

A P P R O V E D

CONSERVATION COMMISSION MEETING

JULY 20, 2015 @ 6:30 P.M. CITY HALL AUDITORIUM

62 FRIEND STREET, AMESBURY, MA. 01913

MEETING WAS CALLED TO ORDER AT 6:35 P.M.

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

ABSENT: None.

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

MINUTES: 6-1-15 SPECIAL MEETING

6-1-15 REGULAR MEETING

6-17-15 SPECIAL MEETING

Michael Bik motion to approve all, seconded by Alan Corey. AIF with Suzanne Egan abstaining.

Enforcement Order – Hatter’s Point Marina, LLC

John Lopez: This is pursuant to 002-0704 for the installation and placement of a temporary structure within a buffer zone, buffer zone to bank, and bordering land subject to flooding. This has been vetted through the DEP for review and edit if necessary at my request. I also was able to discuss this with Mr. Scott David, the property manager representing the home owners association. This took all day to straighten out. Mr. David put me in touch with attorney Ted Rignante, who represents the home owners association also. He helped me straighten it all out and who he suggests the E.O. be directed to. ConCom has a copy of the E.O. I ask that it be reviewed for ratification, with the following amendment: That the name of the violator, John McPartland, manager, Hatter’s Point Marina Parking LLC, easement holder, and John McPartland, manager, Hat Factory Marina LLC easement holder, and Hatter’s Point Condominium Association Inc, fee holder. This went through a minor edit at my request to the department. I gave the applicant until November to submit a Notice of Intent to replace this temporary structure with a permanent structure. DEP thought it was too generous and asked that this NOI be received for a NOI hearing at the Aug. 31, 2015 meeting. I ask that this be ratified.

Paul Gagliardi, Attorney for Hatter’s Point Marina, LLC: I was unaware of an Enforcement Order. I feel this time frame is very tight. We can’t file an NOI in time for the Aug. 31 meeting. We’d need more time than that. I’m asking for more time.

John Lopez: We could have the filing deadline date of Aug. 31 for the Sept. 21 meeting. I originally suggested Nov. 11 for the Dec. 3rd meeting. DEP thought that was too generous.

Paul Gagliardi: That will work.

Motion made to ratify the E.O. and that their NOI be presented at the Aug. 31 meeting by

Suzanne Egan. Motion was seconded by Michael Bik. AIF.

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Enforcement Order issued last week to the property owner at 81 Pleasant Valley Road.

John Lopez: Recently purchased parcel where the property owner contracted the services of a landscaper who went about clearing the riparian bank attempting to clear it of any and all vegetation. The order was promulgated and sent out last week. **The property owner has already retained an environmental consultant and they are pursuing the enforcement order and anticipated meeting dates. We can expect to see them at the Aug. 31 meeting with a restoration plan.**

ADMINISTRATION:

Mill River Consulting- Amendment to Letter of Engagement for Consulting Services

John Lopez: The commission has received an amendment to the Mill River contract. I request that it be approved.

Motion made by Kinsey Boehl to accept the amended letter of engagement (OoC) from Mill River consulting service for the National Grid parcel at 39, 39A Water Street and 33 Oakland Street. Motion seconded by Suzanne Egan. AIF. Applicant has remitted in full.

Enforcement Order – 92 Whitehall Road (Scarfo)

To be dealt with in NEW BUSINESS section of meeting.

Enforcement Order/Cease and Desist- 22 Clinton St. (Laplante)

To be dealt with in NEW BUSINESS section of meeting.

Enforcement Order/Cease and Desist- 54 Pleasant Valley Road (Chapin)

John Lopez: This was in support of the placement of rip rap and armoring of a shoreline without a valid OoC or a Negative Determination of Applicability issued by this commission. The E.O. was once again vetted and reviewed by DEP, who made substantial changes. The initial draft required the applicant to submit a NOI . DEP said no NOI, they wanted it out. Hence the term restoration to remove and do an assessment as to any damage to the resource, both the bank and submerged aquatic vegetation, if any, and to provide a restoration plan.

Matt Chapin, owner of the residence: At the last meeting, we discussed the E.O. that was going to be issued. We submitted a correspondence to the commission since then. As requested in the E.O. that we were taking this seriously and moving ahead. We agreed last time that we went ahead and hired a consultant, Tom Hughes, and he'll be walking you through what his assessment is prior to removing the rip rap and looking for a better solution for erosion and protection of the water's edge. That was our approach. We are just completing the survey of the property, and we plan to file a NOI for the Aug. meeting for the complete solution for the waters edge. Tonight, we'll give an update on what the plans are, and what Mr. Hughes will be recommending in our proposal.

Steve Langlois: So, the NOI is due Aug. 31. Is the rip rap to be removed by the 31st?

Tom Hughes, Hughes Environmental: I wasn't here during the entire discussion you had with Mr. Chapin. It sounds like ConCom told Mr. Chapin that if someone looked at it and it looked like it stood a good chance of meeting performance standards, that it could

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be filed as a NOI and rip rap wouldn't have to be removed until that process had gone through. Last hearing, I heard that the area was salt marsh and that there was spartina. There is a bull rush there, but there is no spartina. In fact, this area of the river, just across from here, was studied in a lot of detail about a decade ago, where they looked at salinity concentrations, and this area is a tidal fresh water marsh, so its not a salt water marsh...based on vegetation, based on research done on the river. I want to clarify that. When you look at the shoreline there, there are areas that have got some nice marsh shelf.

Steve Langlois: Tom, we've got a heavy agenda tonight. Bottom line is, the rip rap has got to go.

Tom Hughes: If I can just go through some of this...

Suzanne Egan: May I ask a question? I'm just trying to understand what we're doing here. I thought this was a public hearing?

Steve Langlois: This is not a hearing. It is administrative. We don't vote on this. Tom is explaining to us what he is going to do. John has said that DEP said the rip rap has got to go, so there is no working around it.

Tom Hughes: So, with some changes, I believe that some shoreline protection is permissible. I want to go through quickly what I have in mind and why, dealing not just with rip rap but what is happening on this property is that it is being subject to severe wake erosion. It's important that we have ConCom do a site visit, if possible on a weekend boating day, so you can see what is happening on the shoreline. There are two large maples. Half the roots have been completely undermined and they are sticking out in the air. There are things we can mitigate on property for shoreline protection. There is an old dock platform surrounded by concrete.

