

CONSERVATION COMMISSION MEETING

CITY HALL AUDITORIUM @ 6:30 P.M.

62 FRIEND STREET, AMESBURY, MA. 01913

JANUARY 5, 2015

MEETING CALLED TO ORDER AT 6:33 P.M.

Present: Steve Langlois, Michael Bik, Kinsey Boehl.

Absent: Suzanne Egan, Alan Corey.

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

MINUTES: November 3, 2014 and December 1, 2014. Minutes continued to 2/5/15 meeting due to only (3) commissioners present tonight.

ADMINISTRATIVE:

Request for Information: Lake Attitash Watershed Plan

John Lopez: The Con Com received a request for information. We had a certain legally defined time period to respond. This concerns the lowering of Lake Attitash, with a few other questions. The applicant was the city of Amesbury. This was going back a number of years ago. I forwarded the request on to the Director of Public Works, who provided a formal response. You all received a copy. Barring any outstanding issues or the commission has questions, I will simply forward to DPW director's response to the inquirer. Vote was unanimous in favor of doing that.

ENFORCEMENT ORDER – 56 South Hunt Road (Tough Mudder)

John Lopez: This is a follow up to the enforcement order that was issued by the Conservation Commission for some activities which violated the Wetlands Protection Act, state, and the Amesbury Wetlands Ordinance. The Conservation Commission, through a vote, provided me with the legal authority to review and approve a draft restoration plan that was done. One of the mitigating factors to expedite the process was two pits which were excavated, approximately 5 ½ feet deep, 40 feet long. The property owner, Waste Management New England, was concerned about liability. They had filled with water since summer. The draft restoration plan was approved. It is currently being implemented. All is fine now. I can provide the Conservation Commission with copies of the plan. All present agree.

ENFORCEMENT ORDER – 12 South Hunt Road (Amesbury Land Associates)

John Lopez: One of the attorneys is present tonight who will provide a brief update. Along with that, the Conservation Commission is in receipt of an e-mail which was received tonight from attorney Agin representing the trust. Conservation Commission voted at the last meeting to provide the agent the legal authority to review the draft restoration plan, and approve it. I met with the applicant's representative. There were some minor changes made, but it has subsequently been approved. It's my understanding that the sale of the property was executed last week, and Mr. Dipple is now the owner. The enforcement order / approved restoration plan will be implemented when the season allows in the spring. Things are fine. The appeal lawsuit has been withdrawn. No issues there.

Shantel Bill, attorney for Spartan Race, Boston, MA: Just want to let you know that we have worked with the other two violators and have agreed to adopt their report so that there wasn't a

waste of time and expense. We are currently working settlement terms behind the scenes so that Spartan Race will be contributing to the fund being held by the two trustees, and will be transferred over through the sale, so that the new owner can implement everything through the report. That is where things stand. Before this meeting, I got off the phone. The bankruptcy trustee has to approve where our meeting of the minds is, but it is likely that will be resolved, and we'll do paperwork behind the scenes.

APPEAL OF MA DEP NEGATIVE DETERMINATION – 70 LAKE ATTITASH ROAD (DOW)

John Lopez: This is in response to an approved project to remove a number of trees with associated landscaping to serve as mitigation within buffer zone to Lake Attitash. An abutter appealed the Conservation Commission's decision. The DEP reviewed the appeal and elected not to entertain it. The acting section chief of the northeast region determined that the appellant was not an aggrieved abutter, did not fit the definition of an abutter, and as such elected not to entertain the appeal. The appellant has subsequently appealed that decision, and a number of dates were provided for the subsequent pre-trial hearing. As of 1:44 PM this afternoon, I received an e-mail from the office of dispute resolution, DEP, that the pre-trial hearing is scheduled for Jan. 26, 2015, at 10:30 A.M. There is no further action necessary on behalf of the Conservation Commission at this time. Probably at the Feb. 2 meeting, I will ask Conservation Commission how they wish to proceed. If they wish to proceed in publicly support DEP's proceedings and uphold their decision, or if the Conservation Commission wants to provide pre-trial testimony of its own. Last time we did this, Conservation Commission simply elected to allow DEP to take the lead. Essentially, this is between DEP and the appellant. They are not appealing our decision. Conservation Commission agrees to take action at the Feb. 2 meeting. No further action required at this time.

