

**CONSERVATION COMMITTEE MEETING
MONDAY, OCTOBER 6, 2014 – 6:30 P.M.
CITY HALL AUDITORIUM- 62 FRIEND STREET
MEETING CALLED TO ORDER AT 6:35 P.M.**

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

Absent: None.

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

MINUTES:

8-4-2014: Motion to approve by Michael Bik, seconded by Alan Corey. AIF.

9-15-2014: Motion to approve by Alan Corey, seconded by Michael Bik. AIF.

ADMINISTRATIVE:

**Briefing: Woodsom Farm Habitat Conservation and Management Proposal
(Johnson / Essex County Greenbelt)**

ENFORCEMENT ORDER – TOUGH MUDDER INCORPORATED

John Lopez: This is referring to an event that was to have taken place on Sept. 6 A Cease and Desist was issued pursuant to unauthorized activities within a jurisdictional zone, specifically alteration of a buffer zone to bordering vegetated wetland on property located at 56 South Hunt Road, location being SCA Disposal Services of New England, in care of Waste Management Disposal Services of Massachusetts. The company identified as TOUGH MUDDER INCORPORATED. The ConCom will please review the draft enforcement order with particular attention to the attachment to the enforcement order, which provides a time frame for the violator to respond. There are five items, including such things as the violator submitting a letter to ConCom stating that they will comply with the required mandates by Oct. 15. Additional letters stating that they have retained a wetlands consultant by Oct. 30 with an assessment being required and a draft remediation plan submitted no later than Nov. 10, 2014 for a discussion by the commission at the Dec. 1, 2014 ConCom meeting. So procedurally, I ask that the ConCom review this, and if there are any modifications to this, and if the commission is supportive, to ratify the enforcement order. Also, a representative for the property owner is in attendance tonight. (representative person doesn't wish to speak).

Motion was made by Michael Bik to ratify the enforcement order. Motion is seconded by Alan Corey. Vote was yes from all but Suzanne Egan who abstained.

ENFORCEMENT ORDER – 12 SOUTH HUNT ROAD (AMESBURY LANDS ASSOCIATES)

John Lopez: This is an enforcement order that was issued pursuant to unauthorized activities and alterations of a jurisdictional resources in support of a cross country obstacle course mud race, which took place in early August, an event known as the Spartan Race. Amesbury Lands Associates are the people identified on the enforcement order. A trustee of the Amesbury Lands Associates is here tonight and wishes to address the commission.

Warren Agin, the Chapter 11 Trustee that was appointed by the U.S. Trustees Office to oversee the chapter 11 case for Amesbury Land Associates. I wanted to give you an update on enforcement responses, because the responses we do are hindered by limitations on the things

