision or condition within the order that allows it to be updated with the approval vote of the ConCom on an ongoing basis, so you always have an up to date copy. But you learn as you go along with fields, what changes you need to make and how you need to make them. You don't want them to be stale documents. We can put together a turf management plan. Re: the peer review, my recollection of the last meeting was a little bit different. It was discussed, and the Planning office had already made it clear they were

not going to do the wetland portion. I thought the ConCom discussed it and decided not to do that.

**Steve Langlois:** I don't think we voted on that, Tom. I don't think we did.

**Tom Hughes:** But I don't recall John being asked to go and pursue that beyond that at that time. However, if you want to do the peer review, BSC is already doing the peer review, and all I'd ask is that the scope of what they are doing, the words WETLANDS is that that same contract be expanded to include" within the scope, review under the wetlands PROTECTION ACT be added to their scope. They are reviewing for all the same standards, I believe.

**Suzanne Egan:** So what we would do is, we would send this out in the normal course of how we have a peer review. So if you're suggesting that by adding certain language that we would be limiting our request for a peer review? We'd send it out, as we typically do and under those circumstances.

**Tom Hughes:** If you're going to do this because we've now lost a month, because this was discussed at the last meeting, and if we were going to undertake peer review, it would've been good to start the process at that time. If the PLB is contracting with BSC for Domenic to undertake a storm water review, what I'm asking. if you want to do the peer review, BSC is already doing the peer review, and all I'd ask is that the scope of what they are doing, the words WETLANDS is that that same contract be expanded to include" within the scope, review under the wetlands protection act," so that there is no redundancy and under the Amesbury ordinance as well, but the Amesbury ordinance will refer you right back to the wetlands protection act for the storm water. We'd ask that that be piggybacked soon, so we don't lose additional time.

**John Lopez:** I don't think we can do that, legally. We can't alter a peer review implemented by the PLB.

**Tom Hughes:** No, but you can issue a contract document to use the same peer reviewer and to just basically to add the language. I'm just saying you don't have to go out to bid. You can quickly and simply get BSC to do the peer review, if that's what you're going to be doing.

**Steve Langlois:** You're probably thinking time and money. We're not trying to burden the group of money, but we're trying to protect ourselves. When do you think you want to start the project?

**Tom Hughes:** This is a privately funded project, and there is an awful lot of fund raising that has to happen. Progress and permitting is key to getting the fund raising going. So it's really that the money to pay for the project is not going to come in while we're going back and forth with permitting. The other thing is the anxiety on the part of ASA to get the fund raising going, and get progress going. Keep in mind that we're not increasing impervious, so it is questionable whether or not storm water requirements apply.

**Margaret McCarthy, treasurer of ASA:** The ASA does not want to push through anything that the town and association is not comfortable in any way. If the peer review could be coordinated, it would be greatly appreciated by the ASA in the savings that would mean to us. We are non-profit and need to keep our costs as low as possible. We need to show progress in order to prompt benefactors to donate.

**Steve Langlois:** We'll try to move this along as much as legally possible. So John, basically we just want to review the storm water and see how it affects the wetlands, correct?

**John Lopez:** Sure. Storm water review pursuant to the wetlands act and the ordinance. I could probably have a contract ready to be signed Wednesday.

**Steve Langlois:** Seeing we're doing it with the same company, BSC, it should move along pretty good, then next meeting, who knows where we'll be, but ...

**Margaret McCarthy:** How do we get a copy of the contract and understand what the fees associated with the review from the PLB and the ConCom will be? We have to factor that into our planning.

**John Lopez:** It's a public document, and you will get it from me as soon as I get it. But we would need the funds prior to the review. I believe that's the same procedure that the PLB requires. The other option is, I don't think the commission knows enough about the withdraw of the water from the well, and what hydrological unit that well water is associated with, or what wetlands resources, but to eliminate that level of complexity, have you thought, as an alternative design, just tapping into town water?

**Margaret McCarthy:** We were essentially advised by the town not to. It was suggested that, based on our needs for irrigation, and the fact that when a drought is called, that one of the first areas to be requested to comply with shutting off water would be fields and other non-potable uses that are non-essential. Fields would be just that.

**Kinsey Boehl:** Is there any validity to the comment that because there isn't any impervious space being added that the storm water review is not required? That would be open and closed for the peer reviewer?

**Tom Hughes:** That was the question I was going to ask, is if you are going to get proposals from BSC as a peer reviewer, would they get a copy of the storm water report that they will base the scope on? Because it's probably the thinnest one I've ever written, for exactly what we are just talking about now. Its all grass before, its all grass before. So really, the difficult storm water standards just disappear on this.

**John Lopez:** I'm assuming they already have it.

**Tom Hughes:** That would be good, and if we look at the proposal, then feel that someone was misinterpreting what is required here, we could perhaps have a conversation with him.

**Suzanne Egan:** So the ASA hasn't heard anything from the PLB regarding the consultant fees or contract?

**Margaret McCarthy:** No. We had a meeting last Monday. They requested the same information that we submitted to you, with regards to turf management, and our intent with regards to that. So we provided them with this letter and a copy of the Mass. Dept. of Agriculture plan.

**Suzanne Egan:** Because in this plan it says for you to submit the turf management plan to the different permitting boards.

