

**AMESBURY CONSERVATION COMMISSION
CITY HALL AUDITORIUM
62 FRIEND STREET
MONDAY, MARCH 3, 2014**

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

Present: Steve Langlois (Chair), Michael Bik, Suzanne Egan, Kinsey Boehl, Alan Corey.

Absent: None.

Also present: John Lopez, Agent; Paul Bibaud, Recording Secretary.

MINUTES:

January 14, 2014: Joint meeting with Planning Board. Motion to accept minutes as presented by Kinsey Boehl. Motion was seconded by Michael Bik. All in favor.

January 27, 2014: Mtg. at Ordway. Motion by Alan Corey to accept as presented. Motion was seconded by Suzanne Egan. All in favor.

February 3, 2014: Motion by Kinsey Boehl to accept minutes as presented. Motion was seconded by Alan Corey. Suzanna Egan abstains. All others vote in favor to accept as submitted.

ADMINISTRATIVE:

Summary of Conflict Of Interest Law: Commissioners signed acknowledgement page.

VIOLATION NOTICE- 10 Strathmere Club (Doughty)

John Lopez: This is an update on an unusual situation. The new property owners had removed ten trees, and were allegedly told by the Lake Attitash Association, specifically the chairman, provided the new property owner with the authority or the sanction to remove the trees. It should be noted that the Lake Attitash Association has no legal standing with the commonwealth, and as such, significantly overstepped their authority. But the commission took that into account, elected not to issue an enforcement order because the property owner expressed attrition, also agreed to submit a notice of intent for the work that was done. They stated they would submit the NOI in time for the March 3 meeting. I met with the property owner approx. 2-3 weeks ago, at which time she discussed a number of other projects that she was thinking about doing. I advised her to take her time, think about what she wants to do, thus avoiding spending multiple filing fees or multiple notices, and we anticipate having her NOI submitted in time for the April 7 meeting. As an aside, I think the commission needs to draft a letter to the Lake Attitash Association, reminding them of the Wetlands Protection Act, the Amesbury Wetlands Ordinance, and the need to come before this commission as DEP's local representative on any project or activity within the buffer zone.

Suzanne Egan: I would just say, if we don't have any written letter or personal knowledge as opposed to someone saying they did it, Then it would be more appropriate to find out the facts first, before sending a letter saying " we heard you did this, don't do it anymore."

John Lopez: Makes sense. I will make some phone calls to confirm the property owner's claim.

Steve Langlois: Either that or invite Mr. Campbell into your office, John, and discuss who heads what department. It's a mistake you wouldn't expect him to make. If not, then we can go back to the property owner. **Continued to April 7, 2014.**

REQUEST TO MODIFY THE Order of Conditions – Contaminated Soil Removal/ Lower Millyard

John Lopez: This is for the Order of Condition for the removal of contaminated soil in the lower millyard in support of a park which the commission approved under a separate Order of Condition. The Order of Condition states that there will be no storage of equipment within 100 feet of the riparian bank. As it turns out, the entire site is less than 100 feet. The applicant submitted in an e-mail which was forwarded to everyone, requesting a change in the Order of Condition to allow the storage, so they are requesting that the 100 foot area be reduced to fifty feet. I think this is reasonable and I have no problem with it. Regarding fueling equipment, those would be required to be stored at a greater distance. They are primarily about an area to store their trucks at night and equipment.

Motion by Kinsey Boehl stating that the commission considers this change a minor modification, that you change it to 50 feet from 100 feet, and that no fueling equipment is to be stored overnight. Motion was seconded by Suzanne Egan. Vote was all in favor.

LETTER TO PLANNING BOARD- CVS EROSION CONTROL BOND (AMESBURY CONSERVATION COMMISSION).

John Lopez: We've had a request from the applicant. The project is nearing completion. We've gotten reports, the commission's consultant, BSC, has issued a report in November that the site was secure and, at the end of the growing season, all the plants were thriving. We've also had a monitoring report by the applicant's representative, Mr. Seekamp, from Seekamp Environmental, that it was secure and things are progressing. The Order of Condition stated that an Erosion Control Bond would be posted with Conservation Commission unless a bond was also requested by the Planning Board and was posted through the Planning Board. It was. The applicant is requesting the release of those funds. The chairman of the Planning Board has requested that the commission through our chairman, Steve Langlois, send a letter to the Planning Board verifying that the site is stable, that the vegetation at the end of the second monitoring period is thriving, and that the erosion control funds can be released. So the commission is tasked with determining if this is the time and it is appropriate to do it, or would you prefer to wait later in the spring? It's been 2 years since they started his project. Because of waivers that were requested and granted, there was a significant amount of mitigation that went into this project, such as a constructed wetland, along with some minor setbacks, such as a brush fire. The fire dept sprayed it with high pressure hoses and tore up the plantings. So that is the question before the commission: is it appropriate to release the erosion control bond. The Conservation Commission has its own bond that we'll retain, but this is the Planning Board's bond.