REQUEST FOR BOND RELEASE: QUIMBY LANE (206 LIONS MOUTH ROAD)

Roland Couillard

John Lopez: This is in reference to a bond that is being held by the PLANNING BOARD for a number of things, because we share some concurrent issues and jurisdiction with the PLANNING BOARD. Oftentimes, the PLANNING BOARD takes the lead in holding the bond, sometimes the Conservation Commission. In this case, it is a bond held by the PLANNING BOARD. The PLANNING BOARD has requested that Conservation Commission provide one final directive as to whether or not this commission considers the Quimby Lane project closed, and if so, to recommend the full release of the bond. A certificate of Compliance for the project was issued a year ago. The project was in compliance. So does the Conservation Commission feel comfortable that the project has reached finality, that the monitoring periods have passed, and if so, would you recommend to PLANNING BOARD that the bond be released?

Conservation Commission members unanimously vote to release the full bond.

NOMINATE / ELECT COMMISSION SECRETARY (AMESBURY CONSERVATION COMMISSION)

This is continued to Feb. 2 meeting, due to only 3 commissioners present tonight.

Kinsey Boehl, commissioner: Mr. Lopez, John, there was a letter in the packet from the DEP regarding the removal of a tank on Water Street?

John Lopez: It was removed, yes. This was a letter issued to the City of Amesbury, notice of non-compliance at 31 Water Street. This concerned some violations of non-compliance at a contaminated waste site in the lower milliard, involving a ruptured tank. Since this letter has been received, it has been rectified, and EPA is involved in the process and clean up. They are working to bring the project and this issue into compliance. It is well under control, if not already rectified. No further action is warranted on our behalf, at this point.

NEW BUSINESS:

RDA – 13 MERRILL STREET – (OWNER- MR. Van de Visser)

John Lopez: This is an RDA that comes in support of the proposed wetlands delineation. As stated in my briefing memo, the site may be subject to an Order of Resource Area Delineation already issued by Conservation Commission, and to the permit extension act passed by the Ma. legislature, would still be valid. Although I must admit, based upon the information submitted, I couldn't quite tell. The Conservation Commission has a wetlands delineation done and confirmed by BSC Group. So the area, from what I can tell, may overlap. I'm not sure. In any event, this is an RDA. The applicant is looking to have Conservation Commission approve the wetland line. The applicant further states that this is relevant to an isolated wetland. He was unable to determine or he has not determined whether this is bordering vegetated wetland. Again, an isolated vegetated wetland is only relevant to the local Amesbury Ordinance, not the state wetlands act. Bordering vegetated wetlands (BVW) would be applicable to both.

Matt Schweissburg, Wetlands Strategies and Solutions, from Merrimac, MA, working for the applicant, the Van de Vissers: I was hired to delineate wetlands on the site. I had a small piece of what I now understand was a prior resource delineation approved by Conservation Commission, but when I went out, I was not aware of that, so I did a delineation, filed the RDA, Mr. Lopez called me and explained, saying he thought there was a resource delineation done previously, and he was kind enough to send it to me. I looked at it and reviewed the Conservation Commission's order. It appeared only to apply to the wetlands on the lower end of the site, down by the tidal creek. The wetland I delineated is within the line on the prior order. I guess my purpose here is, having looked at the prior line that was delineated, in my opinion, does not appear accurate, particularly with conditions on the property. I'm not sure how it was done. I didn't see any field forms or anything like that. But if you look at the lines on the map, you have two straight lines that intersect at a right angle, and a curve that is pretty much a nice arc on the other side of it, at least in the materials that Mr. Lopez sent me. I've never seen a wetland line that was straight and that it intersected at a right angle with another edge. But more importantly, it doesn't reflect the conditions on the site and what you find when you go out there. So the request here is: is the Conservation Commission willing to reconsider and revisit the delineation of this wetland at the other end? In particular because the line doesn't seem right, it appears to be isolated, not bordering because there is no stream channel, there is no sign of bank of anything else in that area. So I think there were some inaccuracies in the prior work. The request here is: would Conservation Commission be willing to reconsider that order, or at least that part of the order and take another look?

Steve Langlois: My opinion is, the only way I would reconsider is with an impartial review done by a third party. Maybe Mary Rimmer?

John Lopez: A couple of things: just about all the development that has taken place, first of all, this was a wetland line that was ...

Steve Langlois: I have a pink line and a green line. Which is which?

John Lopez: The pink line is the bordering vegetated wetland, and the green line is the 100 foot buffer zone. So everything from the green line to the pink line is buffer zone jurisdictional, and everything within the pink line is the wetland itself.