that we can do as a trustee, within the bankruptcy process. Amesbury Land Associates is simply the land owner for the property of 1214 South Hunt Road. It doesn't own any of the affected property. Its tenant is a company called EVENT PARTNERS, who are also in a Chapter 11 case. They had common ownership, but EVENT PARTNERS right now is under the control of another Chapter 11 Trustee, a fellow named Stuart Grossman. EVENT PARTNERS is the company that contracted with SPARTAN COMPANY. So we have provided a copy of our lease (Amesbury's lease with event partners) and also a copy of the contract between EVENT PARTNERS and SPARTAN. I am working with the EVENT PARTNERS trustee, acting as a landlord, so to speak. I've insisted that the activity stop, and it has. I've also told them to take actions to pay for the remediation as well as pay for compliance with the order. It does put both the estates in difficulty because they frankly do not have much money. Where we are is Mr. Grossman, on behalf of the EVENT PARTNERS estate, has agreed to pay for the report to get done, as ordered. He still has to get bankruptcy court approval to pay for it. He has to get bankruptcy approval to retain the expert. We have consulted with three experts and received proposals from all three. We have selected Mary Rimmer as the expert that we want to hire, and attorneys from Mr. Grossman's office are getting in touch with her to do the paperwork that needs to get done to get her appointed by the bankruptcy court as a professional to do work for a bankruptcy estate. There area couple of changes to her proposal that have to be made to comply with bankruptcy court rules and there is some paperwork that needs to be prepared and sent to her, she needs to sign it, and it needs to get filed with the court. The court approval process, once the papers are filed with the court, can take anywhere from one day to about three weeks, depending on how fast the judge signs off on it. But the trustee does need to have court approval to hire her, and he has to have a signed order from the court to pay her any money. That is just how the bankruptcy process works. So he is working on that. Once she is retained, it should take about three to four weeks for her to produce the report, so we can see it, and obviously then it would be presented to ConCom, and we can then take it from there. Hopefully, the remediation that is needed is not significant, in terms of cost and scope. If it is, we have to do some unusual things, we have to figure out how to pay for it. My bankruptcy estate literally has about \$1000 in it. The Amesbury estate, as of a month ago, had about \$120K in it. Right now, they are shut down for the season. Whether they are able to reopen...and they're not planning to do any more races. But they have some rent coming in from the Tosh Soccer School that is using the fields there. But whether they will be able to reopen to do the tubing business on the hill is questionable financially. The ability to get more money is very limited, but we're going to try to figure it out. The end game for both estates is probably to sell off the property to somebody who has resources to deal with these things. But it is very difficult to do that with the enforcement order in place. That is the long and short of the status. We've also sent in insurance claims. Both estates have filed insurance claims with the insurance that was being retained by EVENT PARTNERS, and also an insurance policy that was being maintained by FRONT OFFICE EVENTS, which is another company that was involved with some of these off road races operating off of that facility, again, owned by the same people who owned EVENT PARTNERS and Amesbury Land Associates. We just filed those insurance claims last week, asking for the insurance companies to step in and pay for remediation, but we don't really know whether or not that is going to result in any sort of recompense or how long it might take. We're not sure that this is even covered by the insurance policies. Finally, EVENT PARTNERS is reaching out to SPARTAN to insist that they remediate, since it was their race, and they are contractually obligated to put things back the way they were, and I don't know if that is a short term solution

or particularly productive. So, I wanted to give you the update on where we were, and what we're doing to try to get this problem solved. I'm a little curious about the one we just talked about, the TOUGH MUDDER? That sounded like that is nearby?

John Lopez: It is. It's an abutting piece of property, and on the same trails. This TOUGH MUDDER race was defined as Mudderella, to use the same trail system accessing abutting properties. That Enforcement Order was issued through activities in support of the Mudderella Race, which were not implemented for the SPARTAN RACE.

Warren Agin: I thought the Mudderella was supposed to take place in our facility and it didn't take place.

John Lopez: Yes, and it was the Cease and Desist Order that halted the Mudderella Race. However, by the time the Cease and Desist order was issued, alterations had already occurred in support of the upcoming Mudderella Race.

Warren Agin: From our standpoint, it was because I think one reason it didn't happen in ours is that it was being sponsored by FRONT OFFICE EVENTS, and they didn't have authority to even use the land, and they had reached out to Mr. Grossman, who told them no, then they reached out to me and I told them no. So I don't know whether they cancelled it strictly because of the enforcement order, or also because they were told they can't use the land for this.

John Lopez: To the best of my knowledge it was two fold. Primarily, initially, as I understand it, it was Waste Management who asked them to Cease and Desist on their property. Then our enforcement order under the Wetlands Protection Act was issued.

Warren Agin: That's very helpful. I have a couple asks: 1. Amesbury Land is the property owner. I really don't feel it is the appropriate target for the enforcement order if it is not the actor. We'd ask that you withdraw the enforcement order against Amesbury Land, except perhaps for the prohibition against sponsoring these types of activities on its property. And issue an appropriate enforcement order properly against EVENT PARTNERS, FRONT OFFICE EVENTS and SPARTAN RACE. Frankly, an enforcement order against SPARTAN RACE may go a long way to helping get this resolved, since they have resources and we simply don't. The other side of it too is, from our viewpoint is, the inability to sell the land is going to cause real problems in these bankruptcy estates, and cause some damage to creditors generally.