**Margaret McCarthy:** Right, but it also has contingencies in there with regards to sod or seed types, and we don't have that, depending on fund raising, and depending upon how these fields get built, we may seed, we may sod, but we don't know that until we see what level of funding we're going to be able to achieve from our various sources. That is why we don't have a definitive answer. We don't have a contractor lined up, we don't have a few of those pieces in place, because frankly, everybody wants to see this permitted, because we all know the history of fields at Woodsom Farm, nobody want to expend a lot of money or energy until we've gotten through some of these steps first.

**Suzanne Egan:** As long as you can submit as much information as possible to us, and that we're requesting, in a timely manner, then that will help your project move along.

**Steve Langlois:** In your report, was there anything in there about how much water is in the well, what kind of water?

**Tom Hughes:** It will not be a typical well. We have not done a depth to see if it is a hundred feet, two hundred feet, but it is not a shallow well. The wetlands themselves, in my opinion, is that the source of water for the wetlands, there not spring fed. These wetlands are fed by rain water and snow melt, and there is a restrictive layer in the first 12-24 inches of the soil, tightly packed fine grain soil. So water is coming through the loam, rests on the tighter subsoil, and flows with the topography. That's evidenced by the fact that you're wetland boundaries go way up those hills. The water flows along the surface. Beneath that, there is a fairly well draining sandy soil. There are two different water regimes going on. The water from the well is coming from the one underneath. It won't affect the surface flows. We'll get more information on the depth of the well. But if you're thinking if you draw water out of the well, the wetlands will go down...that is just not the way it works. The pond was built as an irrigation pond, also. It's a man made feature, and has not been used for irrigation in a while. The well is going here and will be a drilled well, outside the buffer zone over near the parking area. It is 385 feet from the wetlands at the closest point. We'll double check that. If it needs to be moved, we'll move it. The other thing I wanted to mention: seed vs. sod, the erosion control is designed for the worst case scenario, which is seed. Seed takes longer to stabilize itself. As this goes forward, prior to construction, after hiring the contractor, a storm water pollution prevention plan is produced that meets the EPA requirements to make sure the site is stable. The vast majority of disturbance is well outside ConCom jurisdiction, but EPA has jurisdiction, and the site will remain stable and remaining in good shape. So seed vs. sod shouldn't make a difference in terms of impact to the wetland. Erosion controls have been designed for worst case. The fact that ASA requires that someone regularly inspect erosion control, stabilization, making sure things are mulched if they are going to lay dormant for a while or seeded. There are strict requirements within the storm water program. There should be no concern with regard to sediment travelling beyond the erosion control.

**John Lopez:** Could the ConCom sum up what they want in a motion?

**Kinsey Boehl:** I think we're asking for a review that is applicable to the storm water standards, specifically almost like an applicability determination, if the storm water review actually is required, and if it is, to do one.

**Suzanne Egan:** It is required, we just want the review under the wetlands protection act and the wetlands ordinance for the storm water. We also would like a turf management plan which includes ...also a concern about the fertilizer used in the wetlands area, in as much detail as possible. Then we'd like some information on the hydrology of the well and the impact on the watershed. If what you were stating was that you want to be able to water the fields when there is a drought, then that's why you're using a well. So then, the question I have is, "what is the connection between the public water supply and the well water you're drinking?"

**Tom Hughes:** We can look at GIS resources and see if this is anywhere within a protected well head area or within a Class A water supply, which is the only times that it would have an affect on the public supply. We can do that. Also, as noted, the closest

approach to the wetlands where any fertilizer would be applied is on the edge of the field, which I think is 65 feet. And we're looking at the turf management plan including both soil testing, to make sure we're not over fertilizing.

**Suzanne Egan makes a motion that the application be submitted for a third party review as to the storm water under the wetlands protection act and the Amesbury ordinance, and that the applicant submit to the ConCom a turf management plan and information regarding the well and its impact on the public water supply.**

**John Lopez: Would it be worthwhile to have the review include the well issue?**

**Suzanne Egan: I will add that to my motion. Seconded by Alan Corey.**

**Tom Hughes:** Re: the well: If we can show that the well is not located within the same aquifer, and those are fairly well mapped out in GIS resources, getting that into a peer review without a real clearly defined scope, could end up being a very ongoing, much larger exercise in aquifer science than I think anyone is willing to go in. I suggest that I prepare a GIS map. I can pull up GIS resources, put on the DEP aquifer layers, and see whether or not it is good.

**Kinsey Boehl:** I personally question whether the well is not jurisdictional for this organization, really.

**Suzanne Egan:** One of the things that we review application that there is protection of the public water supply. That is right in the wetlands protection act and the ordinance. So I asked whether or not the well would have any impact on public water supply.

**Tom Hughes:** The well is outside jurisdiction, its 385 feet from the wetlands. The reason we were advised not to go with using public water for irrigation, frankly I think it's a waste of water that's been treated to make potable to use it for irrigation when other sources are available.

**John Lopez:** I can also get written confirmation for the record from the DPW director verifying this.

**Steve Langlois:** The applicant has to provide that for us.

**Tom Hughes:** We'll provide you with more information on the well, and it will include why we're using it and all that, even though its outside jurisdiction. So for the motion, I heard "a peer review for the storm water standards under the wetland protection act and under the ordinance, that applicant will provide ConCom with a turf management plan and the specific fertilizer levels, and that applicant provide ConCom with additional information as to why we're using the well, etc. in more detail, who would approve it, and whether or not it is within the city's aquifer per the GIS maps.