Steve Langlois: This would all be in the NOI.

Tom Hughes: Yes.

Steve Langlois: Right now, we just want to deal with the rip rap.

Tom Hughes: The thing is if you were to tear out the rip rap right now, I believe you'd create an unstable bank. Something has to go in its place. What we're proposing is a NOI that will provide some soft solutions in an area of erosion that is cove like sand where soft would work. In the area where the current rip rap is, we'd be looking at lowering the rip rap elevation, using soft at the top, but where the wake is continually hitting the shoreline, we'd be leaving some stone at the bottom. If you look at the rest of the shoreline there, I believe there was some old brick and debris that was sort of enhanced by Mr. Chapin quite a bit.

Steve Langlois: It sounds to e like because you don't want to just take the rip rap out before Aug. 31, you want us to accept a method that you're going to do.

Tom Hughes: What we'd like to do, and there was a motion at the last meeting to approve the E.O. and that an environmental assessment and restoration plan be submitted by the date in that E.O. So, that was the motion made and approved.

Suzanne Egan: Do you have the E.O. in front of you? What's the date you were supposed to submit the plan by?

Tom Hughes: " By no later than July 19, property owner shall submit to the ConCom for review and approval a restoration plan consisting of a written schedule and plan prepared by wetland scientists for restoring, negating and monitoring the altered bank. Restoration plan shall include a minimum ...

Suzanne Egan: That's fine. Has the restoration plan been submitted? Is it sufficient?

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John Lopez: I haven't received any.

Suzanne Egan: You haven't received any. So he is in violation of the E.O.

John Lopez: I'm under the impression that Mr. Hughes was trying to present an alternative approach to ConCom.

Suzanne Egan: But the E.O. required it to be submitted by June? And we're a month later.

Tom Hughes: It was a June 19 letter that was sent by Mr. Chapin, outlining an alternative approach to come in and talk to you about, in terms of a schedule.

Matt Chapin: The June 19, and I didn't complete reading the section there, but that letter wasn't for the full plan. It was basically to indicate that we'd engaged a wetland consultant and a surveyor to survey the property and describe the sequence of events that we'd be following. We submitted that in a letter on June 19 to the ConCom. Also, the letter summarized what our understanding was of the last discussion in the June meeting, that the sequence of events that we agreed to, was that we'd hire a consultant, assess the situation, and come back to update you and propose providing a restoration plan, which at the time, the consultant came back saying this rip rap is no good, it does no good, it's doing harm. But his assessment was that it was actually doing some good. So we'd like to provide a more comprehensive plan that may still include some of the rip rap and that's what we'd like to present.

Steve Langlois: And you feel that we have the power to give you that permission without a NOI?

Matt Chapin: This is an update to say that we plan on filing a NOI ...

Tom Hughes: What we'd like to have you do is to amend the E.O. to provide enough time to get the NOI in and go through the process. Under an E.O. it would be a stretch to have you approve rip rap to remain in place in perpetuity. We're looking to have you let it remain in place while we engage you in a NOI process with a solution. Among the other things we would look to do, included in my assessment, this existing dock is sitting on a cube of concrete right on the shoreline. It is connected directly to floats with no ramp. I'd have that torn out, construct a more up to date version of a dock on either piles or sonna tubes, set back a little bit, ramp out to a set of floats, because in my opinion, that is also a cause of some of the erosion. What I'd like to do in this process is ask that ConCom schedule a site visit to come out while we're preparing a NOI to look at the things we're talking about doing.

Steve Langlois: I understand the site visit part, and we're always willing to do that. I'm confused about, John, is the deadline of the rip rap. Where did that come from?

John Lopez: The timeline for the submission of deliverables was reviewed and it was all based upon a discussion of this issue in a public forum, which we're doing right now. ConCom can always amend the E.O. to extend dates.

Steve Langlois: So we're looking at extending the date and a site visit.

Jon Lopez: Correct. But what about the removal of the rip rap?

Steve Langlois: I just asked you that, and you said that they made a recommendation, but they didn't give us a date certain. So, basically, until he provides his NOI...

John Lopez: No, DEP is saying no NOI because it probably would not be approved. It's about a restoration plan, and change the date to accommodate the property owner. It'd be an administrative action pursuant to the Enforcement Order.

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Matt Hughes: If I may, the restoration plan will likely incorporate what DEP has allowed elsewhere, which is a hybrid soft solution. In addition, because the structure was built prior to a date in the wetlands protection act performance standards, you are allowed to put in a rip rap to protect the property, because it is on a grandfathered property. I'll produce all the regulatory arguments to that effect in the NOI.

John Lopez: I think the intent of the Enforcement Order was to have the rip rap removed and to have a restoration plan submitted to restore the resource prior to the placement of the rip rap. At least that is my understanding as to what the department was interested in.

Suzanne Egan: So John, can you tell us what has been complied with under the E.O. at this point? It sounds like this E.O. required a filing of a schedule by a certain date, showing a written report and a surveyed plan. Has that been complied with?

John Lopez: No.

Tom Hughes: With all due respect...

Suzanne Egan: Excuse me, can we just have this conversation? I just want to find out some facts.

Tom Hughes: I'd just like to clarify the facts if I can. As we agreed in the last meeting, we were to submit by the 19th a letter which we were proposing was to outline what we were doing, and it did not require immediate removal of rip rap, because we felt removal of rip rap could cause more damage. In subsequent discussions with agent Lopez, we agreed that we'd take a step back, engage the experts to assess the situation...

Suzanne Egan: OK, so I have the minutes here. It says you are being ordered to remove the rip rap. So I just want to make sure that we're following along and we just get consistent with what we do. So if there is non-compliance with the E.O. and we want to schedule this date out to get compliance, then let's just do that, as opposed to getting more involved than it needs to be.

John Lopez: Not to confuse anyone, but the commission can always amend an E.O. So if you wanted to approve, for example, to be facetious, if you felt this was a great project, we'll just approve it, as is, under the E.O. and you amended it, you can do that. You'd get a notice of intervention from DEP tomorrow, but you can do it. So if ConCom feels that Mr. Hughes' approach is cogent and bears review, that's fine. You can amend the E.O. If the ConCom feels that the rip rap should be removed, you can just amend the current E.O...