Steve Langlois: I'd like to see it go through one more spring, heavy rains, thawing, and maybe set June 30 as the date to release the funds?

John Lopez: Or perhaps we could inspect how things are at the end of May. At the end of June, we're already into the dry season. The end of May, so I could have such a letter, a draft prepared to the Conservation Commission for our May meeting? The letter could stipulate May 30 for a release date, if all is well.

Steve Langlois: We'll consider it at the first meeting in June, so since we still have money left over from BSC, if we do need to monitor it, so prior to me drafting and get all of you to sign a letter, I can ask our monitor to go out for one last check.

John Lopez: So when does the commission want this letter...first meeting in May, stipulating May 30, or do you want it on June 2 meeting date, stating June 30. So the commission chose June 2 meeting. Make a motion.

Motion by Suzanne Egan to have the matter of the CVS Erosion Control Bond come back before the commission in the first meeting in June. Motion was seconded by Alan Corey. All were in favor.

157 CONGRESS STREET – APPEAL to DEP Back River Road Association.

Suzanne Egan recuses herself for the record.

John Lopez: We are in receipt of an appeal pursuant to the Order of Resource Area Delineation issued by this commission at the last meeting. The support material, a copy has been submitted to the commission as well as to DEP for further proceedings. DEP will review the appeal, they will look to see if the Conservation Commission based it's decision on the best science available, and if there were no violations of procedure, and they will not elect to entertain the appeal. If they do, they will do a site visit, come out, you guys will be invited, the public can attend, but right now, there is no further action warranted by this commission at this time on this issue, this is just informational.

BAILEYS POND- FARFARD APPEAL TO DEP SUPERCEDING ORDER OF CONDITIONS

John Lopez: This is pursuant to an Order of Conditions issued on a conditional approval of a subdivision located at the Village at Bailey's Pond. The commission initially approved the project pending the removal of one structure within the riverfront area. The commission felt that the project as proposed did not meet the performance standards of the Massachusetts Wetlands Protection Act, the Amesbury Wetlands Ordinance and the River Front Act. The applicant appealed. DEP entertained the appeal. A site visit was conducted in June. DEP rendered their decision upholding the commission's decision on every count. The applicant has now appealed that decision to DEP, so we have to wait to see if DEP will uphold its own ruling or not. If DEP does uphold the decision, then the applicant may elect to pursue an appeal through the judiciary. This is under the act. Under the local, they're pretty much doing the same thing. We've met with town counsel, and the applicant is also appealing the Planning Boards decision, because the Planning Board had similar conclusion. Suffice to say, the denial is being appealed to DEP for further proceedings, and this is presented just for your information and reference. No further action is warranted at this time.

NEGATIVE DETERMINATION OF APPLICABILITY – 22 Woodwell Circle (AKA Nancy Circle Lot 10 - Michaud.

John Lopez: The applicant's representative is here tonight, Mr. John Paulson. This is an issue which predates all of us on the commission. It was the subject of a considerable appeal or perhaps through the judiciary, but it went through DEP. The applicant's representative can provide us with the information. Lot 10 did not go through the DEP appeal process. The other lots, numbered one through nine, were determined to be river front area. Lake Gardner is dammed. At some point, there is a river emptying into the lake, then exiting the lake through the dam and continues on again as the Powow River. At what points river characteristics become evident is the debate. Lots 1-9 were river front. Lot 10 was not determined as river front. The

applicant has requested that the commission review and uphold a negative determination which was issued. I have to admit, I don't know why the commission did what it did. In reading it, I was amazed. I'll let the applicant's representative fill in the blanks.

John Paulson: A little history: I tried to enclose as much info as I can. I talked to the original developer of the waterside lots on Woodwell Circle. I've talked to Curt Young, who had done some work there in determining what the river front was, and when it became a lake. I included a portion of that report that he had done in your packet, and gave the whole report to John, so the commission has it. In the middle of your report, there is a copy of a GIS map from Oliver, which is where everything in the state is done now. They went back and forth at the time, appealed to the state, the state was involved, but I think that what happened in talking to Curt was that they agreed to just settle it, let them build, but with certain parameters. I don't think there ever was an actual decision. I haven't talked to the state about it, but according to Curt and his involvement in it was extensive at the time, they agreed to let them build these couple of lots across the street, which were also involved.

Michael Bik: So what lots did they allow?