**Motion by Michael Bik of "so moved." Alan Corey seconded the motion. Vote was unanimous.**

**Motion to continue the hearing to June 1<sup>st</sup> by Michael Bik. Motion was seconded by Suzanne Egan. AIF.**

**NEW BUSINESS:**

**RCoC #002-0876 – 108 PLEASANT VALLEY ROAD (COUTURE)**

**RCoC #002-240 108 PLEASANT VALLEY ROAD (MOORE)**

**John Lopez:** These two agenda items, #002-0876 and #002-240, are very similar, so what goes for one will go for the other, so they will be dealt with simultaneously by ConCom right now.

This is an outstanding OoC which was discovered during the sale of the parcel. This is in support of the installation of a water line. This is an older order. It did not require as built plans, but it did require some verification that the project was implemented as approved. It has been problematic in that there are no as built plans, it is an older permit, I've worked closely with the buyer's attorney who is here to further elaborate.

**Jeff Tomlinson, with Tomlinson and Hatch:** There are two on the agenda. The older of the two is from 1998, and that was for the septic system, which did not require the as built plans. Concerning #002-0876, my client, Olyce Moore, owned this property when she purchased the property after 1998. This OoC was in place for reasons unbeknownst to me. It wasn't addressed when she purchased the home. As John just pointed out, she recently sold the home, and we discovered that there were these two open orders of conditions in preparation of her sale. We were able to go forward with the sale, but monies were set aside in escrow pending obtaining the certificates of compliance. So with the 1998 package I delivered, there is a copy of the order of conditions itself. I was in contact with the installer of the septic system, who informed me that everything was built in accordance to the submitted plans, in an e-mail exchange. So I simply request that a CoC be issued. A different individual did the water line, there is a letter from that installer claiming the work was done according to plan.

**John Lopez:** We do have those letters, and they have been entered into the public record. Attorney Tomlinson distributed those to you this evening.

**Jeff Tomlinson:** The most recent of the two, one issued in 2004, and that one does require, because of the standard form requirement, as built plans by a registered engineer. But it wasn't an engineer who did the work, and according to this gentleman when he first installed the water line, he was the only person in MA who was able to install this type of water line, which was new technology at the time. I'm requesting that you waive that condition, since he wasn't an engineer, because a registered engineer needs to supply an as built plan, and this person wasn't an engineer.

**Steve Langlois:** So he is asking for a waiver on the as built, and he'll present the letter and the e-mail as evidence.

**Motion was made by Michael Bik for a certificate of compliance for 002-0876 and for 002-240, we're going to issue a waiver for the sign off by an engineer on the water line. Motion was seconded by Alan Corey. Vote was unanimous.**

**REQUEST FOR AMENDED ORDER OF CONDITIONS (002-1110) - 159  
KIMBALL ROAD (DAAMEN)**

**John Lopez:** This is pursuant to an OoC which was approved in Dec. of 2014. This also was approved under a previous OoC approx. 3 years prior. Under the first OoC, the garage was never built. Under the second OoC, a 22 by 22 foot garage was approved. The applicant since moving in, has realized he has a lot more stuff than he ever thought, so he is requesting an amendment to the OoC to a 24 by 24 foot, as opposed to the 22 by 22 already approved previously. All other conditions remain. The planting plan to be installed around the garage would remain the same. So we're only looking at the increase to the amendment.

**Carlo Daamen, owner and resident of 159 Kimball Road:** Like John said, I've got a lot more stuff. I need more space, so I'm requesting this increase in size.

**John Lopez:** This would be toward the outer buffer zone and actually on a high hill leading to the lake. I think this is fine, and the applicant has proceeded in the appropriate manner.

**Motion was made by Alan Corey that we approve the amended OoC for NOI 002-1110. Motion was seconded by Suzanne Egan. AIF**

**Motion to close the hearing was made by Suzanne Egan and seconded by Alan Corey. AIF.**

**NOI #002-1115- 13 LAKE SHORE DRIVE (GREENFIELD)**

**John Lopez:** This is for some improvements to an existing structure within the buffer zone to Lake Attitash. Some of these proposed project requires a number of waivers that have been requested. The proper waiver request forms have been submitted, and the applicant's representative is here to explain.

**Alan Roscoe, Cammett Engineering:** I'm here tonight on behalf of Andrew and Jennifer Greenfield. The applicant has submitted a NOI for this project. It is a smallish lot, and every part of it is either in the buffer zone or into the water resource protection district. So any improvements will require review by the boards here in Amesbury. We met with the PLB and ZBA over various aspects of the project. In a nutshell, this is a maintenance and site improvement project. It is a seasonal cottage on Lake Attitash, right opposite the end of Second Avenue. The applicant came to us since we'd done survey work for him previously. He asked what the process would be to do some shoreline erosion prevention. Once we explained to him what the process was going to be, he already had in mind a 4-5 year project to do some site improvements, add fencing, landscaping, plantings, and do various projects around the home. It's a historic residence, built in the 1880s. A lot of construction is of that time, even though there have been many modifications over the years, but the family wants to continue to use the property, but there are some features that are falling into disrepair, like landscape retaining walls, flagstone retaining walls that need to be improved or maintained, to add to the usefulness of the property. We appeared before the ZBA. There is a deck on the rear of the property which the applicant wishes to extend. We got a finding allowing that extension. We are currently meeting with the PLB as the entire project is within the water resource protection district, so this has had a lot of eyes on it. The applicant would like to do, the primary focus is to repair some erosion and undermining right at the shoreline. Other

elements would include replacing brick walkways with pavers, adding a wooden walkway and ramp down to the water, repair of some landscape timber retaining walls, either in kind or as part of the overall landscaping scheme. Those are the applicant's proposals. The buffer zone is the water and the wetlands edge is the same, a very narrow strip of beach before you hit any kind of embankment. The most land or buffer zone is actually extending from the flood plain. It got messy showing various foot dimensions on the plan, so what we decided to do was the wetland edge and the edge of land under water bodies is that blue line. Any improvements performed or land disturbance is going to be under your jurisdiction.