Kinsey Boehl: I think our actions should be consistent with the motions made at the last meeting and the Enforcement Order that is written.

Steve Langlois: OK, I don't want this to go too far. I think the decision we have to make is, whether the rip rap stays or goes, is it staying or going...we vote on that. Then after that, we can do a site visit, until we do a visit and he brings his plan before us.

Tom Hughes: We're only asking that it stay a little while, while we complete our assessment. But what we'd like to do is be able to file a NOI, and DEP could then comment on that, because I believe that with some modifications, shoreline protection here can be designed in a way that properly mitigates, takes into account the resource area, removes some of the impacts of what was done from this, and that would be what I'd like to do as a restoration plan. All we're asking is that we not remove rip rap until an agreed upon restoration plan that may incorporate some of the hard elements, but in a hybrid solution that is much more akin to what has been approved by DEP elsewhere.

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Steve Langlois: Lets just let them do their restoration plan, let the stuff stay there, and go forward from there. Why do we want to...

John Lopez: Because this is a very complicated issue. It has to go through the army corps of engineers permit review. This isn't just a question of...

Suzanne Egan: So the E.O. states that this rip rap was installed without any permits. Now, the E.O. was issued on June 1, 2015. I don't know when it was installed. So that has been installed on a resource area without any permitting or anything, or response to an E.O. You'd think we would say "remove the E.O. and if you don't do it by a certain date, then the penalties will accrue.

Kinsey Boehl: So back to my original comment, I think we should act commensurate with the motions we made at the last meeting, which are: submit a restoration plan for the removal of rip rap. That's my feeling.

Suzanne Egan: By what date? The date has passed, so...

Tom Hughes: The date has passed because my understanding from last meeting, I complied with what was agreed to at the last meeting. I felt I clarified that several times. I was clear before I walked out.

Kinsey Boehl: If we received your packet two weeks before the Aug. 31st meeting, we could hear it then.

Tom Hughes: I also want to note that the surveying is done. The surveyor found several conflicting record plans on mean high water. So he is going back to the title data to figure out the actual mean high water. If even a soft solution is going to need corp. approval, if it goes below high water, and we also may need Chapter 91. But it will be on us to get all the proper permits.

Steve Langlois: So for now, the rip rap stays until you tell us how you're going to get it out of there. And the date to tell us is Aug. 31st.

Tom Hughes: So we're looking to file a NOI by then and...

John Lopez: We're not asking for a NOI.

Suzanne Egan: So you have an Enforcement Order requiring you to remove the rip rap. You have minutes from the last meeting saying remove the rip rap. That's what we're saying, that you have to comply with this order. We're extending the date by which you have to comply with it. But you have to comply with the order. We're not amending the order. We're saying do what you are required to do under the order, but we'll give you more time, since you haven't done it.

Matt Chapin: I felt the June 19th letter I submitted to ConCom was very detailed in what my understanding was and my understanding of the conversations.

Motion by Kinsey Boehl to have the applicant prepare a restoration plan that discusses the removal of the rip rap from the Merrimac River, to be received by Aug. 15th for the Aug. 31st special ConComn meeting. Also include an assessment or methodology as to how the site will be restored. Motion was seconded by Suzanne Egan. Vote was all in favor.

John Lopez: One other item, Mr. Chairman. I believe Mr. Chapin is interested in briefing the ConCom on a plan that he has a NOI pending for enlarging his existing single family structure, and I believe he is interested in asking ConCom if they would consider a conceptual phase review.

Steve Langlois: Let's get rid of the rip rap first, then we can deal with that later.

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CONTINUED BUSINESS:

RCoC – 62 Haverhill Road (Doherty)

John Lopez: This request was submitted quite some time ago, at the end of the last growing season. The applicant was unaware that he had to submit photographs of the plants, showing that they were thriving. It was not the growing season, so everything was bare leaves. The ConCom continued it to July. The applicant has submitted photographs of all the plants. They were forwarded to the ConCom. Everything is fine and thriving. This exhausts the requirements of the order. I recommend the CoC be issued for 62 Haverhill. Road.

Kinsey Boehl motioned so moved. Motion was seconded by Suzanne Egan. Vote was AIF.

Request for Amended OoC (002-1079) 39 +39A Water St. + 33 Oakland St. (Boston Gas DABA National Grid)

John Lopez: This is on a remediation site of a manufactured gas plant. The commission issued a order of conditions, pursuant to 002-1079. The applicant submitted a request for an amended Order of Conditions. Mill River Consulting was retained as the consultant for ConCom. Mr. Rottenheimer from Mill River is here to present findings and recommendations.

Dan Oppenheimer, Mill River Consulting: They are proposing to remediate a contaminated site and proposing to dig it out 3 feet of material and bringing in 3 feet of new material, then restoring habitat afterwards. They want to change their approach to construction in two major ways. 1. They want to build a road to get into the site better than it currently exists. It drops down significantly at the present time, then it is at river elevation from there. They want to be able to get equipment in and out, so they want to bring material in to build a temporary road, then as they clean up the site and work their way out, they would take that road out with them. 2. They want to change the way that they are proposing to put sheet pilings all around the zone of construction. They were going to isolate everything from the Powwow River with sheet piles, do the clean up work, bring soil in, then install their plantings as per their planting mitigation plan. They want to still do that, but they want to it slightly differently. They want to have a lower set of sheet pile walls, and in some locations, bring that in closer, so there is less disturbance, and most significantly, they now want to contain the excavating work into smaller cells of 40 by 40 foot area, approx., dig out that area, bring soil in, stabilize it with matting on top of it. Under the previously approved order, they were going to dig the whole thing out at once, and leave it exposed. So those are the two big changes being proposed. So there was a change in the level of the sheet metal. The wall itself is proposed to come in a little bit, in some spots, and have less resource area impact. It is also supposed to be about 2-3 feet not as tall, or the tops of the sheet metal is going to be lower than it was previously. That was a concern of ours. The risk is, in the event that there is a significant flooding event, water could potentially overtop that. That was possible even with the higher wall. This obviously is greater risk because the wall is slightly lower. What we think offsets that is the fact that there are only digging up one area at a time. So if there was a significant flooding event, most of the site would be as it is today. Whereas the 40 X 40

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foot area that is dug up would be the only part most at risk. In totality, we think it is not a significant negative to the project to have a lower wall.