John Paulson: All these lots are built on. This is the only one that was not built on. So they allowed them to build on them, there was no river front ever mentioned in the Order of Conditions, but there was river front shown on a couple plans, so I'm not sure what the final decision was. I have the superceding Order of Conditions for lot 9, and I know that it's built on. So I didn't care any further. When lot 10 was originally being looked at, the engineer at the time said "we're not in the river front" and filed an NOI only under the local bylaw, because everything that was being done. This plan is a recreation by need, but it pretty much holds what was done in the plan that is in your packets. So here is the wetland line. The FEMA flood zone line is out here. The 100 foot buffer to the FEMA flood zone is here. This is the question that I asked the Planning Board a meeting or so ago, about is the flood zone a part of what needs a buffer, because it doesn't have it under the state regulations. So they filed under the local regulations for basically this line in working on the project. The Order of Conditions gave them permission to do this under the local bylaw, but then it has those other comments in there and a cover letter behind the Order of Conditions that says we strongly suggest that you file further request for determination on whether this is in the river front because it may be that these other lots on this side were in the river front. This is one of the widest portions of Lake Gardner. If this is river front here, then Lake Gardner is a river. So if it is a lake here, then what we have has to be a lake at the widest portion of it. I have other documentation in here that spells out one of the reasons why lot 9 was originally denied as being a river is because the national wetlands inventory map at the time showed a portion of Lake Gardner as being a lake, then it showed a portion (not defining any beginning or end) but it shows a portion of it being a river. The current national wetlands act shows the whole thing, all the way up to the state line and further, but the whole thing as being Lake Gardner. It clearly defines it now as an impoundment of water called Lake Gardner. Updated maps all call it Lake Gardner at least up to the state line. The conclusion: Curt Young did a study all the way up to and beyond the state line, he did a lot of sampling out here, all the stuff in the report, some of which is in your packets, and he determined it was also a lake. An argument could be made for river front on some of the properties, but not in our opinion. We have a valid Order of Conditions tonight that we are looking for the commission to agree with the determination. I have two requests. One requests the commission to concur that lot 10 has no riverfront area, and to retract the letter and information that was put in that 2008 Order of Conditions and the letter that they attached to that Order of Conditions. They didn't say

that it was a river back then, they just said they should file an RDA to find out if it is. I think the commission has the power to say “based on evidence, it is not.” The second request I have is Order of Conditions was never recorded. It went to a P.O. box in North Carolina. The owner lives there, went through everything and could not find it, so my second request that you issue me a certified copy of the Order of Conditions so I can record it. John said that shouldn’t be any issue.

John Lopez: The Order of Conditions has to be recorded in order to be valid. This would’ve been issued prior to the adoption of local. Was our current ordinance even adopted at this time, or was this issued under the old bylaw?

So this wouldn’t even be subject to any regulations.

Suzanne Egan: I think we have two issues: whether or not it is still valid under permanent extension act and 2. Does it comply with our local regulations. I guess thirdly, as much as it’s being asked that the commission take an action based on the evidence presented. Then we would probably want to send this out to have somebody else look at it, I would think.

John Lopez: Before our current ordinance, there was a bylaw, which provided a grant framework with no regulations. Prior to that, it was just the state. But this was issued under a time when it would’ve been issued under the old bylaw, with no regulations.

Michael Bik: If this was issued in 2008, can we change a motion to accept, or does...

John Paulson: I’m not looking for you to change anything that is in that Order of Conditions.

Michael Bik: What I’m saying is, the file number that they have here was filed in 2008. The Order of Conditions is a different day, so it doesn’t match.

Suzanne Egan: If it is not recorded, it wouldn’t be subject to the permit extension. We’d need to have that resolved. The second issue is, do we have the authority to do that? Unless this got refiled, I wouldn’t think we’d have the authority to do anything.

Steve Langlois: What I remember about this is, they were trying to determine, there was some line of thought that when a river enters into a lake, it carries sediment into the lake a certain distance, and some scientists or whatever would consider that area a river, too. So, this piece of property is on the widest part of the lake.

John Lopez: It’s also worth noting that, although well intended, common sense is not a legally recognized defense. This is what I’m thinking: the applicant’s representative has stated that lot 10 was not part of the agreement, having nothing to do with prior development. In talking to DEP, they claim that lot 10 was not part of the prior determination because it was never part of any negotiations. Only lots 1-9 were part of the negotiations on whether it was river front or not. I’ve also been told that there may be a memo floating around that defines lot 10 as river front, but then again, there may not be. This is from Pam at DEP. I also talked to the commission’s counsel on this issue, and they request more information to make a determination. One question they asked for was a copy of the RDA.

John Paulson: I do not have one. There may not have been an RDA filed.