Suzanne Egan: Does Amesbury land Associates own the property?

Warren Agin: Amesbury Land Associates owns title to the property, that is all it does. When Amesbury Sports Park was purchased by Kevin Jock and Mary Carol Fowler, the land at that time was owned by one business entity, a fellow named Edward Dipple and another company that he owned ran the operations, so they maintained that same structure. Amesbury Land Associates purchased the land, and then PARTNERS LLC purchased the operating entities operations. And there was at that time a lease. This clearly violates the lease. So I've taken the appropriate actions as a landlord at least by telling EVENT PARTNERS that they had to stop, which they had no problem doing, and asking for them to correct the situation, as any landlord would, keeping in mind that my ability to do that is actually limited by the bankruptcy process. So I have to go to the bankruptcy court to get relief in order to force them to do it, and I have done that, at this point. There is a hearing on that matter scheduled for Oct. 22. It could end up continued for many reasons. But I would say that because of the lack of funds in that case, in that bankruptcy estate, it is perfectly possible the judge will tell me that I can't get the relief that I want, just because it is not practicable.

Suzanne Egan: So you're suggesting that ConCom has the authority to issue an enforcement order against SPARTAN RACE, although they have no interest in the process?

Warren Agin: You issued one against TOUGH MUDDER.

Suzanne Egan: But SPARTAN RACE has no authority to even go on the property and do any of the remediation. So how could we pursue them?

Warren Agin: We don't either. In fact, the property that is being remediated is not the property that is owned by AMESBURY LAND ASSOCIATES. The associate's property was simply being used to stage the beginning and end to the races. There's a corner of it that is wetlands. But none of the race affected that corner. The areas that are protected by conservation are completely on abutters. It is all other peoples' properties. It's a terrible thing that they were on other peoples' property without permission, doing these things. I get that. But none of the property that was actually damaged is owned by Amesbury Land Associates.

Suzanne Egan: Do you have anything that is before the commission that shows us that what you're saying is true? There are three entities, and you are the least culpable of the three entities, so therefore for us to pull in the other two to include them in the enforcement order, but I don't think we have anything...

Warren Agin: I did provide, in my last letter, a copy of the lease between AMESBURY LAND ASSOCIATES and EVENT PARTNERS. You can see that landlord-tenant relationship. Also I included a copy of the contract between EVENT PARTNERS and SPARTAN RACE for the race, which I will say the event was planned, a contract was entered into before they filed for bankruptcy, before Mr. Grossman was involved. But there is a contract there between the two of them, and it actually requires that SPARTAN RACE fix any damage that it causes to the track. Whether they interpret that to say that they have to comply with all this, there is still a provision like that in the contract with SPARTAN RACE. But you have copies of those documents. Certainly, if more is needed regarding the operations and so forth, I can always provide them to Mr. Lopez. The only other thing I would ask, simply because of the timing of things, I know Mr. Grossman takes this as seriously as I do. He is working with me to try to resolve things. He is going to be the one hiring the expert because he has the funds to pay for it. Again, he is the Chapter 11 trustee for EVENT PARTNERS.

Suzanne Egan: What the ConCom is interested in, obviously, is having the actions take place, the remediation, have it all done in compliance. So it sounds to me like it would actually further the commission's interest to have all three meet the enforcement order. It may assist in having AMESBURY LAND on it.

Warren Agin: I understand that I'm here and working on it from my end because you have an enforcement order in place, no question about it. But I would point out that it is not the right party. At a certain point, and that point is coming up, as a bankruptcy trustee, my job is to sell the real estate, pay off the secured creditor, I generate other monies for other parties. That is my duty to the bankruptcy court. Frankly, I can't do it as long as this enforcement order is in place.