So this was confirmed by BSC Group a number of years ago through a peer review, both the pink and the green lines. So this would be the legally binding delineation of record. A lot if not all of the development which has taken place along Old Merrill Street and Merrill Street has been done pursuant to this plan. You also have an open NOI hearing on a proposed development of another house (Toth) that is using this same plan. That property is located near the intermittent stream, which is a salt marsh. Because this is a perennial, it generates a 200 foot buffer zone, under the rivers act, with a 100 foot no-build. So all of this here on the map is relevant to the Toth site, which is not applicable to this discussion. Also, DEP did not appeal this decision.

Kinsey Boehl: For the application, you invoked 310CMR10522B1. Also, if you look at #3 of that section, where it says “ if there is some dispute on whether or not the volumes could make the isolated land subject to flooding, that a certified engineer with water flow calculations is required, which is not included in this?

Matt Schweissburg: No, it is not. It didn't appear that it was even close to the standard of a quarter acre foot, by the work that I did out there. But by all means, if the Conservation Commission desires to have an engineer survey it and run the volume calculations, that is your prerogative.

John Lopez: The burden of proof is always on the applicant, so it is the applicant's responsibility to provide us with the data. We simply review, confirm or deny and provide comment.

Kinsey Boehl: Per the application, it says that the wetland area is .17 acres, and you said it pools up to 18 inches. That is just over a quarter acre feet, actually.

John Lopez: Also, I think we have a wetlands delineation that is legally binding, but we have a property owner that just doesn't like the wetlands delineation. I think that is why it is being contested.

Matt Schweissburg: It's not that I don't like it. I think whatever was done up there at that end of the property, again, I don't know who or how it was done, for what purposes, but I've been doing this for a very long time, and it is just not accurate.

Steve Langlois: So you're saying the previous delineation is not accurate, but yours is?

Matt Schweissberg: No, I'm saying that it is not accurate. I've given you one that I did. It is your determination ...that's why I'm asking if Conservation Commission would be willing to re-visit that part of the property, and figure out where exactly is it?

Steve Langlois: I made the statement that we should go with a third party review for the delineation of the wetlands line. You are bringing up another subject, is that correct? The saturation of the land? (correct). Saturation of the land is probably a bigger deal than how close these lines might be. Things have changed over these few years, probably. So basically you have this area right here that is either saturated, or very close to the 100 foot buffer. I know this creek right here is tidal. In certain instances, that can flood, maybe. Most likely, houses are being put in here. This is a very sensitive piece of land. For us to pass something, then have people with water in their basement or whatever... you said DEP passed this?

John Lopez: No one appealed this decision. It was 3 years ago, but because of the permit extension act, it is still valid. So this is a legally binding wetland delineation that we still have a number of houses that have Certificates of Compliance are due that are outstanding based upon

this delineation. We have one NOI hearing still open, based upon this delineation. I guess it gets back to: does the Conservation Commission have faith in its consultant?

Kinsey Boehl: For the application that stands before us, we would have to have a third party review. This has been approved.

John Lopez: If you recall, this was Blue Moon. We still have enforcement orders out on this that the applicant chose to leave town.

Steve Langlois: This is a very sensitive issue. The previous developer ended up not following through with anything, and I don't have much faith in it. So in order for us to have this land reviewed, we would probably have to go with BSC.

John Lopez: Right. I have the utmost faith in Gillian Davies. But you might have a difficult time getting another peer reviewer to review someone else's work that is still outstanding. I don't know what the legal implications would be?

Steve Langlois: If you can get a note from GSC and Gillian, saying that she still stands behind her work without looking at it again, we'll go for it. Give her the benefit of the doubt.

John Lopez: Well, the Conservation Commission approved this, so this is ultimately your responsibility. Jillian provided you with the data. So this is approved, as of June 10, 2011 was the last revision to this.

Kinsey Boehl: This isn't what is before us though. The applicant is submitting something different. This is not part of the application.

John Lopez: If the Conservation Commission wants, you can retain whomever.

Steve Langlois: Basically, what we're voting on now is whether or not we want to accept the revised wetland lines by Mr. Schweissberg, correct?

John Lopez: Correct. So you would be either voting ... well, there are 3 options, as I see it: 1. you can retain a peer reviewer. This time of year, it is very difficult, due to snow, frozen conditions, etc. You could be cautious and continue this to the growing season in spring, so fresh vegetation could be included. 2. You could reach a negative determination, meaning that the wetlands lines as depicted through the RDA are accurate, which would mean these are not accurate, or 3. you can reach a determination that the wetlands lines, as proposed through the RDA, are not accurate.

Steve Langlois: And who did the delineation the first time?

John Lopez: It was the Blue Moon's consultant. Perhaps ARROW? They were working for Sullivan Engineering.