There was no RDA mentioned in this Order of Conditions, because it wasn’t a requirement, it was a suggestion of the commission. They said you are at your own risk if you go forward without it. So they never filed anything. The lot was still vacant, so they decided to not do anything. They were in North Carolina.

The burden of proof is on the applicant, but that is why I submitted the information that I did. I submitted a national map, the state map, the obvious physical logical GIS map that shows that if it is a river there, then all of Lake Gardner is a river. You have to make 2 plus 2 equals 4. On the

USGS map, it shows all of it as Lake Gardner. But, it's a 1983 map, so there are other maps that supercede that in date.

John Lopez: There is still a lot of confusion on this. Are we asking to send the most recent information that the applicant has provided both to counsel and to DEP for confirmation, and then proceed from there. My concern is that we get this right, because nobody wants to go back to court.

John Paulson: The ones that don't show houses on them are vacant. House 14 was built about a year ago. House 18 is just being built. House 14 is already built and it is 100 feet off the buffer.

John Lopez: These are all part of a superceding order, so DEP assumed responsibility for this. But lot 10 is not included, because it was never part of any negotiations.

Suzanne Egan: Would it be appropriate to send this out to a third party consultant to review the entire thing under our local ordinance to make a determination if it was subject to the permit extension act.

John Lopez: Well, if it was submitted and approved under the bylaw, wouldn't the bylaw be applicable?

Suzanne Egan: But if it wasn't recorded, then it wouldn't be valid.

John Lopez: If it wasn't recorded and it isn't valid, then the whole point is moot.

John Paulson: Item 11 doesn't say that it isn't valid on the Order of Conditions.

Suzanne Egan: What does it say in the permit extension act, with regard to Order of Conditions?

John Paulson: I don't know if I have that here.

Suzanne Egan: So that would be the issue that we would need to find.

John Paulson: But item 11 states: "it was supposed to be recorded immediately after appeal periods. No work to begin. If it is not recorded, then the Amesbury Conservation Commission may record it at the applicant's expense." It doesn't say it invalidates the order, and I'd say it is like a deed. If it is issued, it is issued. You don't have to record a deed for it to be valid.

Suzanne Egan: Correct. I just know that for Zoning and Planning, it has to be recorded in order for the permit extension act to be applicable. So I think we should get that issue resolved first, then we can make further determinations as to what is applicable here, because we don't really know that at this point. One step at a time. Perhaps town counsel...

John Lopez: Town counsel is already involved in this, and I've gotten the ok to work with him on this.

Suzanne Egan: OK, so let's get their opinion on this. Also, find out whether the commission has the authority to take the action that they're asking us to take.

John Lopez: Town counsel was very concerned, because the applicant requested that this be put in writing. I think anything that is put in writing should come from town counsel.

Suzanne Egan: Also, whether this is the proper procedure. I would think there is something that would have to be filed and noticed, as opposed to a letter to change a document or order?

John Lopez: Mr. Paulson, do you know why your client doesn't want to file a NOI and go forward with that?

John Paulson: Because the only reason to file a NOI on this would be...I'm under the personal presumption that it is not on the river front. We are not working in the 100 foot buffer. The only thing we were working in is the 100 foot buffer to the flood plain, which I think is an arbitrary line. If I look in the bylaw and the regulations, in the bylaw, it doesn't mention this, and in the regulations, it puts it in there. I think the bylaw should supercede the regulations, but the list of areas that are under control of the Conservation Commission, it states one through four or

whatever it is, then the next item says “These shall have a 100 foot buffer.” Then it states “flood zones” and there is no buffer. That is in the bylaw. The regulations state the same thing, but then they add “areas that have flooding shall have a buffer zone.” Then it also states that FEMA areas don’t have a flood zone. I want to read this into the record. This is from the Permit Extension Act: “the act refers to a list of statutes. Does the act cover approvals under other statutes? The definition of approval includes, a particular statute is not inclusive. A list of all statutes affected under the act as such applies to all regulatory approvals concerning the use and development of real property except those expressly exempted.” So it doesn’t say “unless it is recorded, or this or that. Basically, that is their definition.

Steve Langlois: You can request town counsel to read that and to translate.

John Lopez: I would be the one to meet with town counsel.

Steve Langlois: Say that Mr. Paulson has some questions for counsel, can he submit a letter to you that could also be presented to town counsel?

Suzanne Egan: Wouldn’t that be more appropriate for Mr. Paulson’s attorney to respond to, as opposed to town counsel? Seems to me they are asking the town is paying legal counsel to the commission, but not to Mr. Paulson.

John Lopez: Would the applicant be willing or could we impose a third party review on this. I think it is closed, so I don’t think we can.