Kinsey Boehl: Our power here is on the property. Everything we issue is tied to deeds, essentially, right?

Suzanne Egan: But John, this is an enforcement order you're issuing against AMESBURY LANDS for action on somebody else's property? I'm unclear here. We don't have any authority to require an entity to go on someone else's property.

John Lopez: No, but the enforcement order states that the applicant or the AMESBURY LAND ASSOCIATES is responsible or must secure the permission to go onto someone else's property. If permission is not secured, like for example TOUGH MUDDER: if Waste Management were to deny access to the property, and were to deny any further involvement, then the commission would have to entertain an enforcement order directly to Waste Management.

Suzanne Egan: I guess I'm unfamiliar with that approach, how we would have authority for ordering another entity to go onto someone else's property to do work, because they don't have authority to do it and we don't have authority either.

John Lopez: We have the right to ask them to do it, to secure written permission, which is what is stipulated in the enforcement order.

Suzanne Egan: And that's what we're asking to do?

John Lopez: Yes.

Suzanne Egan: I would think, if we're asking this entity to do it, to ask all three, to issue the enforcement order against all three.

John Lopez: The reason why that this entity was identified on the initial Enforcement Order was because the chief enforcement officer at DEP northeast regional office stated that whomever's name is on and listed as being the culpable individual through the Secretary of State's office, is the responsible party. It refers to the secretary of state's website.

Warren Agin: The secretary of state website, that doesn't relate to real estate. It relates to the entities. The enforcement order was issued to AMESBURY LAND ASSOCIATES, care of Jock and Fowler, who are listed on the secretary of state's office website as principals for both EVENT PARTNERS and AMESBURY LAND ASSOCIATES. They have no control over either of these entities, at this point. But they were the actors acting through these entities, although I'm not so sure that they had any role even with EVENT PARTNERS at the time of the race. I know they didn't have any role to play in AMESBURY LAND ASSOCIATES at the time of the race.

Steve Langlois: Who is the perpetrator of the wetland ordinance? Who is person that really is responsible for the damages done and should be the responsible one to repair it? Is it SPARTAN?

Warren Agin: I think SPARTAN. I think SPARTAN sets up the race course. What you might want to do is take a look at the contract. The contract sets out what EVENT PARTNERS is supposed to do with connection to the race, and what SPARTAN RACES is supposed to do in connection to the race.

Kinsey Boehl: I think you have kind of a slippery slope, though, because then you could say "well, who is operating the backhoe?" Who they contract to run the equipment?

Suzanne Egan: Who benefitted from running the event, is what I would say, and who was the active person? I think that would be all three: AMESBURY LAND ASSOCIATES, EVENT PARTNERS, and SPARTAN RACES.

Warren Agin: Actually, it would be EVENT PARTNERS and SPARTAN RACES, because all we get is rent, and we actually haven't gotten paid rent since the beginning of the year.

Suzanne Egan: But if you're getting paid rent, then you are benefitting. That's how I would look at it.

Warren Agin: Well, I haven't actually been getting paid rent.

Steve Langlois: So this is an enforcement order, John. It isn't necessary for a vote, but you would like a vote?

John Lopez: I always like a vote, and a modification to the initial enforcement order that we're addressing, certainly can be done. But I ask that it be done through a vote, with a clear directive to me, and then that change will be effective tomorrow.

Motion by Suzanne Egan that the enforcement order issued against AMESBURY LAND ASSOCIATES be amended to include SPARTAN RACE and EVENT PARTNERS.

Motion was seconded by Michael Bik. Vote was unanimous.

Warren Agin: I believe you have a time frame to have it recorded by Oct. 28 with the next hearing in November. I can tell you, it is unlikely that we will have a report done by that time frame, because we have to get the paperwork together, event paperwork together, approval from bankruptcy court for the retention, have to get approval to make the payment, because there's a small up front fee, but it's not a lot.