Kinsey Boehl: The portion of 310CMR that was invoked by the applicant is obviously in dispute, and ...

Matt Schweissberg: No, that little bit about isolated land subject to flooding and the 18 inch depth, only pertains to a very small depression at the lower end of the site, which actually isn't even on the property. It is just a little depression about 4 feet or so wide, and it is about 18 inches deep. The rest of this wetland is extremely shallow, no more than 3 inches deep, at best. I guess I would ask the Conservation Commission if you are willing to re-visit through a third party, and the right time to do that would be spring.

Kinsey Boehl: Would the applicant be willing to revise the application with the approved wetlands delineation?

John Lopez: That's a great idea.

Matt Schweissberg: You mean the prior delineation? (Kinsey: yes). I would have to talk with them and ask them that. They are here.

John Lopez: If your clients are willing to accept this, then they can simply withdraw their RDA and go with this ORAD, and that's the end of it. Then they could submit a NOI for proposed construction of a single family house, I assume, whenever they want, using this ORAD...which is what every other person on this street has done.

Matt Schweissberg: I understand that is an option, but I'm not sure, and I would talk with them. But considering what I found on the site, and what I've informed my clients of, I don't think they would wish to do that, no. Again, because I don't think the prior line is accurate.

Kinsey Boehl: The alternative would likely be that we would request a bond, and hire a third party reviewer to review your delineation in the spring.

Matt Schweissberg: Correct. They would have to pay for a third party review.

John Lopez: And if that's the case, I'd recommend BSC Group and Gillian, who is most familiar with the property. The other concern I have, Mr. Chairman, is what legal issues are you raising if you re-visit or override this delineation? You'd have at least one property owner who has taken a year to revise their plans, based on this delineation.

Steve Langlois: Why does it matter to anyone else, John?

John Lopez: Because everybody else is using this same delineation.

Kinsey Boehl: And those NOIs are also open?

John Lopez: All but one. So everybody else has built houses and everything has been done pursuant to this wetlands delineation.

Steve Langlois: OK, so let's either accept this ORAD, or ask for a third party review.

Kinsey Boehl: That's not what is being presented, though. What is being presented conflicts with the previous ORAD. This is not part of the application.

Steve Langlois: The only way we can do this is to get a third party review.

John Lopez: Or accept this...which means you would determine...

Steve Langlois: Alright, so I mentioned ORAD...the previous ORAD. That was my mistake. We are accepting this gentleman's new delineation. Correct?

Kinsey Boehl: I think the applicant might want to think about what John had discussed, which would be to pull the Request for Determination of Applicability, and then re-file under an existing approved ORAD, under an NOI.

John Lopez: So if you do that, then you are voting that the wetlands line, to fit the language of the determination that the wetlands line as proposed is inaccurate.

Kinsey Boehl: I will **motion** that I feel there are too many conflicts based on the current information that we have, and that the delineation that is before us may not be correct and may have to be peer reviewed.

Michael Bik: Question, John: This thing goes back a long time ago, and what some of the other problems that we've had here, which are still open, with us voting on this, where does that put us?

John Lopez: If the Conservation Commission wants to revisit this whole delineation, then it is only fair... the property owner has spent a fortune for this delineation. So legally, that is a question for town council. I don't know. Could that property owner sue the city? I don't know.

Michael Bik: I'm just curious about the legal side of it, John. If you move forward in regards to issuing the changes in this, legally what happens to the other problems that are over there? Do they come back and bite us?

John Lopez: I don't know. That is a question for city counsel.

Michael Bik: I personally don't think we should approve any of these things. This whole piece of property is a nightmare.

John Lopez: Well, this is a legal delineation of record. So if the Conservation Commission wishes to change this, you would have to do as the applicant's representative and I would suggest, if you want to re-visit this, then you would have to go through with a peer review.

Michael Bik: So if we request him to get all the information in regards to this whole piece of property...

John Lopez: No, I think he has provided all the information ...

Steve Langlois: Let's get the third party review on the delineation. What's wrong with that?

John Lopez: I don't know what the legal implications are of re-visiting.

Steve Langlois: So as our agent, you are recommending to us to vote to accept it.

John Lopez: No. I would vote to support this and to determine that the delineation as proposed is not accurate.

Kinsey Boehl: Which is the motion that I actually made.

John Lopez: Right, but you also threw in the peer review. But you can confirm that with a peer review. You can continue this to the spring. I would say the May 4th meeting would give our consultant, Gillian Davies, enough time to work with the applicant's rep and to revisit the site. So it is really up to the Conservation Commission.