John Lopez: Commissioner Egan is in receipt of an e-mail we received from the City planner concerning some legal agreements that were reached under the old order. But now that we'll be doing an amended order, just to insure that some of these issues are addressed through the order, so that was forwarded to ConCom for consideration, at Bartley Machine at the end of Water Street.

Suzanne Egan: It is a recommendation from the Planning Dept. that a provision be included in the permit that the applicant holds the city harmless against any activities permitted by the order. It is indemnification in case anything went wrong, with property damage, then the city would be held harmless. I guess we'd require the applicant enter into this agreement as a condition to the order that we issue. In the second recommendation from the Planning Board is that the Order required the applicant to pay the city for any damages arising out of the approved activity, and obtain insurance.

John Lopez: There is a portion of this that is on City property. National Grid is doing the work on land that they own, but two other owners are involved, one of them being the city.

Michael Jammer, Robinson-Coe, representing National Grid: This is the same project you previously approved, with an Order of Conditions. Nothing has changed. It's on 3 properties, one being a parcel that the city took by tax titles some number of years ago. We have the permission to do work on that property. The issues regarding holding harmless, those are property owner issues, they are not regulatory board issues. This is not really a matter for an OoC. This is something by agreement with the city, which we have and we have a PLB Special Permit that has been approved with special conditions that address this issue, but it's not really a conservation commission issue. I'd submit that this is a non-regulatory issue that shouldn't be in front of you. I don't know why the planner chose to raise it in this way, without even discussing it with us. We've had this discussion with him in the context of the PLB proceedings. There are conditions in the PLB permit that get to those issues. We also have an agreement with the city dating from when this project was first conceived about 6 years ago, which gave us permission to work on the property. So we have the legal authority agreements lined up with the city for the work.

Kinsey Boehl: It doesn't sound like it is jurisdictional to us.

John Lopez: To sum up, Mr. Oppenheimer, your recommendations?

Dan Oppenheimer: So if the commission so chooses, you could issue a new OoC which would supplement the one that was issued last year, and we'd recommend the same conditions that were previously indicated, but referencing the most recent submissions that have been provided. In each OoC, we reference all the documents, so that's the only piece that would change. There's been some new plans and new reports produced that should be referenced in the OoC.

Motion by Kinsey Boehl to approve the request for an amended OoC, with the caveat that the current orders are updated with the plans referenced from tonight's meeting. Motion was seconded by Suzanne Egan. Vote was unanimous.

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NOI (002-1118) 36 Kimball Road (Aspeslagh) - (Suzanne Egan abstains)

John Lopez: This is to install a boardwalk through bordering vegetated wetlands to replace an existing boardwalk on Essex County Greenbelt property. This project meets the regulations and performance standards. The commission continued it, pending comments from DEP. They reviewed it, issued one comment requesting that some verbiage be submitted to insure that the existing boardwalk in dilapidated shape is removed by hand and carted offsite, which has been done. I recommend an Order of Approval with issuance of an Order of Conditions.

Motion made by Kinsey Boehl of “so moved.” Motion was seconded by Michael Bik. Vote was in favor by all but the abstaining Ms. Egan.

RCoC (002-0704) 60,75,77 Merrimac St.- Hatters Point Marina Parking LLC)

John Lopez: This was continued pending resolution to an issue concerning the placement of a temporary structure without a valid Order of Conditions or a Negative Determination of Applicability. Those issues have been clarified. So it is up to ConCom as to whether you feel more comfortable holding off until we receive a NOI, then entertaining the certificate of compliance? I'd say to continue this to the Aug. 31st meeting and receipt of the NOI.

Motion by Suzanne Egan of “so moved.” Motion was seconded by Kinsey Boehl. AIF.

NOI (002-1116) 219 Lions Mouth Road #RR (McCarthy)

John Lopez: Please continue this to Aug. 31st.

Motion to continue this to Aug. 31st by Suzanne Egan. Motion was seconded by Michael Bik. AIF

NOI (002-1119) 92 Lake Attitash Road (Ryan)

John Lopez: This is a NOI submitted pursuant to an Enforcement Order for the removal of asphalt and re-asphalting an existing easement to Lake Attitash. This has been going on since last October.

Tom Hughes, Hughes Environmental, with Taylor Turbide: Last meeting, we had a discussion, went through the project, and what we proposed is a retrofit of installing a trench drain and an infiltrator. The trench drain was sized for the 100 year storm event for twice what we calculated the increase in pavement to be, based on a prior survey and also based on interpretation of photographs and site conditions. We have before and after photos. It's all shown on the plan and calculated. We've proposed something that will trap any sand that comes down that driveway, easily maintained. Pop the grates, take a shovel, put it in a wheelbarrow and its gone. It is the only solution that will prevent sand from continually migrate down there. Even the burm that we're working with the city to have installed is not going to stop sand from being plowed over that burm. This plan will treat a hundred year storm event for 100 square feet. That means that on your inch rainstorm, you're treating 600 square feet. So during your average storm, we'll be treating a very large portion of the driveway that is currently running unabated. Also, there was an e-mail from an abutter, we went through that at the last meeting. You asked me to put my response in writing, and I able to get that out to you last week. In a nutshell,

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we agreed that the burm should run all the way down to the other catch basin. DPW needs to be handling storm water from the road, and should be directed into a proper catch basin that is designed to take it, as opposed to running down people's property. The commission also asked us to take a look at it that the deed had some language in it. We had a stamped plan that showed the ownership to the center line of the passageway. I agreed to go back to that same surveyor and ask if that deed description changed his opinion. He read the deed description and it didn't change his opinion. He then traced back the title all the way back to its initial sale in 1933. Mr. Ryan's property was the first one to be sold in 1932. Because the easement was not retained by the owner under Mass. Statutes, he gains ownership to the other half. When the neighbor's lot was sold in 1933, again, the ownership of the passageway was not retained. She got half of it. So the center line represents the ownership area, but it has to remain passable. A number of people in the neighborhood have to have a right to pass and re-pass. Another thing to note is, most people walk down his driveway then over and down the stairs. If you walk from this house, the passageway has a retaining wall that you have to jump off of to get down to the lake. What we're proposing maintains passage. It is on his land, we have a stamped plan from a surveyor that shows that, which is generally the test for filing a NOI. We ask that you go forward and approve this. John mentioned to me that Nipun indicated that the PLB on any work done in any easement shown on a subdivision plan, the PLB needs to be appraised of it. The earliest PLB agenda we can get onto for that is (-10-15, and would be done under the heading of correspondence. All they want to be sure of is that we are not doing something that blocks the easement in a way that is inconsistent with the original thing. I'm confident we'll get that approved. It just means we can't go forward with a trench drain until after we go before PLB. But we would like to go forward with approval.