Suzanne Egan: But this is an enforcement order against SPARTAN RACES too. So all three entities are to be named.

Warren Agin: Well they won't have a report done for you by then, either. I think it'll take about 3-4 weeks to get the report done. Keep in mind that, whoever does go on, they do have to get ...you've got a process built into the enforcement order for dealing with the fact that this is all on somebody else's property. That requires us to go get written authority to go on to do the report, and to provide evidence to you folks...which is fine. I really don't think we'll have any problem getting a sense, but it takes a little time. I'd suggest the December meeting, if for no other reason than I don't have to come up from Boston every month.

Steve Langlois: So John, what can we do about the date?

Suzanne Egan: How about if we have a written update in a month, and then appear at the next meeting in December?

John Lopez: So the motion would be to amend the enforcement order to require all three entities be named in the enforcement order, get a status report to the ConCom at the November meeting, then appear before ConCom at the December 1st meeting.

Suzanne Egan motions "so moved". Motion was seconded by Michael Bik. Vote was unanimous.

ENFORCEMENT ORDER – 131 KIMBALL ROAD (Leslie)

John Lopez: This enforcement order was issued for a violation to a buffer zone on Lake Attitash. The property owner and her attorney are here today that the enforcement order be removed and to provide the commission with an update on proceedings.

Sarah Bellino, attorney from 30 Green Street, Newburyport: Just a quick recap: this time last year, an enforcement order was issued due to some excessive pruning that happened on the shore of Lake Attitash. The bushes in question were Rosa Regosa, and as part of the enforcement order, my client was directed to replace the bushes that had been removed with winterberries, which was taken off the list provided by ConCom. Since that time and through the spring and summer months, the rose bushes have recovered quite well, even appearing more robust now than they were last year when they had been pruned. So, we'd ask that the ConCom lift the enforcement order and provide some sort of written determination, such that it could be recorded, indicating that the order as issued is no longer necessary.

Steve Langlois: To explain to new commissioners, basically when it happened, it was reported. We had to take action. The abutter next door actually, after we ripped everything out, wanted to put back the same roses. So, I think they've been there forever, they aren't doing any damage to anything, I don't think there is a need to make a big deal out of this. My opinion.

John Lopez: For the commission's edification, this initially was an RDA that was submitted to the ConCom for the installation of a fence and associated landscaping improvements to the property. There was an abutter appeal that went through the judiciary, not through DEP. I believe that has been worked out or is in the process of working itself out. In any event, I think that the pruning or removal or non-routine trimming of vegetation and landscaping within the buffer zone has ceased. The area has recovered. So I professionally feel that it would do more harm to

remove the vegetation, even though it is of a non native variety, it would do more harm to remove the rose bush in question, along with the extensive root system.

Motion was made by Kinsey Boehl to lift the enforcement order on 131 Kimball Road.

John Lopez: Also, I would also ask that the ConCom include that the cease and desist component of that enforcement order is removed, as well.

“So moved” by Kinsey Boehl. Motion was seconded by Alan Corey. All in favor.

CONTINUED BUSINESS:

REQUEST FOR DETERMINATION- 35 WATER ST., 40 WATER ST., 17 CHESTNUT ST., (REMEDICATION OF AMESBURY FORMER MGP TEMPORARY CONSTRUCTION ACCESS AND STAGING AREA) (BOSTON GAS DBA NATIONAL GRID)

John Lopez: At the previous meeting, the applicant and representative, as well as the commission’s consultant from Mill River were present for this and the following NOI hearing to provide the commission with an update. Tonight’s deliberations have been almost a year to the date in coming. There’s been a lot of work put into this. At the last meeting, ConCom was briefed. At that time, ConCom asked that a draft negative determination of applicability be presented to the commission, pursuant to Mill River’s findings. That has been done. Things seem to have met with the commission’s approval. If there are no outstanding issues, this appears ripe for a negative determination pursuant to the approved plan.