Motion was made by Kinsey Boehl to deny the request for Determination of Applicability, based on conflicting information, without a peer review. Based on the site plan prepared by Sullivan Engineering Group for 14 Merrill Street, last revised Jan. 10, 2011. If Gillian would support the wetland line in writing, that would suffice for me. I would be ok with the ORAD that we already issued.

John Lopez: Procedurally, you need to retract the motion, and restate a motion.

Kinsey Boehl: I retract my motion, and make a new motion to deny the request for Determination of Applicability, based on conflicting information based on the drawing that we received tonight, and that the wetland line as proposed in the RDA is inaccurate, and that the proposed wetland line proposed in this 14 Merrill Street dated Jan. 10, 2011, is accurate. Motion was seconded by Michael Bik. Vote was unanimous.

Motion to close was made by Kinsey Boehl. Motion was seconded by Michael Bik. AIF.

NOI# HATTERS POINT, 60 MERRIMAC STREET (Mr. Charlie Wear)

John Lopez: This is a NOI in support of proposed work on a 42 unit residential building, with associated parking and access. Resource areas include coastal bank, land subject to flooding, riverfront area, buffer zone.

Charlie Wear, Civil Engineer with Meridian Associates who designed this project:

I have with me tonight the developer, **Larry Smith.**

This is a 5 acre site on Merrimac Street. In 1997, I became involved with this project. Bill Sullivan was the developer of the first phase. He proposed 85 units for the entire project of residential condos. He completed the first half of that around 2004. In 2007, he got an approval from the PLANNING BOARD to increase the number from 85 units up to 135. We asked for an extension from Conservation Commission, then we were going to ask for a modification to the 1997 OoC. The Conservation Commission denied the extension. At that point, it was 10 years old, and they wanted to see a new filing done. Shortly after that, Bill passed away due to cancer. The land is now under the ownership of the Homeowners Association. This commission granted us Certificate of Compliance for the 1997 OoC. The association has entered into an agreement with Mr. Smith to develop the second phase. Larry has gone back to the original concept of developing an additional 45 units, bringing the whole development up to 85 units, instead of the

135 approved by PLANNING BOARD previously. This is more in line with what this Conservation Commission approved 17 years ago. The western half of the property has already been constructed within the old mill facility itself. The easterly portion of the facility, the structures are no longer safe to use and will be torn down. The intention now is to build a new building, keeping the architecture in conformance with the old building, so it looks like one continuous idea. Resource areas are: There is a 3-4 foot tide in the river, and the water in this area is brackish. So technically, it is coastal, and we've gone with those definitions. The entire site has been disturbed going back to the 19th century. There is rip rap along the entire are of property bordering the water. The top of that rip rap is essentially the first break in slope. It falls under the coastal bank. The second resource area impacted by this is this next red line. In a 100 year event, the river tops over that bank and comes up to that point. We are proposing some filling of that. Also, 200 feet from the mean high water is the riverfront area of 200 feet. Being a historic mill facility, we are exempt from the riverfront requirements. We don't have to go through any alternatives analysis or any other requirements of the riverfront area. The site gets treated as if the riverfront area doesn't exist. There is a 25 foot no build, under the local bylaw. We are proposing work in there and we are asking for a waiver. We propose this work in this setback: the riverwalk and parking associated with access to the riverwalk...the public parking. Under our Chapter 91 license granted in 1997 or 1998, part of this Chapter 91 for having non-water-dependent uses, they require public access. When the first half of this project was built, they put in the riverwalk there, and it has access onto Pleasant Valley Road, with signage that welcomes people onto the site. This was approved previously by the commission, and is incorporated into the existing Chapter 91 license. So we are required by Chapter 91 to build this. Same goes for the parking, which is parking separate from the residential piece. It is public parking to serve the public access portion of this. In lieu of the use of the 25 foot no build zone, what5 is given back is public access. Beyond that, there is a second part. Originally, this whole slope was proposed to be a 25 foot rip rap slope. We came into the PLANNING BOARD with that design. It may even be still on these plans. The peer reviewer for BSC has pointed out that that is not a preferred way. The slope was started, but never finished by Bill Sullivan. Scrub brush has grown up on the slope. Our intention is to follow through and finish what was started over 10 years ago. However, based on input we've gotten, we have changed the rip rap idea to an engineered fabric slope. We haven't come up with planting for that yet, but our intention would be to work with Jillian (if she is hired for this) to plant with vegetation that provides for habitat and enhance the riverfront along that section. The public access to the area will probably be from dawn to dusk, according to the Chapter 91 license.