**Steve Langlois:** I think we're going to send this out for peer review. We're not going to make any decisions tonight on your plan right now. There is too much going on there. Plus, I know you actually want to go for more than one waiver?

**Alan Roscoe:** Yes.

**Steve Langlois:** That is beyond our scope, without a consultant.

**Alan Roscoe:** But this is more maintenance than anything else.

**Steve Langlois:** Whatever. You're on the lake's edge, very close to the lake, you're proposing a deck, proposing a gazebo, proposing a wall...

**Alan Roscoe:** There is a deck on the back of the house, that we have approval for...

**Steve Langlois:** But I'm going to make the call. We're going to suggest a consultant to represent this to us, because we don't have what we'd need to make a vote and tell you what to do. That's what we want to do, and I'm going to ask for that vote.

**Alan Roscoe:** I wish we'd done that a month and a half ago, but...

**Steve Langlois:** Well, this is the first time we've seen it.

**Alan Roscoe:** This is landscaping and maintaining the infrastructure and the features. This isn't a ferris wheel. I don't think it is worthy of a peer review consultant. If you disagree, that's fine.

**Suzanne Egan: Motion to send this out to a third party review to review it with regards to the wetlands protection act, wetlands ordinance, and best management practices.**

**John Lopez:** If the ConCom is going with a peer review pursuant to the act and ordinance, and include a review the waiver requests, I think this would be appropriate for Mill River Consulting. The other issue here is that there is an EPA study on Lake Attitash with recommendations. So I'd ask that the project be reviewed in context with those recommendations, like retaining wall construction using a green approach.

**Suzanne Egan: I amend my motion to include that Mill River be hired as consultant for this project, and that the project be reviewed to be consistent with the recommendations put forth by the EPA study on Lake Attitash.**

**Motion was seconded by Kinsey Boehl. Vote was unanimous.**

**John Lopez:** The goal is to have something worked out with recommendations to the commission for the next meeting. We might even be able to approve it then.

**Motion to continue this hearing to June 1 was made by Michael Bik. Motion was seconded by Suzanne Egan. Vote was all in favor.**

**REQUEST FOR AMENDED ORDER OF CONDITIONS (002-1079)  
39 & 39A WATER STREET, 33 OAKLAND STREET BOSTON GAS DBA  
NATIONAL GRID**

**John Lopez:** This is on a recently approved OoC for the remediation of a contaminated site within the riverfront of the Powwow River. Mr. Bridge is here representing the applicant, and Mr. Ottenheimer from Mill River is here, the commission's consultant on this year long review. My recommendation is to go with Mill River. I've drafted a proposal and Mr. Bridge has received a copy, and I believe he is prepared to remit in full.

**Jeff Bridge, LEC Environmental:** With me tonight is Ken Lento from National Grid, Jim Ash from GEI, Jeff Schwartz from GZA, Mike Giammo from Robinson-Cole, and Mark Manganello from LEC. The ConCom previously issued an OoC last fall for remediation activity at the end of Water Street. In response to the review of project constructability and construction sequencing, it was determined to make a few minor modifications regarding the implementation of the approved remedial action, in terms of additional best management practices and construction methodology. As a result, we have filed a request in accordance with DEP's policy 85-4 for an amended order of conditions. It is important to note that the approved remedial action is not changing. You may further recall, in conjunction with the OoC, the ConCom issued a negative determination of applicability for an abutting property. Additionally, the proposed modifications do not affect this DOA and it is our understanding that the ConCom has received a letter of support from the adjacent property owner, Mr. Rick Bartley. With regards to the proposed modifications: impacts to resource areas will not increase, but in fact will decrease, in response to a deduction to the limit of disturbance. As a result, alteration of riverfront area and bordering land subject to flooding will decrease. Approved restoration of temporarily disturbed wetland and upland areas will not change. Compliance with the time of year restriction for in-water activity in the river will not change. With regard to the previously issued OoC, the minor modifications will not affect the wording of the Special Conditions included therein, but for reference to the relevant documents and approved plans. In terms of DEP's policy, per amended OoC, the project purpose has not changed, the project scope has not increased, project related impacts are less or remain unchanged. The project continues to meet relevant performance standards. The potential for adverse impacts to the protected statutory interests will not increase. In summary, the proposed modifications are relatively minor and will have unchanged or less impact on the interest of the act and ordinance, thus considering the subject modifications as appropriate for an amended OoC. Having coordinated in advance with Mr. Lopez, it is our further understanding that Mill River Consulting will be performing a peer review of our request, and we are prepared to submit a check this evening in response to Mill River's scope of work. In addition, this was published in the newspaper, abutters were notified, we have the green cards, and by way of that brief introduction, I'd like now to introduce Jeff Schwartz from GZA to describe the proposed project minor modifications.