Motion was made by Suzanne Egan to approve a negative determination...

John Lopez: Mill River has provided the commission with recommended wording with conditions to be included. So I would ask that that negative determination be conditioned pursuant to Mill River’s recommendations.

“So moved” by Suzanne Egan. Motion was seconded by Michael Bik. All in favor.

NOI DEP # 002-1079 39 Water St., 33 Oakland St., Amesbury (former MGP Phase IV Remedy Implementation) (Boston Gas Co. DBA National Grid).

John Lopez: The same holds true for this agenda item as the last. This NOI is for the work associated with remediation of a manufactured gas plant’s site at the aforementioned address. Mill River briefed the commission, and the commission requested a draft OoC be presented, pursuant to their recommendations. That was forwarded to the commission as part of the meeting packet. If there are no outstanding issues or modifications, I recommend the issuance of the OoC approving the work as proposed. I believe one outstanding condition last time was whether or not to forward a letter to DEP soliciting their input on additional remediation. That is also included in the OoC, so that will be forwarded to DEP.

Motion was made by Michael Bik to approve the NOI on DEP #002-1079. Motion was seconded by Suzanne Egan. Vote was unanimous.

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

NOI DEP #002-1096 127 KIMBALL ROAD (SCIMONE)

CONTINUED TO NOV. 3 MEETING.

RDA - 24 MERRIMACK STREET (NOON / BOYAH)

John Lopez: This is in support of a fence within the buffer zone, the 200 foot riverfront area to the Merrimack River. This is also within a FEMA designated flood zone. The commission has been forwarded all that relevant information.

Virginia Noon, 24 Merrimack Street: We're just trying to install a fence along the property line on the downriver side of our property. I think everything in the application is self explanatory.

John Lopez: Just to review for the commission: This is within a FEMA designated flood zone. It is in a Flood Zone D, with a 0.2 % chance of flooding per year. The applicant has taken efforts to mitigate any potential of alteration of flooding by having the fence elevated off the ground. In my briefing memo to ConCom, you'll note that if the commission reaches a negative determination, I request it to be conditioned to include a sign that says "ACC 002-24" to be visible from the public street during the duration of work. No stock piling of material within 100 feet of the river. The water quality of the Merrimack River and any other jurisdictional wetlands (there aren't any) shall not differ from that of the pre-installation period. Standard conditions.

Virginia Noon: It's only 100 feet within that jurisdictional area. The fence is longer than that, but only 100 feet of it lies within that jurisdictional area.

Motion was made by Kinsey Boehl to make a negative determination for an RDA for 24 Merrimac St. under the condition that a 2 by 3 foot sign reading "ACC 002-24" be visible by the public street, with no stockpiling of materials within 100 feet of the river, and water quality shall not differ from pre-construction period. Motion was seconded by Alan Corey. Vote was unanimous.

NEW BUSINESS:

RDA – 33 MILL STREET (BROWN)

John Lopez: At least two commissioners that have been here for a while will recall that several years ago, I was contacted by the hazardous materials division of DEP, requesting that an emergency certificate be issued to remove an apple tree on said property. The apples from the tree were being consumed by animals, and the potential was there for human consumption. The tree, located at 33 Mill Street, is on a highly contaminated site.

This is an RDA that is in support of some test borings to determine the extent of that contamination. The applicant's representative is here, and he can provide details.