MaDEP storm water standards: From the perspective of the low impact development (LID). Obviously, the site is disturbed already, having buildings on the site for 100 years. But you think about things that you can incorporate. One thing they like to see is reduction of setbacks. We are requesting reduction in setbacks from the PLANNING BOARD to keep the building as far forward as possible. We want to keep it historically accurate by keeping it closer to the road. One thing you try to do in LID is to preserve as many shrubs and trees as there are on the site. In this case, there really isn't any shrubs and trees there, other than vegetation planted as part of Phase 1. Vegetation has grown up on the steep slope, but it is mostly sumac, scrub brush, etc. Then they look for reduction in impervious areas. In this case, we propose more than half of the parking for this facility to be on the first floor of the building. If that parking was outside, that green space on the plan would have been dedicated to parking. There is more green space in the existing portion of this site. By introducing parking into the first floor, that produced a reduction

in impervious surfaces, which is certainly considered LID. From here, LID turns towards structural; things like rain gardens, constructed wetlands, water quality swales, grass channels, etc. The one place where country drainage isn't really achievable, because the access road is too steep, there is a steep slope. That is given to us, since the road has already been constructed. Then we looked at structural approaches, whether it be constructed rain garden or rain garden. There is some green space here to sneak something like that in, but didn't see where that was lessening the impact to the site. There was no benefit to introducing those in here. The primary thing we did incorporate into the design is that underneath this parking lot, we have a sub-surface infiltration basin tucked underneath the parking lot, so it doesn't take up any portion of the property. That is our primary BMP. It is impervious pavement, and water will be collected through a series of catch basins. The rooftop and series of catch basins over the new impervious surfaces will carry it into the infiltration system. That brings us to the DEP storm water standards. There are 10 standards. Our primary DMPs are the infiltration system and also we're proposing a storm sceptor, which was supposed to be installed as part of Phase 1. Also the deep sump catch basins. Those are the primary DMPs. As for the ten standards:

1. There can be no untreated discharges to waters of the Commonwealth. We achieve that. All is being captured and treated.
2. No increase in peak rates of runoff. We have met that. No increase in rates from runoff on the site for the 2-10 year or the 100 year storm.
3. At least 65 % of the site is captured. Impervious surfaces on the site are captured and run into the infiltration facility. We capture just short of 70%, and that infiltration system has been designed in accordance with the regulations under the parking lot.
4. Water quality: it requires that your BMPs provide for a minimum of 80% TSS removal rates. The water running through this infiltration basin, together with the deep sump catch basins, gives us a removal rate of 85 %. So we meet this. The water running through the storm sceptor goes into deep sump catch basins through the storm sceptor, which is the other 20% of the site. Those two BMPs together result in a removal rate of 83%, so we meet this standard.
5. Not applicable. It is a luhppl (land use with higher potential pollutants loads). These are gas stations and facilities with over 1000 parking spaces or trips per day. I may be mistaken. This facility obviously will have below 500 trips per day.
6. Critical areas. We have no critical areas. Even if we did, we're still treating all the storm water in accordance with standards.
7. Redevelopment. It is arguable that this is redevelopment. Under a redevelopment, you are not supposed to have an increase in impervious surface. We have a slight increase in impervious surfaces. This policy plays out with DEP is that you can take the 60,000 square feet currently impervious and call that development, and then call the new 6000 square feet redevelopment. You have to meet the redevelopment area to the maximum extent practical. Then you have to go through a whole song and dance about what's the maximum extent practical? In this case, we meet all the standards. Redevelopment is not applicable in this case.
8. Construction. Providing construction, operation and maintenance. We provided that report. Our primary protection against contamination of the river is we're proposing silt socks along the edge. We also propose erosion control protection around the catch basins. Then there is a whole protocol along the river for how materials will be stored on site. We provided a good housekeeping list. We haven't filed the project yet. It will also be subject to anything that disturbs more than one acre is subject to a Nipties permit from the EPA. We are subject to that but have not filed yet. You don't file that 2 weeks before you begin construction. A storm water

pollution prevention plan gets put together. A lot of what is on the plans now already exists and will be incorporated into the OoC.

9. The post construction O+M. That is how you go about maintaining the catch basins. I think it is quarterly inspections. If the deep sump, which is 4 feet deep, if that is more than 2 feet of sediment in it, it needs to be pumped and removed. The infiltration basin

Is inspected bi-annually, and the standards for that storm water shouldn't be standing in there after 72 hours. If there is, there are methods for flooding that and removing those materials. If it continues, after many years, they have to be replaced, similar to a septic system.