John Lopez: That is separate from what we do, so in our OoC, we stipulate that all other state and local permits and authorizations must be secured.

Tom Hughes: But their still is a valid Enforcement Order against Mr. Ryan, and I don't want you guys to order the work to be done by Aug. 31, once you issue the order but have us not be able to do it because we haven't gone to PLB yet. So we need some time after that, then arrange a contractor, etc. We filed a NOI, so there is no Order of Conditions, so ConCom, if satisfied you meet performance standards and regulations, you would issue an OoC for the approved project. The status of the Enforcement Order was that Mr. Hughes was to present this material tonight.

John Lopez: Well, perhaps the best way to do this is to amend the Enforcement Order to require all work pursuant to the approved plan and order be executed by Dec. 31, 2015. This would give you additional time to do it and negate the need to come back.

Tom Hughes: That would be fine. I can always update you if you're interested whenever I'm here.

Steve Langlois: Let's make it October 31st.

Suzanne Egan: We should hear from abutters next.

Beth Sloan, 90 Lake Attitash Road, abutting the right of way: I am somewhat perplexed about this whole process. This originated when he paved over part of the right of way. I have not heard that addressed. In my proposal, when I looked at this drainage ditch, there was prior to Mr. Ryan paving over the right of way, there was a contiguous area of pavement with a cement pad at the top of the steps that lead down to the water. I

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had photos of this showing it was part of the runoff problem. My proposal is to put grass and a berm in between a grassy environment that will catch a lot of that sand. I think
1. you need to address the paving. That is allowing sand to run down the driveway. 2. this proposal of this drainage ditch, two questions: is that better than putting a natural buffer in there, and two, who is going to empty out that trench? It won't be Mr. Ryan. When the property sells in time, who cleans it then? It won't be the city.

Kinsey Boehl: So any decision that the commission makes is appealable within 30 days with the DEP.

Tom Hughes spoke at length but away from the microphone and was inaudible.

Motion was made by Kinsey Boehl to issue an Order of Conditions for NOI 002-1119. The OoC should stipulate that the maintenance plan should be included in perpetuity to clean out the catch basin that is included in the NOI. It would be a perpetual condition. The plan is site plan in Amesbury showing drainage improvements at 92 Lake Attitash Road, Sheets 1 +2 dated June 2, 2015. Motion is seconded by Alan Corey. AIF. The Enforcement Order would be amended to stipulate that all work pursuant to DEP 002-1119 be executed no later than Dec. 31, and that the representative be present at the Jan. 20156 meeting to brief the commission. So moved by Kinsey Boehl, seconded by Alan Corey. AIF.

Motion to close this hearing by Kinsey Boehl and seconded by Alan Corey. AIF.

NOI (002-1120) 128 Kimball Road (Swift)

Dan Swift, involved in 128 Kimball Road: We had changes with our running of pipes. We were going to run them up and down the road. We are now planning to run them through the neighbor's back yard. Two reasons for that: it gives us the opportunity to take two septic systems potentially, one for sure and one in the very near future, out of the drinking water district. We'll do it by horizontal drilling. Not the cheapest way to go, but certainly the best way to go, because it doesn't disturb the site hardly at all. We'll run over 1300 feet in between water and sewer lines, we're digging four holes. They dig a hole, run it through, and just like digging a well, except it is done horizontally. The main reason we're here tonight is to ok hiring a consultant. We got the proposal today for the consultant, and their asking for more money than all of the engineering we've done on the site, just to go down there and check it out. It's a simple project. Why is he charging \$5500 to come to check our guy's work? We did everything from scratch, there was never a plot plan. It still costs less than having this person come out to look at this. Its four holes. But we only got one bid, from BSC.

John Lopez: The proposal is for a peer review pursuant to the wetlands protection act and the Amesbury ordinance, as well as an engineering review to ensure that the hook up is appropriate into town water.

Dan Swift: The hook up isn't even on the property, it is in the road, so its city property.

Alan Corey: Is DEP still reviewing the project, or will we have to come back to us with something?

John Lopez: I'm looking that up right now.

Kinsey Boehl: For the demolition and construction, have we received any waivers, given that the properties basically within no builds?

John Lopez: Right, it's within 20 feet of the back river. I think the applicant has stated that it is not in a FEMA flood zone. So ConCom has a lot of choices. You can do a peer

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review as proposed by the contracts. Because this is tied into the city water line, we could request the department of public works do a review pursuant to the directional drilling, and the hook up into the town water line, which would essentially cut the price in half. If ConCom is receptive to that, then it would just be a review pursuant to the act and the ordinance and not engineering. This is a very good project. There is no mitigation plan. The applicant doesn't want to submit one. That's fine. But would ConCom feel more comfortable with a mitigation plan, with landscaping? We're talking about removing an existing structure, but there is no associated landscaping. We usually have a landscaping plan associated with these types of activities.

Suzanne Egan: If you take out the engineering, the water supply portion of it, what is the cost? (John = I don't have that). Should we continue this, to have a break down for our third party consultant to tell us specifically what that price is for, then we can make a decision?

John Lopez: We could continue this to Aug. 3.

Suzanne Egan: I think that makes sense.

Kinsey Boehl: The other thing not to miss, though, is that it does require a waiver, right, which we don't have?