Suzanne Egan: So that would be the second question for town counsel, whether we can take any action on this matter, if it is already closed?

John Paulson: But I’m not looking for the commission to take an action on the Order of Conditions that was issued. It was a recommendation in that Order of Conditions that an RDA be filed. I want the commission to say, “it’s not a river. You don’t need to file an RDA saying is it a river or not?”

Suzanne Egan: Typically, how would an issue like that be resolved? Through an RDA?

John Lopez: No, it would be through NOI and Order of Conditions.

Steve Langlois: We’re going to town counsel. Let’s just determine what questions are going to be asked, and then we’ll go to the next step. What questions are we asking town counsel as a board?

John Lopez: 1. Is the permit valid, even though it was not recorded? 2. Clarify whether this would be pursued under the old bylaw, which was in affect at the time of issuance, or the ordinance, which was adopted in 2009?

3. Is this the proper procedure to take? 4. Is there any further action that we can take on this matter, such as retaining a third party review.

Steve Langlois: Is the commission satisfied with those remarks? (yes was the response). Then can we have a motion?

Suzanne Egan: So moved.

Michael Bik: I second.

Vote was unanimous.

John Lopez: One more thing is to continue to April 7.

Suzanne Egan: Motion to continue this to April 7.

Michael Bik: I second.

Vote was unanimous.

CLAIM OF EXEMPTION UNDER WETLANDS PROTECTION ACT AND THE AMESBURY WETLANDS ORDINANCE

54 Lake Attitash Road – Wishing to install a driveway. (Paulson).

John Paulson, 54 Lake Attitash Road: I would like to install a couple rows of pavers or stone in order to park there. I'd like to put in some sort of pervious material. Whether it is pervious pavement or crushed stone depends on the cost. My contractor said it would take him a day to a day and a half. I haven't priced it out yet, but I've attached copies of the pervious paver installation. Under the regulation I was looking at, I paraphrased it in my cover letter and enclosed a copy of the section which says as long as it is fifty feet away allows for certain accessory uses. It talks about patios, pools, decks, sheds, etc. to not have to go through the permit process. So I think those were examples, and I think this falls into that category. I've parked there for years, but it gets very muddy. It would be for two cars. Otherwise, the plans speak for themselves.

Steve Langlois: Usually with something like this, we like to do an RDA with conditions. I'll talk to John about it. There's no need for an NOI or anything like that. It would be an improvement from what you have now.

John Paulson: The only reason I'm asking for it this way is because I believe the regulation allows it to be done. It will either be crushed stone or pavers, but nothing in the way of paving. I don't want black there.

Steve Langlois: Basically what this is saying is, these particular activities don't require NOI. We're just saying we'd like a Request for Determination (RDA).

John Lopez: The issue for me is the exemption under the act is appropriate. It's just a small project. In reviewing the local ordinance, I don't see an exemption for small activities, only for activities in service of public sewer or electric or something like that. I'd ask Commissioner Egan for input.

Suzanne Egan: I think this is the same issue as the last. It is coming to the commission in a way that is a letter asking the commission sort of not to exercise its authority or jurisdiction. But typically, there is a process to that, and this is not going through that process. The process would be an RDA.

Under the act and under the ordinance, there is something laid out, saying this is how you go about doing it, something to determine if Conservation Commission has jurisdiction over this project. And this is a letter to the commission. But I sort of see a little bit of equity in this issue, if it is a small driveway that is being used, etc.

John Lopez: The commission could grant the exemption, with the stipulation that the fee be waived, and the applicant submits an RDA under the local.

John Paulson: Two reasons I was doing it this way: 1. because I thought the regulations would allow it, and 2. because I didn't want to spend the fees. But it's also at what point do, if I wanted to put in a flagstone walkway.

Suzanne Egan: Under this, it says that it is exempt for a pedestrian walkway.

John Paulson: I did it this way because, under the state regulations, it is certainly acceptable. It's up to you guys.

Steve Langlois: I like to be consistent with what we've done before. I think this is a little less than what we need for an RDA, and that's fine. It isn't going to damage the environment.

John Lopez: If the commission feels that way, then I ask that the motion for the exemption include what commissioner Boehl just read. "We, the commission, find this proposed project not detrimental and having no cumulative impact on the resource.

Steve Langlois: Why don't we have a motion, then I will ask for discussion.

Motion by Kinsey Boehl that the commission, under the Amesbury Wetlands Regulation, Section 3.2, determine that the proposed driveway installation on the print dated Feb. 9, 2014, at 54 Lake Attitash Road, does not have cumulative or adverse affect upon the resource area, and therefore the activity is not subject to regulation. (no discussion ensued). Motion was seconded by Alan Corey. Vote was unanimous. Exemption is granted.