10. There should be no illicit discharges from the site. As a residential use, there should not be any illicit discharges, which would be things like dumping crankcase oil into a catch basin, etc. That covers it. I can field your questions, if you have any. It's a lot of information. John and I talked and we anticipate that you'll hire Jillian to make sure everything I said is true. We'll fine tune all of this somewhat, and Conservation Commission may have some ideas as well. We're not looking for an approval tonight.

Kinsey Boehl: There has been a review of the storm water protection standards, right?

Charlie Wear: Yes, by BSC. We have responded to that review. They had a few good recommendations. We've made some adjustments accordingly to the drainage.

John Lopez: I can provide Conservation Commission with a copy of the report and the response electronically tomorrow.

Charlie Wear: Talking to Nipun in the hallway, we're expecting to have the second peer review done this week. We might have the thumbs up from BSC on that.

John Lopez: The PLANNING BOARD has retained BSC for the storm water. What remains to be done is to see if there are abutter comments this evening, and then to ask the Conservation Commission if they would like to retain BSC and Jillian Davies to do a review pursuant to the Mass. Wetlands Protection Act and the city of Amesbury Wetlands Protection Ordinance. Our goal was to have the proposal present this evening. But because of the holiday schedule, it wasn't possible. Anticipating the Conservation Commission directive, I forwarded the NOI packet to her, and she is in the process of drafting the proposal and we may have it as early as tomorrow. The applicant has expressed no reservations about BSC conducting the review, so if the Conservation Commission is prepared to approve BSC and Jillian Davies as the consultant, we can proceed accordingly. Also, aside from possible abutters in the audience, this was forwarded to Conservation Commission electronically in an e-mail Wed. Dec. 31: it is abutter comments. Some of the concerns address height of the building, sunlight, these are all relevant comments, some of which are more applicable to the PLANNING BOARD. I'd like these abutter comments entered into the public record, dated Dec. 29, 2014, David and Brenda Grover. I can include this in with the scope of review for BSC, so Jillian can review this and address these comments as well, if you could include this piece in a motion.

Motion was made by Kinsey Boehl for Conservation Commission to hire BSC Group and Gillian Davies to review the NOI for Hatters Point at 60 Merrimac Street in Amesbury, in accordance with MA. regulations and Amesbury ordinance and wetlands regulations, with specific attention paid to abutter comments. Motion was seconded by Michael Bik. AIF.

Motion was made by Michael Bik to continue this hearing to Feb. 2. Motion was seconded by Kinsey Boehl. AIF.

ANOI # XXXX, 2 PINE STREET- (LYNDSEY & GEORGE HAIGHT)

John Lopez: This is an **abbreviated NOI** and this hearing is only applicable to the MA. Wetlands Protection Act, Ma. General Law Chapter 131 Section 40. This is for the proposed addition to a single family house within 100 foot buffer zone to a bordering vegetated wetland.

Lyndsey Haight, applicant: There is some question as to what is before the Conservation Commission this evening. Mr. Lopez and I have gone back and forth. You have before you an ANOI. Last week on Dec. 31, I actually also submitted as an addition, and this is what is up for dispute, not as a separate application but as an addition, because what was sort of in question between myself and Mr. Lopez was the appropriateness of the ANOI. I have a few points to place on that. I will pass out the copies that Mr. Lopez returned to me last week. General overview: we are requesting permission from Conservation Commission to complete a 16 by 22 foot two story addition to our home at 2 Pine Street. The construction will be located 77 feet from the newly delineated wetlands, which is located on our abutter's property. We were granted a variance from ZBA last month, as we will be constructing within the standard guidelines for setbacks for a side setback. As part of that approval, it was reinforced that we were coming here. We did submit a WPA Form 4 and all the required attachments, the delineated report, the plot plan, abutters notification publication, and filing fees in time for the Dec. deadline. A couple days after that, the submittal, John and I had a lengthy conversation about the appropriateness of Form 4 vs. Form 3. There is still some question, and I am arguing some ambiguity both on the town website and in the state and local ordinances. Both the state and local ordinances dance around this Form 4. There is very little mention of Form 4 specifically, except when you read Form 4 instructions. So I have a bunch of materials that I've printed up and highlighted and whatnot. The question really is whether or not you can review our request and make a determination with the ANOI. Despite the fact it is called an abbreviated NOI, Form 4 has far more questions, 17 pages, vs. Form 3 with 10 pages. There is no information asked on Form 3 that is not asked on Form 4. So all the information that I submit to you tonight in Form 3 has already been submitted to you previously the format of Form 4. All the public hearing requirements were met and the certified letters were sent out, we paid the fee to the town who then sent out the certified letters, and the publication was made in the newspaper. All of them stated that we were being heard for a NOI, and actually the agenda for tonight was amended to say this is an ANOI. Since everything was scheduled and we've paid all our fees to not have to come before Conservation Commission again, without any actual new information, we hoped to just be heard and to make a determination. It is a minimal impact project, so we did meet all three criteria for the Form 4. The reason we submitted a Form 4 was if you go on the town website, Conservation Commission page, the only form was for a ANOI. So I opened that up and read the 3 criteria that requires being met in order to be able to use that. We met all the criteria, meaning we are within the buffer zone at 77 feet, it will disturb less than 1000 square feet, the footprint of our addition is 350 square feet, the dept. of army permit or Chapter 91 waterways license is required. Also, in the section in Form 4 is that it specifically mentions providing a streamlined process to both Ma DEP and the Conservation Commission. So in reading all that, we found that we were acceptable at both the city and state levels.