John Lopez: This house could not be built today. There is a 100 foot no build zone abutting a perennial stream...a river. So it couldn't be built where it is today, but because it is grandfathered, now the applicant is proposing to demolish it but keep the foundation. That is key. If he were to propose expanding, then that couldn't happen. Also, are the distances that he is proposing correct? So a wetlands review would just confirm that everything is as proposed. I asked for a standard review under the wetlands review and the engineering review, since this would entail hooking up to the town water supply.

Motion was made by Suzanne Egan to continue this and request from BSC a more detailed quote for this project.

Dan Swift: Honestly, I thought the thing was going to be \$1200. What I'd like to do is request that this thing be approved. I'm asking you to let me do the work. You guys can supervise it, come down and see it, whatever.

Steve Langlois: We can't have another company bid on it?

John Lopez: Sure.

Dan Swift: My P+S is up, I don't have an option, other than buy it and use the existing septic system. That's part of the reason I thought both bids were going to be in, if it was going to be \$1200, I would've paid it by now. That was my original plan. Now, my poor planning on the P+S does not constitute your emergency. I'm fine.

John Lopez: Even if you did it all in a more conventional way, the ConCom would still require a peer review.

Dan Swift: OK. It's your call. I'm game for whatever you decide.

John Lopez: So the contract of the proposed contract site visit and document review = \$1850. Report: \$1150 Attending a meeting: \$1000 (these are all for two people) Coordination: \$250 Review Supplemental Material, assuming that there have to be changes made to bring things into compliance with regulations: \$1050 Total: \$5300. Reimbursable mileage, copying, \$200, for a grand total of \$5500.

Motion was made by Kinsey Boehl to continue this hearing to 9-21-15. Motion was seconded by Suzanne Egan. AIF.

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NOI (002-1115) 13 Lake Shore Drive (Greenfield)

John Lopez: Mill River was retained as the consultant. A second proposal was solicited from BSC. The applicant respectfully requests that ConCom not select Mill River and select BSC. They feel that the review is a bit more comprehensive. BSC has factored into their proposal a meeting to come in to brief ConCom where as Mill River has not.

Ironically, BSC is more expensive than Mill River, but the applicant requests to use BSC.

Motion was made by Suzanne Egan to make BSC the consultant group as opposed to Mill River. Motion was seconded Alan Corey. AIF.

Motion by Kinsey Boehl to continue this hearing to Sept. 21. Motion was seconded by Suzanne Egan. AIF.

NOI (002-1123) 20 Woodwell Circle (Tonks)

John Lopez: This is a NOI for the installation of a dock at Lake Gardner. There were no outstanding issues. The ConCom continued this pending DEP comments. DEP reviewed and issued no comments. I feel this is appropriate for approval and issuance of an order .

Taylor Turbide, Millenium, engineer: We also received comments from MESA, stating there are no adverse impacts due to the installation of it.

Motion was made by Kinsey Boehl to issue an Order of Conditions and approve NOI 002-1123. Motion was seconded by Suzanne Egan. AIF.

Motion to close NOI 002 1123. Motion was seconded by Alan Corey. AIF.

NOI (002-xxxx) 68 Lake Attitash Road (Hallissey) – Dock and Stairway

John Lopez: This is a NOI in support of the installation of a dock and the repair of an existing stairway. The stairs to be done as the same size as those existing now. At the previous hearing, there were no outstanding issues. The ConCom continued pending DEP review. DEP has reviewed and issued no comments. We got abutter comments from 66A Lake Attitash Road concerning erosion of material into Lake Attitash. Those comments were forwarded to DEP and to the applicant, who responded. Abutter comments were dated July 6, 2015. The applicant responded and forwarded to ConCom. It meets all performance standards and is ripe for approval and issuance of an OoC.

Motion was made by Kinsey Boehl to issue an Order of Conditions for NOI 002-1124. Motion was seconded by Alan Corey. AIF, with Suzanne Egan abstaining.

Motion to close 002-1124 by Kinsey Boehl. Motion was seconded by Alan Corey. AIF.

NOI (002-1117) 60 pleasant Valley Road (Corey) - Continued to Aug. 3.

NOI (002.1088) Old Merrill Street (Toth) - Continued to Sept. 21.

NOI (002-1096) 127 Kimball Road (Scimone) - Continued to Aug. 3.

John Lopez: Before continuing to Aug. 3, the applicant and their representative were under the impression that this should go to a peer review. They're agreeable to BSC. If there is no issue, I request ConCom to approve BSC as monitor and I can get the contract going.

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Motion of so moved was stated by Suzanne Egan. Motion was seconded by Kinsey Boehl. AIF.

Request for CoC (002-1076) 277 Elm Street (Beanpod Partners) Continued 9-21.

NEW BUSINESS:

RDA –Clarks Pond (Clarks Pond Watershed Assoc. / Amesbury Lakes and Waterways/Murphy)

John Lopez: The applicant presented a briefing to the commission in June. He inquired into the permitting process to remove water chestnut, a highly invasive species in Clarks Pond. I texted my DEP_ colleague, who responded and at minimum an RDA should be submitted . The issue was, these plants were about to go to seed and we wanted to get a jump on them, so the ConCom issued a emergency certification good for 30 days. It expired July 4th. We hope to entertain this request at the July 6th meeting but because of a lack of quorum, there was no meeting, so I issued a second emergency cert. which brings us to tonight.

Tom Murphy, 15 Spring Street, Amesbury Lakes and Waterways: We started removing them, but you might not even notice, there is so much, but we're keeping up with them. The weeds are extremely aggressive and have been free to spread for at least 10 years. So we're starting and it'll be a long process. We appreciate your advice and support from the last time.

Motion by Kinsey Boehl to find a negative determination of applicability with one condition that until you're done pulling the water chestnuts to put a sign from a road that is visible saying ACC 002-40. Then the water chestnut has to be disposed of commensurate with best practices. Motion was seconded by Alan Corey. AIF.

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

RCoC – (DEP #002-1081) 495 Main Street (Cullen)

John Lopez: This was a NOI issued for various site landscaping improvements on a house within the riverfront area. I conducted a site visit last Thursday. All work as approved in substantial compliance. No outstanding issues.