Bill Mitchell, Clean Soils Environmental. I am a licensed professional representing 33 Mill Street LLC. This property is at the end of a bend in the road. The area is totally fenced off. It is basically across the street from the proposed river walk. It is pretty much vegetated now. We are looking at moving forward and conduct assessment activities. In fact, we have already conducted some activities. We did some hand borings, so we took advantage of minor activities under 310CMR. I talked to John about that, too, so we've moved forward. Now we want to do some monitoring wells, which is still minor activities, in addition to soil borings. However, we want to do test bits. We want to open up the ground and get some visual observations of the contamination in that vicinity. Obviously, that is not a minor activity. But my point is, the entire property is fenced and vegetated, so it would be appropriate conditions out there, I don't think hay bales are necessary because it is so vegetated, but that is your call. Maybe a sign is advisable

and locked fence. We request a negative determination, and if we move forward in the future we'd have remediation and would come before you for a Notice of Intent, most likely a limited project under the Massachusetts contingency plan.

Scott Boehl: What is the contaminant?

Bill Mitchell: We basically are detecting high TPH (total petroleum hydrocarbons) along with extractable hydrocarbons. We're seeing some high lead issues. It has driven some sampling from Ma. DEP next door, and also some arsenic. Right now, Ma. DEP is trying to figure out if this is either an urban fill placed there, or whether it is actually a release of hazardous materials to the environment. But we're only focused on 33 Mill Street only.

Scott Boehl: I think one of the other applicants is up-gradient, right? The Water Street item we did tonight?

Steve Langlois: No. This is more up-gradient.

Michael Bik: The level of arsenic that you're showing. How high are they?

Bill Mitchell: As an example: Ma. DEP clean up standards is 20 milligrams per kilogram, 20 parts per million. We are seeing concentrations higher than that. We're seeing it in the hundreds. We're seeing lead at 1500, and the clean up standard for that is 300.

Suzanne Egan: So, have you submitted plans for this, or are you going to submit to the Conservation Commission plans to show the work that is being done in this area?

Bill Mitchell: Yes. In my package, I've got a number... did you look at my material?

John Lopez: Actually, this information was distributed for the September meeting, but because the applicant didn't submit the legal notice in time or something.

Bill Mitchell: Yes. I sat in a meeting and called my staff and suddenly realized that we had not done the legal notice to 17 abutters, so I have that this evening too.

Suzanne Egan: So it seems to me, for the last one we just approved for the 35 and 40 Water Street that we had no river involved in a lot of review of that project. This one, are we not doing that for a particular reason?

John Lopez: This is just for borings, which is a relatively routine support activity and relatively straight forward. Although the commission can always issue a positive determination, requiring a NOI, at which time a consultant can be retained by the commission.

Suzanne Egan: I guess my only question is, it sounds like this is going in that direction where this is going to be...

Bill Mitchell: I'm proposing assessment activities here.

Suzanne Egan: But aren't you going to do the next step, after the assessment activities? And that is when you would come in and file your NOI?

Bill Mitchell: If remediation was required, that is when we'd come forward for an NOI.

Kinsey Boehl: The plan that was submitted for the application, basically all it really ends up saying is "we'll oversee the advancement and backfilling of test pits, which include conservation of soil borings into small diameter monitoring wells of about one inch and test pits."

Bill Mitchell: And I forgot, we are a little bit in the riverfront. That is resource area. No land subject to flooding, no buffer zone, but we definitely have a sliver of the eastern portion of that land within the 200 foot riverfront, or I wouldn't be in front of you. And soil borings and monitoring wells are exempt, considered a minor activity. As long as they are for survey purposes and planning purposes, and this is in planning purposes. This program is privatized by the state of MA, so I will personally be the first one to get the results. Then they will proceed to the property owner. Eventually, we are going to prepare a Phase II Comprehensive Site Assessment that will be submitted to Ma. DEP. But we're happy to share this information with

you, and it will become public information. But the RDA specifically references the plan project narrative.

William Hart, owner of 31 Mill Street, abutter: We also have had flag testing done by Andrew Clark on our property, just preventative and as a check, and it is ongoing. My question is concerning the fencing. Is it going to change? Right now, it looks like a real eyesore around the property. It screams at you, having been there for over 2 years now. It is a construction temporary fence. Anyone going by, if I tried to sell my property, etc. that whole area is going to get developed, I assume, with the \$2M grant, it is all going to be park area. That fence being there, I just wonder what will become of the fence? Will it remain as it does, or will something else be done until you find something?