**Jeff Schwartz with GZA, I'm an environmental engineer, and I sealed the modified set of permit drawings that came in your information packets.** Overview of the construction minor modifications: The main point is that there are no changes to the remediation activities, excavations, backfilling, plantings, all stays the same. We're

looking to try to reduce the construction schedule, since we have to start the work in mid-November, and we have through the middle of March. So we're trying to see if we can reduce the construction schedule to get everything done as quickly as possible, with as little disturbance to the wetlands as possible. Our main focus in the modifications are primarily, we are reducing the impact to the wetlands area. We plan to install fortified erosion controls. Those will be outside of the sheeting alignment that we plan to use, alongside the Powwow River, which offers an additional area of protection. We will install posts, then a sort of chain link fence structure, then a silt curtain affixed to that to prevent sediments from going into the river. All that will be installed at the beginning of the project, and will remain in place until the plantings have been established. We are requiring that we will have flood contingencies in place as part of our contract documents, including weather watch. If storms come, we will keep equipment and materials upland, to minimize any chance of impacts during the storm. We will also install two temporary structures, a temporary hall road, approx. 20 feet wide, going from roughly through the middle of the site. It will also establish an area where you can get the majority of your construction equipment. Once you put that hall road in place, that limits the need to put additional equipment elsewhere. So we'll do most of the excavation and to take the excavated material onto the hall road, rather than have equipment going all over the wetlands. In summary, we are using this material and these construction techniques to reduce the overall remediation schedule, therefore save us from potential impacts during the inclement weather conditions. Also the other savings is that we are going to be significantly reducing the amount of water we have to actively pump, working in sections, and further minimize the disturbance of wetlands. We're backfilling and then installing erosion control blankets on top of that backfill each day, to keep things in place. We feel these are prudent steps that are taken to do our work in a sensitive wetlands area. Additional contingencies include some hay bales and silt that are required to be on site, in case there is a condition that necessitates it, we'll be able to act instantly on the issue. Those are the precautions we'll take to get work done properly.

**Steve Langlois:** What does this material under there look like?

**Jeff Schwartz:** It is oily soil with a lot of organic material. But it is oily soil within the soil and the wetlands mass.

**John Lopez:** So this is the dnapple that you're describing?

**Jeff Schwartz:** Yes.

**Kinsey Boehl:** The basic process is that you guys are installing a series of frack tanks ?

**Jeff Schwartz:** Sorry, a clarification on your previous question on the soil:

**Jim Ash, GEI Consultants, I'm the LSP for the work, and have been in front of the ConCom before.** The material that is being excavated from the wetland, the upper three feet, is not significantly contaminated by dnapple (coal tar). The dnapple (dense non-aqueous material, the coal tar) is located much deeper down to depths of 12-15 feet. We're not disturbing that heavily contaminated material. The remedy is to remove the upper three feet of wetland, where modest contaminate conditions are located, and replacing that with clean soil, because that is the layer of soil accessible to people and animals. We're not exposing the heavily contaminated soil located at depth.

**Michael Bik:** So if that fifteen foot depth is heavily contaminated, what is going into the area now, if its not being touched?

**Jim Ash:** That material that is located at depth is not doing much at all to the area. It is stable, its been monitored for years, its not migrating further, in fact, the contaminate conditions in ground water is also stable and not significantly contaminated. Even though contamination at depth is greater, there is no exposure to those contaminants, and they are not going anywhere. We feel that the exposure would be greater to people if we were to dig up that material at greater depths, because then we'd be creating lots of odors, we'd have to treat that material, put it in trucks and haul it away, which would cause the controls for the project to increase significantly, and potentially create risks that we don't want to create.

**Suzanne Egan:** Wouldn't the ideal scenario be to remove that?

**Jim Ash:** The evaluation of alternatives is a balance between costs and benefits, with cost meaning in terms of cost to the neighborhood. Ideally yes, it'd be great to remove all contamination. But the potential exposures of removing all the contamination out weighs the benefit of it. There is no exposure now. The act of digging it up, treating it, putting it into trucks...all that creates additional exposures. So it is best in our opinion to leave that material in place, and focus on material where there is exposure, rather than creating heightened risks.

**Suzanne Egan:** Do you have mechanism to make sure that when you are doing this project, you're not going to potentially impact those areas?

**Jim Ash:** Since the material is located at greater depths, even the surface activity we'll be doing doesn't cause disturbance at 12-15 feet down. We evaluated all that, and we'll not be creating any disturbance to that material.

**Kinsey Boehl:** What work practices will you use to prevent a heavy equipment operator going down 12 feet instead of 3 feet? In that situation, what would be the remedial action?

**Jim Ash:** I can let GZA talk about that. Equipment these days is extremely sophisticated in controlling depth. As engineers, we're out there watching the construction activity full time. I don't know if GZA plans to use GPS controlled equipment where the operator can see where the bucket is within inches of the cab. Those are available to us, so an inadvertent excavation to greater depths is not in any of our interests, and we can control that very carefully.

**Suzanne Egan:** It seems to me in the paperwork that you submitted, it states that you're not going to be doing dewatering, that you'll only do that if necessary? Can you explain that? Will that not have some impact on the actual work you're doing?

**Jim Ash:** Yes, the original previous one, submittal, basically focused on dewatering of some kind of active dewatering, so pump ahead of excavation.