Motion was made by Kinsey Boehl to issue a Certificate of Compliance. Motion was seconded by Mike Bik. AIF.

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

RDA – 22 Clinton Street (LaPlante)

John Lopez: This is pursuant to one of the Enforcement Orders that was issued. The ConCom was forwarded a copy of the E.O. for the July meeting packet. This was for the construction of an extension to an existing barn. The work is minimal re: moving of soil. The property owner and applicant is here to explain in detail. All of the conditions to the E.O. have been met and I appreciate that.

Rick LaPlante, property owner: I have an existing animal building. I'm looking to put a shed roof/small extension on the side of it. It's a simple construction. Earth moving is

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very minimal. The footings will be 8 inch cement lally columns, four feet deep, three of them, 12 X 16. This is within 200 feet of the back river.

Motion was made by Kinsey Boehl for a negative determination pursuant to the submitted plans along with posting a sign visible from a public roadway that says "ACC 002-22." This is also subject to an enforcement order and a cease and desist which contained a cease and desist provision. I vote to rescind the enforcement order and the cease and desist provision, as all conditions have been met.

Motion was seconded by Alan Corey. AIF.

Motion to close the RDA made by Suzanne Egan. Motion was seconded by Alan Corey. AIF.

NOI (002-1122) 97 Whitehall Road (Scarfo) (Kinsey Boehl abstains)

JOHN LOPEZ: This is a NOI as required through an enforcement order. The property owner had removed an asphalt driveway and installed impervious stone in its place. Also had installed within the buffer zone of Lake Gardner. I photographed the work. The property owner had installed erosion control to my standards. The owner also told me he was interested in a dock. I informed him the dock would also be subject to the wetlands permitting process. So the NOI you have is in response to the Enforcement Order, which includes the driveway, patio and dock. All timelines were met and there were no issues of compliance. The owner bought recently and there was an existing old pressure treated dock that was dangerous, needed replacing, and possibly contained arsenic. An aluminum dock replaced it. The dock will fall under the perpetual category but the storage of the dock be placed beyond the 100 foot buffer zone to the lake. The other relevant issue not relevant to the wetlands permitting process, but the applicant should know that the dock, as all docks, are subject to either a Chapter 91 permit or a seasonal 10-A permit from the harbormaster. So be advised to pursue that.

Suzanne Egan: I feel we need a site plan, landscaping plan, the usual requirements for filing an application with this commission. More details are needed.

Motion to continue this hearing to August 31 by Suzanne Egan. Motion was seconded by Alan Corey. AIF other than Kinsey Boehl abstaining.

RDA – 21 Summer Street (Al Sevigny)

John Lopez: This is for the removal of two trees within the riverfront are to the back river. The applicant seeks a negative determination. Support material includes a certified letter or a letter from a certified arborist identifying the trees in question as having yellow ash disease.

Al Sevigny, 21 Summer Street: There is no remedy for correcting the condition of the trees. I had it looked at by a certified arborist. So I plan to have it cut down and the wood taken away. Then it would be second cut, as close as I can, to the angle of the river's bank, rather than go in and going through the cost of excavating earth away from it and then grinding away at it. I have no plans of planting any additional trees there.

Motion was made by Suzanne Egan to approve removal of the two diseased trees, and mitigation with winterberry shrubs to be installed between Sept. 15 and Nov. 15, 2015, and a sign placed in a public way stating "ACC 002-21". Motion was seconded by Michael Bik. AIF.

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NOI (local only) 9-13 South Hampton Road (Quintal)

John Lopez: NOI for the construction of two single family homes with the proposed filling in of a bordering vegetated wetlands. This NOI is subject only to the Amesbury Wetlands Ordinance and their implementing regulations, because this is a isolated vegetated wetland.

Carlos Quintal, engineer: We have is a site at 9 and 13 South Hampton Road, which in 2007 was re-subdivided. We got the subdivision approved with the PLB and had to go to zoning because of the width of the lot needed a variance, and we obtained that. In 2007, there was a permit issued to tear down that building. Also, there is the existing home here, this is the old Oxbow restaurant which has been eliminated, torn down in 2007. These two sheds were torn down since 2007. In 2007 when demolition was done, there was some additional work for construction of two homes. The economy went south for a while, and the area was left in a disturbed due to construction started but not finished. Over time, what happened is, the existing site is elevation 72, elevation 70 and elevation 68 and a catch basin at 67. So everything ran to that catch basin when the lawn was cut, etc. Following the beginning of construction, not finishing it or leveling it of, with time, there were some areas clearly were left below the elevation of the catch basin. It became a pond...becoming a wetland for a total of 3991 square feet. Working under your local bylaw for an isolated land subject to your jurisdiction, we would like to ask the ConCom what you'd like us to do. In order to maintain these two lots, we'd like you to entertain us filling in a portion of that lot. We're looking to fill 1821 square feet. Because of your regulations of a 2:1, we're looking to replicate 3668 square feet. The sidewalk will probably be next for us to come before you. There will be a couple waivers that we'll request, a waiver on consultants to limit the amount of costs incurred. The waivers are included, under the table of contents, the second section under ConCom Waiver Request Form.

Suzanne Egan: I would say the reasons for granting a waiver have not been presented.

Kinsey Boehl: We're also not supposed to make decisions based on financial impact to the applicant.

Carlos Quintal: I had to ask.

John Lopez: So with the proposed location of the created wetlands create buffer zone to abutting properties?

Carlos Quintal: You would extend existing buffer zones.

John Lopez: That would make abutting properties jurisdictional. Why would that not be a regulatory taking?

Carlos Quintal: Not in the regulations, but...

Kinsey Boehl: You're definitely affecting the abutters by relocating/moving the wetland, delineations, up to 50 feet onto their properties, right?

Carlos Quintal: I don't disagree with that. I need to ask that the ConCom reflect on the entire parcel and how this transpired. It was never wetlands.

Kinsey Boehl: What about details for infiltration from the gutters, driveways, things like that? What do you have on those?

Carlos Quintal: (spoke while too much distance from podium microphone).

Alan Corey: We have two plans in front of us: existing and proposed. It looks to me like the buffers on the existing are the same as the buffers on the proposed. They do go into

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other people's properties, so you're not changing the buffers by re-creating the wetland area? Buffers are not changing?