CONTINUED BUSINESS:

NOI # 002-1088 – 12 Old Merrill St. (Toth) Continued to April 7, 2014.

NOI # 002-1087- 19 and 21R Evans Place (Saba) Continued to April 7, 2014.

NOI # 002-1089 98 E South Hampton Road (Cracknell)

John Lopez: You will recall that at the last meeting, this was tentatively approved pending the receipt of a vegetation management plan. That was received and forwarded to the commission. It is appropriate and adequate, and that was the only outstanding issue at the time. If nothing else, I recommend that the Order of Conditions be issued for DEP # 002-1089.

Motion by Michael Bik to issue the Order of Condition for DEP #002-1089 which is 98E South Hampton Road, seconded by Alan Corey. Vote was unanimous.

Motion to close was made by Michael Bik, seconded by Suzanne Egan. Vote was unanimous.

ANRAD – 56 AND 58 South Hampton Road (Couillard)

John Lopez: This is in reference to a Wetlands delineation that was conducted by the applicant and the commission retained the services of Mill River Associates as peer review consultant. The peer review was conducted, some changes were made, and Mill River confirms that all changes have been made, pursuant to their recommendations. They recommend as do I that the commission issue the Order of Resource Area Delineation for the ANRAD at 56 and 58 South Hampton Road.

Motion by Suzanne Egan to approve the ANRAD for 56 and 58 South Hampton Road, and that an ORAD be issued pursuant to the revised plans per Mill River's recommendations.

Motion was seconded by Alan Corey. Vote was unanimous.

Motion to close was made by Suzanne Egan and was seconded by Michael Bik. Vote was unanimous.

The ANRAD , which has now become an ORAD is now closed for 56 and 58 South Hampton Road is closed.

NOI DEP #002-1090 27-31 Water Street Realignment and Lower Millyard Redevelopment Project (Gray)

John Lopez: This is also a holdover from the previous meeting. This was the subject of a Mill River review. The commission will recall that this was also a complimentary NOI for a proposed Heritage Park which has been approved as well as remediation of the site, with the removal of contaminated soil. Mill River has submitted their final report, it meets their standards, and they recommend that the commission issue the Order of Conditions, as do I, unless the Conservation Commission has any outstanding issues, I feel this is a straightforward project. (there were no issues from the commission).

Motion was made by Alan Corey to approve the proposed project and issue an Order of Conditions. Motion was seconded by Suzanne Egan. Vote was unanimous.

Motion to close was made by Kinsey Boehl and seconded by Suzanne Egan. Vote was unanimous.

RDA – 35 Water St., 40 Water St.17 Chestnut St., (Remediation of Amesbury Former MGP temporary construction access and staging area) (Boston Gas DBA National Grid) Continued to April 7, 2014.

NOI # 002-1079 – 39 Water St., 33 Oakland St. Amesbury (Former MGP Phase IV Remedy Implementation) (Boston Gas DBA National Grid) Continued to April 7, 2014.

NEW BUSINESS:

NOI #002-1092 42 Birchmeadow Road (Wojcicki)

John Lopez: This is the subject of a pre-NOI discussion concerning a waiver. The proposed project exceeds by one foot on one of our setback provisions for a structural foundation on a wall. The commission at that time felt that the waiver request was appropriate, but did not grant the waiver. The commission requested that the applicant provide sufficient mitigation to offset the approval. This is for the demolition of a single family house and for the construction of a single family house, approximately within the same footprint.

John Paulson, Atlantic Engineering: Re: the variance request: we are proposing to remove the existing building and build the proposed dwelling approx. in its place. The existing road is fairly narrow there, so we propose to leave it there, but give it space to allow two cars to get by. We propose a parking area which is on top of existing paving. We are removing some paving and putting plantings in along this property line. We are removing paving in this other area as well as this area that goes around to the front of the existing house. So we'll have a walkway. We'll put it a wall here, and going down a set of steps having a pervious walkway (flagstone or similar) that goes around to the steps for the rear of the back porch and deck area. In the back of the property, there is existing paving that goes down into the water. We propose to remove all that. John noted last week that I had forgotten on the NOI to account for that area that is below the wall on the south side of the wall in the water, I should have filled that in on the NOI as land under water. So I have a small cover letter at the end, explaining. Forty-six square feet will be under water.

John Lopez: I'd just like the record to reflect that the applicant has just submitted a letter dated Mar. 3, 2014, correcting that, including the proposed alteration in square feet for land under water bodies. So this is now part of the corrected NOI, a copy will be forwarded to DEP.