**Suzanne Egan:** What does that dewatering mean?

**Jim Ash:** What that does is lower the water table in your work zone, and when you are actively doing it, you can pump down ahead of time. It requires a lot of pumping, especially considering we're in a wetlands environment, where there is a lot of water recharging. So what that does is, now all of a sudden you have a lot of water to manage and constantly pump and discharge every day. So our approach is, because the excavation is so shallow, what we're looking at within the tides, working in small sections, and only dewatering as we need to, as we go. We'll be reducing the water, and when you are actively dewatering, you are pumping, then the water is flowing upwards, and you have some very soft materials that can get disturbed, so when you are looking at overall

impacts to the soft area, the preference, if you can get away with working in very small sections, and doing less dewatering than that might be plus.

**Ken Linto, project manager for National Grid:** To answer your question, we'll still be doing some dewatering, it is not the intent to do no dewatering. That dewatering fluid will be held in frack tanks and will be shipped offsite for disposal. The idea is that you've been approved to get the dewatering basin in. We still want to have that in there as a contingency if necessary. If we start generating a lot of water, based on the site conditions that we encounter in the field, then we'd bring in a treatment system under the OoC, already approved, and then we'd use a dewatering basin. But the original first step in what we're trying to do is to minimize the amount of water to the extent we can and ship it out.

**Suzanne Egan:** looking at the plans, my other question is: it looks like the flood plain elevation is 11.3. That is where you have your sheet metal barriers going. Now you're asking to have that reduced. Why, other than your cost savings, why would we do that?

**Jim Ash:** There are a couple reasons. 1. The 11.7 is a hundred year flood elevation, designed that way because the intent was that we would protect against a flood in the period of time when you might experience that 100 year flood. But the actual construction sequence is kicking that out, so that the actual installation of the sheets is what is requiring us to actually have that elevation. So those sheet in order to have that elevation high enough, is a significant depth of sheeting. They are very large sheets...about 35 feet long sheets, driven into the ground about 30 feet. By going down to an elevation of 8.5, the sheets are only on the order of about 15 foot sheets, which is a significant reduction in length of sheet, thereby using smaller equipment, it weighs less, we can get smaller equipment into the wetland easier, the wetland installation progresses quicker. By also doing the sheet piling around that area, we are reducing the length of sheeting required. So all those efforts will allow us to put the sheeting in, in a much reduced schedule, which allows us to do our work, get out of the wetland area, to do the remedy before March 15, which is when we'd anticipate actually having those actual flood events. The other thing is, under the original sequence, we were going to actually dewater the entire area, remove the entire 3 feet of mass then put 3 feet of material back in. So there'd be a lot of exposed soil during the operation, and we wanted to leave that protection. The idea under this is that we would do it in small increments, we'd have our erosion control mats in place, so that in the event of any flooding, there would be no exposed soil to actually be washed away.

**Suzanne Egan:** So what happens that all of a sudden this is different? I know you were negotiating for months or years on this issue. Now it seems like it is totally different, but there is no explanation as to what occurred.

**Jim Ash:** We actually do a constructability review. We took the original design and put it out to a contractor to take a look at. He realized, given the space constraints and things of that nature that we were dealing with, he recommended doing something similar to this. So it was based on input from the people who are actually doing it, vs. engineers who are designing it.

**Steve Langlois:** Thank you. We're to the point now where, John, do we need to hear from our peer reviewer now? I'm not saying he should, I'm asking if it is necessary.

**John Lopez:** No, we're good.

**Steve Langlois:** So this is a request for an amended OoC.

**John Lopez:** At this point, I am asking that the ConCom consider and appoint Mill River as their peer consultant to conduct a review of the amended plans, and to provide a report with recommendations under the act and the ordinance to this commission.

**Kinsey Boehl makes a motion of “so moved.” Suzanne Egan seconded that motion. AIF.**

**Jim Ash:** We’d like to continue this to the meeting in June.

**Motion was made by Kinsey Boehl to continue this to June 1<sup>st</sup>. Motion was seconded by Suzanne Egan. Vote was unanimous.**