Bill Mitchell: The fence is going to stay as it exists right now. It was put in as a temporary fence. Is a permanent fence going to be put in? This is ongoing. But you can email me and I'll make sure it gets to the property owner, from you the abutter...Mr. Brown, from you, Mr. Hart. (Mr. Hart agrees).

Suzanne Egan: So what is the time frame involved? When will you be done with the test pits and soil borings, onto the next step?

Bill Mitchell: We should finish up by this winter, before snow falls.

Motion was made by Scott Boehl to move that the proposed activities per the plan and application for 33 Mill Street be found to have a negative determination of applicability.

Motion was seconded by Suzanne Egan. Vote was unanimous.

John Lopez: So it is a negative determination pursuant to the plan. I suggest a sign to read ACC 002-33. This sign is made up and posted by the owner. It gets installed for the duration of construction or activities.

RDA 220 Main Street/ Amesbury Middle School (Superintendent of Schools Robinson) Continued to Nov. 3 meeting.

NOI 12 Quimby Lane (Alan Vincent)

John Lopez: This is in support of a patio on 12 Quimby Lane, very similar in design to his neighbors. There were some issues which I asked him to address, and he is prepared to address them.

Alan Vincent: We looked at our next door neighbor at 13 Quimby and what they had done, and also had Mr. Lopez out to our property, and took a look at it with us. Hopefully, based on recommendations that John made, we reflect those in these plans. I wanted to give you sense of where the house stood on the property, where the wetlands ran, where the offsets were, relative to the patio project. It is a poured stamped concrete patio that we're looking to install. The area that the patio would go into is relatively level already. It won't require any substantial excavation. Sod will be removed by the contractor. When we talked to the issue of drainage around this with John, the proposal we had made was to tie it into the existing perimeter drain system around the house, so any water that ran off the patio would run into a crushed rock pit, then percolate into the perforated pipe then into the existing drain system that is already there. The patio would be slightly pitched away from the house, in order to facilitate that drainage.

John Lopez: It meets the performance standards and regulations. The yard is marked by granite bounds, no cut, no disturb. The proposed project is well within the granite bounds.

I have no outstanding issues.

Motion was made by Michael Bik to approve NOI on 12 Quimby Lane for Mr. Vincent, for a proposed patio. DEP number is 002- 1108. Motion was seconded by Suzanne Egan. Vote was unanimous.

Motion was made by Michael Bik to close the NOI. Motion was seconded by Alan Corey. Vote was unanimous.

RCoC – 242 + 244, 250 Main Street, and 5, 7, 9, 11 A Macy Street (Mitchell)

John Lopez: This is a request from CVS for a Certificate of Compliance. Earlier this year, the commission approved a partial Certificate of Compliance, so the property owner could receive an occupancy permit from the building inspector. The outstanding issue for the full certificate was that the OoC required a two growing season monitoring period. Any vegetation that failed to thrive would be replaced. That has occurred. We are in receipt of the last monitoring report. The site, I think, is a model. When I visited the site with our BSC consultant in the spring, there were nesting mallard ducks there. So this was a reconstructed wetland. So it serves as a model program. I think that the full certificate of compliance can be issued.

Motion was made by Alan Corey to approve the Certificate of Compliance for 242-244, 250 Main Street, and 5, 7, 9, and 11A Macy Street (Mitchell). Motion was seconded by Michael Bik. Vote was unanimous.

Motion to close was made by Michael Bik and seconded by Alan Corey. All in favor.

Motion to adjourn was made by Kinsey Boehl. Motion was seconded by Suzanne Egan. Vote was all in favor.

Meeting was adjourned at 7:50 P.M.