John Paulson: As part of the project, we'll put a catch basin in by the driveway along the edge of the driveway, piping it over here. There is an existing catch basin which is plugged up. So we'll pipe our new catch basin

where we will put in some infiltrators to capture water off the driveway, then an overflow of those infiltrators for the heavier rainstorms that this can't handle. That will go through an existing pipe and through an existing wall, acting as an overflow. On this side of the property, we are installing a stone trench to slow water down, so it won't run off into the lake. When we remove this paving, we want to fill in this little piece of wall with like stone and mortar wall. The flood zone out here is at elevation 97. That is basically in the wall, and the buffer zone is shown

for that flood zone elevation is shown in here. The buffer zone is shown there, the 100 feet is shown. The existing setbacks: we are not going any closer to any property lines than the existing setbacks are already on the existing houses. The existing impervious area is currently 2709 square feet. We are decreasing that to 2332 square feet, for a net reduction of 337 square feet. We'll be putting in a siltation barrier while we are working, as shown on the plan. This work down here will be done during low water conditions. Up in the corner of the plan shows detail on the infiltrators. In the lower left hand corner we have detail of the siltation barrier. I think that's it, other than questions.

Michael Bik: The filtration systems that you have on there, and the pipe that runs down and into the lake, I've noticed that, as a lake resident, there are many pipes run directly into the water. They salt the roads. All that is going into the lake, and the money that people spend on the lake for milfoil, etc. this stuff is entering the lake and causing the weeds to multiply.

John Paulson: Our infiltrator will at least catch any sediment. It is set up so that it has a port so you can clean it out, inspect it, etc. It catches all of that first flush, gives it a chance to infiltrate, and then overflow will go down, but it'll be clean water. The overflow will be up here, and you've got stone and this area to be infiltrated.

Michael Bik: Will it absorb the phosphates into that?

John Paulson: Whatever will settle out, some of it won't. But it's better than the existing conditions. Right now, it all heads towards the lake.

Kinsey Boehl: On the west side of the property, there is a crushed stone infiltration channel. Is that the same as pictured in the detail?

John Paulson: No, that is just a three foot wide area of stone, 1-2 feet deep, that the flow is designed to go downhill into this direction towards it. So it will trap some of the water, infiltrate some of it, and act to slow it down. It is sort of an above ground French drain. It acts that way, but there is no pipe in it. It is just a pile of crushed stone.

Suzanne Egan: Why would you have that on the other side, also. Is it two different things?

John Paulson: Two different things. There is a piece of wall here, because this is higher than this, and so I wanted to slow down some before it goes into the lake...just doing due diligence. This is more effective, but I don't have any room to do it over here on this side. I need to keep it away from the house, and there is not much room there. An infiltrator needs to be 10 feet from a house, minimum. The infiltrator itself is 34 inches wide, plus a foot of stone on either side of it. So there is no possibility of putting one there. I only have 13 feet off the lot line.

Steve Langlois: Mr. Paulson, where is the roof run off going?

John Paulson: The roof run off is going to go where it is now. It will run off, he's not proposing any gutters, and it will be clean water going off to the side. It'll hit the grass and make its way into the lake.

John Lopez: The DPW director reports that the roads around Lake Attitash ARE salted, and they are not designated as a NO SALT area.

Suzanne Egan: Do you consider having something done with the roof run off typically, like maybe plantings or something, as opposed to a straightforward lawn?

Steve Langlois: Most times, housing within lake areas, we do want the water to go underground, either infiltrated or slowed down from rushing into the lake. This roof is probably gable end towards the lake. I think he needs to add in something being done with gutters, just because it is a consistent thing with us, and that is a lot of area. I'd like to see as part of the Order of Conditions that the owner or contractor proves that not using gutters is better than using gutters. If they can prove that, fine. I'm thinking run off, possible erosion.

John Paulson: If the gable is here, so that it goes that way, I could set up stone next to the house, but engineering-wise, I don't want to do it. There are a few towns that make you do it. But in my opinion, it is dumb to put water right next to a foundation.

Michael Bik: If you put gutters on the house, eventually he'll probably put plants around the house. If water comes off the roof without gutters, he's going to wash all the plants away.

John Paulson: We do normally infiltrate the roofs on most new houses. The only reason that I didn't here is because I was doing other mitigation on the property over here, so I didn't. Infiltration needs to be two feet above the water table. I'm not sure what the water table is on either side of the wall. I can guess but cannot prove it, whereas, up here, I know where it is because I'm filling this area in to level it off. I have room there for infiltrators.

Steve Langlois: It is coming across to us that "we've done enough mitigation from a ratio perspective." What I'm saying is, we'd like it to be looked into. I'm not saying that it has to be done. If you came back and said that "there is just no way for us to soak up the water if we infiltrate," we'd say fine. But if you think it will work and help, please do it.