**RCoC (002-0704)- 60, 75, and 77 Merrimac Street**

**(Hatters Point Marina parking LLC ) (Amesbury Hat Factory)**

**Charlie Weare, Meridien Associates:** This is for a different proponent, and the proponents have stayed separate. The same as the residential portion of the Hat Factory, that was part and parcel of what was called Amesbury Port Corp., which was Bill Sullivan who passed away. This has nothing to do with that. Same site, but independent of his filing. There was a gentleman named Dan Swift, who had easement rights to put in a marina. He also owned the parking lot across the street from Hatters Point. Dan Swift did that work, put in the parking lot, constructed the marina, then he ran into a bad economy and what not and he went out of business. Jay McPartland now owns the marina and has for several years now, since 2009. Jay wants to get this open OoC cleaned up, so that is where we are. Actually, there are two pieces to it. 1. the parking lot, and 2. the marina. All the land side work was including the marina and was the subject in the OoC for Hatters Point, which was under Sullivan’s original one. The Sullivan’s one has been closed. So what I did was we did an as built survey of both of those. The parking lot is substantially completed in accordance with the plans. There are a handful of things that are not 100% in accordance. One of them is, originally, the plan showed a catch basin in the green space at the edge of Baileys Pond. I think there was a low spot there. I think they just graded that low spot off, and the catch basin was no longer needed. The runoff from the green space runs directly into Bailey’s Pond. So that catch basin wasn’t put in. Then there is an 8 foot wide gravel path that was proposed, supposedly to be constructed up the side and around the back. It may have been constructed at one time. They’ve had problems with this dam, which washes out. That may have washed out the path. The continuance of it behind the parking lot, frankly, I believe it was constructed 12 years ago. It may be as simple as the gravel path being overgrown now. We couldn’t find any evidence it was put in. But I’ve listed that as not being there. The next one is a mixed bag. Curbing on the site. The curbing was originally supposed to be bituminous, which was less expensive. He installed all granite, instead. That’s not a bad thing. We do have a shortcoming on that dam which washed out that end of the parking lot. Its been reconstructed, and there’s no curbing at all on that end of the parking lot, probably a function of the lot being washed out and not replacing curbing. I’d argue that curbing isn’t needed there. All of the parking lot drains towards the center. On one hand, curbing is critical in situations where you try to capture runoff, but not in this location, if ConCom feels that he needs curbing there, he can always install bituminous curbing. I know there were line striping on this, I saw it 12 years ago when it was built. I think it is just faded, to the point now where there is no striping visible. That is the parking lot. On this side, this is Hatters Point, and the water side floats just went in recently. This is in

conformance to the plans approved by the ConCom. The only difference here is, there is a gangway here, and a second one was actually supposed to be here. They constructed the lead in into it, but they don't install the gangway down to the marina, they just leave it as a single access point here. Other than that, the marina is in full conformance. The parking lot is more out of conformance than the marina is. That's all I have for tonight.

A discussion was held regarding the parking lot across the street from Hatters Point. The lot is used through winter for storing docks. In summer, the lot is used for parking, the only parking, for the marina. The history was discussed at length between Mr. Weare and the commission.

**Steve Langlois:** Lets get back to the matter at hand. This is a request for a Certificate of Compliance. I haven't heard any stipulations. Are we ready to issue this CoC? I don't have any grievances with it.

**John Lopez:** My only recommendation is that there are enough unauthorized modifications that this is systemic of the whole complex here. Things have been done without any sort of approval. We're taking Mr. Weare's word that the catch basin wasn't necessary, and that may or may not be accurate. But I just feel that I would recommend that the Certificate of Compliance be denied until that trailer is relocated out of the flood zone.

**Suzanne Egan:** Was the trailer in the original site plans?

**Charlie Weare:** I believe it was, yes. We'd have to verify that. I know it was on the Chapter 91 license. I was looking at that today. But I'd have to check to see if it was under the 1997 order.

**John Lopez:** Was there a bylaw back then? 1997, does that even predate the bylaw?

**Charlie Weare:** Yes, there was no local bylaw back then, I'm pretty sure.

**Suzanne Egan:** The plans from 1997 show the building, is that correct?

**Charlie Weare:** Just today, I was looking at the approved Chapter 91 license plans of 1997. But I haven't looked at the plans that the commission approved in 1997. We can take a look at that together, if you'd like, to see if that building was actually there. I think it was. I was making the assumption that it was approved under the order that has already been closed.

**John Lopez:** My response would be, well, it's not 1997, and today, if there was a proposal to place that temporary trailer in its current location, it would be denied.

**Charlie Weare:** But there is a chance it was placed legally, at that time. Correct? So in that case, it could stay.

**John Lopez:** But it is a temporary structure. I don't know.

**Steve Langlois:** So, let's discuss this. If we give them the Certificate of Compliance, it means that we are accepting the trailer.

**Suzanne Egan:** No, I was suggesting that...

**Kinsey Boehl:** Just another option, though, is would it be something that, I'd imagine no one would want to do it, but, to get a peer review, it says yes, the catch basins that were installed weren't needed.

**John Lopez:** Unfortunately, a peer review would be limited to a review under the Notice of Intent. If the Order of Conditions stipulated that we do this now, that an engineer at the commission's selection, will review the as-built plans. But it is a little too late for that, by about 20 years. But your point is well taken.

**Steve Langlois:** The point I'd like to make about the trailer, I've never seen the trailer, but if the guy takes his trailer away, how does he run his business?

**John Lopez:** It's a temporary structure.

**Steve Langlois:** But, if it was legally put there, and they can prove it...

**John Lopez:** I guess. I'm not an attorney, but I would think the point is that it is temporary, and it has been there for 20 years.

**Kinsey Boehl:** I personally work in a place that has temporary buildings that have been there for 30 years.

**Suzanne Egan:** It can't be very temporary, if it has water and sewer.

**Steve Langlois:** Statute of limitations. But what we have to do is this: before we give you this Certificate of Compliance, this is my suggestion to the ConCom, we want you to see proof that that trailer was legally placed there. That is the least you can do, because we can't prove about the manhole, the catch basins, this and that. But let's see if you can find out something on that for us.

**Charlie Weare:** Absolutely.

**Kinsey Boehl:** I kind of mentioned it earlier, but would the applicant also be conducive to allowing some parking spots that we took out of here and have them marked up here, and say "hey, if you want to use the river walk, this would be a good location to park and use it."

**Charlie Weare:** You're saying re-introduce the parking spaces into this area that we took away?

**Kinsey Boehl:** There were six parking spaces removed because waterways made us remove them. I'm saying, this is a different applicant, right? (yes). So would this applicant be willing to allow a handful of parking spaces for public access for the use of the other property?