Carlos Quintal: The buffers are changing. They are changing based on what you tell me is going to be the final configuration.

Suzanne Egan: So your plan is to fill in the property that is closest to the road, and create additional wetlands towards the corner, which is closer to abutting properties?

Carlos Quintal: The reason why this kept getting wet is, the sump pump kept feeding that. Once the sump pump was taken off, the soils are there.

Kinsey Boehl: But if the sump pump is running, there is water.

Carlos Quintal: I agree.

Steve Langlois: So with the two lots, you only have one buildable lot, as of now.

Carlos Quintal: One way or the other, I'm still before you. I'm in the buffer, no matter what I do.

Kinsey Boehl: I wouldn't be prepared to make any kind of assessment without having a third party review, verified flagging, and as far as the fill goes, its uncharted territory for us, I think.

Greg Schultz, abutter at 122 Market Street: I have the property that is just east of this lot being discussed. This diagram looks like due to the negligence of the property, wetlands have formed and now it might even be impeding on my property a bit. If you look at the plans to move the wetlands, even further down along my property, you're getting very close to my actual house. I'm assuming the buffer zone is in perpetuity, so if I ever wanted to replace my fence or fix my garage, house or driveway, it presents some hardship to me. I'd rather not do that. Thank you.

Bruce McDonough, 12 South Hampton Road: I am directly across from this. The reason I'm here is because the house has been neglected for a very long time. You can't even see the house as we speak today. The town is now maintaining the sidewalk and the area as you walk by. The house maintaining was stopped by the owners 4 years ago. In 4 years, that has turned into a neighborhood disgrace. It's blight. The roof shingles are blowing off of it. The light is on the second floor. Teenagers look at this house. It is in such distressed shape, they are looking to fill it up, build a second house, and the variance to approve a second house, but now we're here because there is a wetland problem. The neighbor that spoke said the woman who cooked in the restaurant used wood planks, so there has always been water here. Also, I don't know why we are even here today. That property, there are taxes owed on that house of \$22,704.11. There hasn't been taxes paid on it since 2012. So that is just on that house, not this piece. So I think the owner should catch up on the bill first, and bring everything up to par, then revisit this. As far as I'm concerned, there should be no action taken until the bills are paid. I'm a builder. If someone asked me if they didn't pay me to come back and do some more work for me, I wouldn't do it. I don't think the town should entertain this until bills are paid. Thanks.

Bonnie Schultz, 122 Market Street, abutter: We have no issue with them wanting to develop this. It is behind our house. We choose to let it overgrow where we have a fence because it is embarrassing. We have a deck, we don't want people looking over to see that. So we'd love to have it developed, but the problem is, when they went for the variance for insufficient side and rear setback, so they could shove the other house...one house would look at the street and the other would look at the side of the house looking at the street. Our issue with that was that they were shoving 2 houses into this lot. Now I

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look at this plan and they are moving the wetland, they are still shoving 2 houses in, and the people who presumably would own those 2 houses would have very little yard. I don't understand. The idea of one house more towards the right hand side where the current house is, that could work if its something they can do, but one house fitting in with the neighborhood, instead of 2 houses with one shoved in sideways, makes little sense. It is not a good plan for the neighborhood, and on top of that, now we have the wetland. It has always been wet there. Don't move the wetland into my yard. I didn't buy a house with a wetland, I don't want a house with one now. My house is 100 years old. It's unfair for this to be put so close to our property, impacting my ability to do things on my property in the future. That's my stand.

Steve Langlois: What does the ConCom think ? To me, it is not a good presentation.

Motion was made Suzanne Egan to continue this hearing to the August 31st meeting.

Motion was seconded Kinsey Boehl. AIF.

Request to Amend Order of Conditions (DEP#002-1111) 60 Merrimac Street (David)

John Lopez: This was a request to amend an OoC pursuant to a request from DEP relative to Chapter 91. It is to extend the riverwalk (public access) to as large extent the applicant is required to ...so this is on an approved OoC, it has gone through an additional Chapter 91 public access review, the waterways division has requested that the river walk be extended. Mr. Weir, the applicant's representative, is here to provide details.

Charlie Weir, Meredian Associates: River walk got pulled up and ended it right about in that location. When we got the OoC and we met with DEP water ways, they made it clear they wanted 2 things to occur: they wanted the river walk to continue all the way to the property line. Their argument is, if some day that could be continued. I argued back that it's half a dozen to a dozen individual homes, and the possibility of continuing a public walkway was probably minimal if possible at all. My argument didn't hold water with them. They also wanted an ending structure that someone could go to. We have introduced a gazebo set back a little way to respect the no build zone. We looked at the gazebo as a structure. That is the section of walk way introduced and is literally a directive from DEP water ways to do that. So we're here to amend that, and have other things to discuss as well, but that is the change to the plan that we came to talk about tonight. The existing one was supposed to be paved and it never was. It is going to be paved, another requirement by DEP water ways.

Motion was made by Kinsey Boehl to amend the OoC to include the impervious walk and gazebo shown on the drawings for Hatter's Point dated 6-12-15. Motion was seconded by Alan Corey. AIF.

Motion to continue this hearing to Aug. 3 by Suzanne Egan. Motion was seconded by Kinsey Boehl. AIF.

NOI (002-1121) 25 Pond Street (Scott David)

John Lopez: This is in reference to some improvements to a riparian bank in the upper milliard. The proposal is to remove invasive species, predominantly Japanese knot weed, and to remove some trees, a pine tree planted for manicured landscape appearances. The

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project is worthwhile. This weed is very difficult to remove. I didn't see in the proposal any definitive way of how it will be removed. I think more detail in your proposed removal method is needed, as well as plant installation that is warranted. This is still under review by DEP.

Motion was made by Suzanne Egan to issue an OoC conditional upon the submittal that the applicant read at the meeting, which will be submitted to John tonight, plus a maintenance plan and a requirement of replacement if the vegetation dies within three years. Motion was seconded by Alan Corey. AIF.

Motion to adjourn meeting was made by Suzanne Egan. Motion was seconded by Kinsey Boehl. AIF.

Meeting was adjourned at 10:08 P.M.