John Paulson: Originally, our intent was that we were not really going to be doing much of anything down here. There are engineering reasons not to, and I'll just mention one: we have a stone and mortar wall that is down in here that is older, adding extra water underground is not good for old concrete and stone. I don't want to get too close to that. I will look at it, but there are reasons not to do it.

Steve Langlois: Right, and we're not authoritative. We like to learn that different properties come with different issues. If you find that it could help, we'd really appreciate it done. Commission all set, so we can hear from abutters? (Commission is all set).

Abutter: David Sweeney, 43 Birchmeadow Road.

These are just lot plans, no building plans. The building department is where I need to see that, I guess. I'm interested in the elevations.

John Paulson: Nothing has been filed with the building inspector yet. We will conform to all the regulations regarding allowable height and such.

John Lopez: Re: plantings: a proposed planting plan identifying the species has to be submitted to the commission for review and approval prior to installation. If the gutters are in issue, I'd say that is more of an outstanding issue. I think you want to address that prior to issuing an Order of Conditions. Once you issue the Order, that's it. So if you want to see an alternative analysis to include gutters, you should recommend that in a motion to continue.

John Paulson: You can issue an Order of Conditions making it subject to providing additional information re: infiltrating the roof. Then you can choose to accept that information, or say we don't have to do it. I'm fine with that.

John Lopez: The commission can always retain their own consultant to do a storm water study, although I don't know that it's warranted.

Steve Langlois: I don't think that is warranted for this project.

John Paulson: I will figure a way to put some sort of infiltration for the roof, which means he has to put gutters on, which means I need to talk to him about it.

John Lopez: Before the commission makes a motion, the deadline for the April 7 meeting is March 18. Do you think you would have these revisions submitted by the eighteenth, or would you need additional time?

Abutter: Jim Buonovello, 40 Birchmeadow Road: The stone wall, is that going to be right on the property line? Also, how close to the street are you proposing?

John Paulson: It's coming out to a little beyond the edge of the existing paving, probably five feet. I was going to suggest to Mark that he talk to abutters and see about extending this wall out here, combining it with this and sort of leveling that area off. That would have to come back as an amendment later on.

Jim Buonovello: The other observation I had was that I know there are 2-3 houses that have deeded rights to the lake. I wondered if that would interfere with access to the water?

John Paulson: The right-of-way is a separate piece of land that we don't own. So there will be no change to that right of way because the right of way is not on this property.

Steve Langlois: We've got the Order of Conditions. We're talking about plantings. The plantings are going where they are shown on the map. You will have to identify the species, and that has to be approved.

John Lopez: The commission also has to vote on whether the mitigation offered is sufficient to grant a waiver, because none of this really is in line with our regulations. If you want this to include a revision to include gutters, I would suggest you not issue the Order of Conditions, but that you require the applicant to redesign and come back with a modified plan, only because it is simple, in the long run.

Steve Langlois: So you're saying that we don't vote yes or no on the waiver until we get what we want for the Order of Conditions?

John Lopez: Yes. I think that is appropriate. And the answer may be no, that gutters are not appropriate, but you'd still approve the waiver.

Steve Langlois: So we're looking at gutters and plantings, and that is it?

John Lopez: I think so. As we discussed earlier, the plantings are easy to address. That can be conditioned, with the issuance of the Order of Conditions. It can simply state as a pre-construction condition, that a landscape plan must be submitted for review and approval by Conservation Commission. So it is just the gutters.

Steve Langlois: So you're knocking the house down. Will there be some excavating? (John Paulson answers yes). Once a foundation is in, before they back fill, is that a time when they should tell us what they are doing with the gutters?

Suzanne Egan: I think we need them to submit at the next meeting some information about the gutters? I wouldn't think we'd wait until then.

John Lopez: We want a plan to reflect the installation of the gutters, or if gutters are inappropriate, a very persuasive argument as to why...

Steve Langlois: I just don't think gutters should hold up somebody from getting their Order of Conditions.

John Lopez: I don't think they're going to start working within the next month.

John Paulson: You don't even have to mention the gutters. I can just tell the commission that I will come back with a minor change to the plan. That can be done a month from now.

John Lopez: Once you issue the Order, you lose considerable input.

Suzanne Egan: I'd prefer that we had information before we issue an Order of Conditions. Then we're making that decision on a full record.

Steve Langlois: Then we've got to have it.

Motion was made by Suzanne Egan to continue this hearing to April 7, 2014 and that the information regarding the gutters will be submitted before then for the commission to review. Motion was seconded by Alan Corey. Vote was unanimous.

Motion to adjourn was made by Michael Bik. Motion was seconded by

Meeting was adjourned at 8:37 P.M.