**Charlie Weare:** I can talk to him about it. He's got plenty of parking, so he'd probably agree to that. But for over a year now, Jay has been saying to me that he wants to put in a permanent marina building. Lets get this together and get it in front of the commission, then I don't hear from him for six months.

**Steve Langlois:** Let's have a motion.

**Michael Bik made a motion that we continue this to June first, until Mr. Weare comes forward to show us proof of the trailer being a legal structure. Motion was seconded by Alan Corey. All in favor...unanimous.**

**NOI # 002-XXXX 60 Pleasant Valley Road (Corey) ( Commissioner Corey recuses himself as he is the applicant)**

**John Lopez:** This is a proposal for a 200 foot dock, within priority habitat for endangered species, Atlantic sturgeon and American Bald Eagle, and as such, it warrants a review under the endangered species act. Also, it is on a navigable river in the United States,, so it has to go through its federal, state permitting. There are a number of issues which have been brought to Mr. Corey's attention, which I believe he is prepared to address with a lack of information that has been submitted. Principally under Section B, buffer zone bank, size of proposed alteration, proposed replacement if any. This information is missing, however, I believe the answer to be zero, because the applicant is not proposing any alteration. He already has a sea wall there. Also, the DEP file number

has not been issued, so legally, there is nothing the Commission can do on this until such a number is issued.

**Alan Corey, 60 Pleasant Valley Road:** The DEP file number wasn't issued because unfortunately, I was told incorrectly the fee was going to be \$500 when it was going to be somewhere around \$1500. So I gave the original fee for the file number, and when Barbara filed it, it came back saying it wasn't enough money. So I gave them another check, and it is gone in and hopefully, we'll get a file number from that now. A couple of the issues John had here: I do have my book and page, which I'll give you, to put in the NOI. There is no impact to the bank, because it is a concrete wall. I have a new drawing that I'll hand out. It pretty much has everything on here, hopefully.

**John Lopez:** So the plan being submitted is: Dock plan for Alan Corey, dated Apr. 16, 2015, at 60 Pleasant Valley Road.

**Alan Corey:** There is a note here from John, stating "project is within the estimated and priority habitat of rare and endangered species. I did not know that. So consequently, I have looked up the information online. I have an application I'm putting in, I can show you. It is in a rare species area. There's already five docks right there, in that same area. So once I submit my application, I'm pretty sure they're going to..."

**Michael Bik:** Are they usually 200 feet long?

**Alan Corey:** Yes, because this is a very shallow area. To get out to about 4-5 feet, at low tide, you have to go out that far. So I'm going to submit to the endangered species. They want their \$50 too. So I'm hoping I can get preliminary approval with the stipulation that I submit to the Natural Heritage Program, and I'll do it certified mail to show that it has been done. Is that enough, John?

**John Lopez:** They are the decision makes, the ConCom.

**Kinsey Boehl:** We should probably wait for a response from them, right? That's what we did for...

**Alan Corey:** If we do that, they take 30 days, then I won't be on the agenda until July. Why put a dock in when its July?

**Kinsey Boehl:** It'd be approved.

**Steve Langlois:** I don't think we've ever let that go.

**John Lopez:** One thing that can be done is, have me draft a draft Order of Conditions to have it ready for ConCom's review at the June meeting, and if Natural Heritage is responsive within that time period, that would give me enough time to incorporate that into the order, or any amendments. But you really shouldn't legally approve this.

**Steve Langlois:** Obviously, you're putting a dock out 200 feet. All you need is our approval, there is no approval from any other...

**Alan Corey:** In the packet I gave you, this is from the harbor master, giving me his approval for the dock in the water. The temporary mooring of floats, and a system of floats connected to shore, and the temporary mooring of a float or a boat not connected to shore.

**Suzanne Egan:** So what about the ramp?

**Alan Corey:** Those are floats that go up and down with the tide. It needs to be moored in place. Basically, it can be connected to shore too, but the best way to do it is with a couple of big granite blocks that holds the dock. That's how pretty much all of these are done. Jay Knapp is going to place those for me, and take it in and out for me every year.

**Kinsey Boehl:** Where are you going to put it when you take it out every season?

APPROVED ON JUNE 1, 2015

**Alan Corey:** Jay has a place for them somewhere on the Powwow.

**Kinsey Boehl:** So it is not even stored onsite, it is stored offsite.

**Alan Corey:** I'm thinking I might be able to put it here in my yard for the winter, but it may not be best. Jay will know.

**John Lopez:** DEP has a document entitled "Guidance for small docks and piers" and one of their recommendations is not storing within 100 feet of the water. That is something that we include in the Order of Conditions.

**Kinsey Boehl makes a motion to have John Lopez draft a draft Order of Conditions, to be available for the June 1 meeting, then if we get a response from the Mass. Wild Endangered Species organization, then we can move one way or another at that time.**

**John Lopez:** Most likely, the review will be that the project as proposed represents no significant impact to endangered species. It's almost like a form letter, but it is still a legal requirement. And the dock will be wood, so no chemicals.

**Kinsey Boehl:** Our standards are our standards.

**Motion was seconded by Michael Bik. All in favor.**

**Motion to adjourn was made by Kinsey Boehl. Michael Bik seconded the motion. All in favor.**

**MEETING ADJOURNED AT 10:20 P.M.**