John Lopez: If I may, the applicant was told in at least 4 conversations that the ANOI was not permitted under the local ordinance. It is fine to proceed under the act, but unless the Conservation Commission opens up the regulations and changes it, the ANOI is non-applicable. So what you're saying is true.

Lyndsey Haight: Just to clarify, those were conversations that happened after the submittal deadline. So after I made the submission, that is when you and I had the subsequent conversation.

John Lopez: It was before Christmas. During that conversation, I thought we had agreed. My suggestion to the applicant was to withdraw the ANOI. It would be much more cost effective to submit a NOI under the act and the ordinance, and proceed accordingly at the Feb. meeting, because she missed the Jan. meeting deadline. So I left on vacation thinking that was the plan. While on vacation, I was notified by our administrative assistant that the applicant had intended to proceed with the ANOI, hoping to explain the situation to Conservation Commission tonight.

Lyndsey Haight: There were three primary factors in why we decided to go forward. 1. Even at the time when John and I had our first conversation, which was on a Wednesday, I think Dec. 18, at that time when I asked if I could get back all of the materials, so the almost 300 pages worth of documents that I'd submitted to Conservation Commission, if I could get those back, I was told they had already been sent out to the Conservation Commission members. So when I was getting the rejection, everything had already been sent out to you. In addition, within just a couple days, I received a certified letter in the mail, and all of the abutters did, as well. So the abutters notices had already gone out, all the wheels were already in motion for this meeting, and so, it seemed like the logical thing to do is go ahead with it. Also, in further reviewing all the information on the website and the ordinances and the applications themselves, there was no new information to be had with submitting the other form, and again, there is some mention on page 12 of the regulation of the Amesbury Wetland regulation, under VII.6 public hearing / public meeting, it does say and mention the ANOI. It shows up once or twice with specific mention, but nowhere else is it mentioned. If you look on the Form 4 instructions, it is right there, listed as allowable under the Ma. protection act of Chapter 131 Section 40, and throughout the ordinance and the regulation were referencing that, the WPA MGL 131 Section 40. So, this is a minimal impact project, so we'd like for this to be heard and discussed, if there is any additional information needed, the Conservation Commission may ask for outside consultants to review this. If so, it may push this project out until May. That is something we want to know sooner, rather than later, so that the banks and the contractor can plan ahead.

Steve Langlois: I've been on this commission for 8-10 years. I've never seen an ANOI come before us. I'm not saying it isn't legal, it's just new. When Mr. Lopez says that yes, we can listen to this tonight, according to the WPA, not the local ordinance, that makes me a little apprehensive. The city spent a lot of money hiring a law firm to come in and look at the WPA, and to have an ordinance, it must be stronger than the WPA. So, under an ANOI, there could be an issue in there where the city says, we want it to be a little better than that.

John Lopez: Before I left for vacation, it was my understanding that the applicant was to withdraw her ANOI and resubmit. So I didn't conduct a review because I expected it to be withdrawn. But regardless, the applicant has insisted on opening the public hearing under the ANIO, so we'd have to judge this, at this point, only under the WPA.

Kinsey Boehl: Mr. Chairman, we're also in receipt of a letter that says "the filing for the NOI was incomplete, the filing fee was not paid, the abutters fee was not paid, no legal notice for the NOI was complete.

John Lopez: So the applicant is requesting that the NOI just submitted tonight be somehow attached to the ANOI. Legally, we're talking about two very different things, both of which are pursuant to the open meeting laws. I've explained this to the applicant, but for this to be a

complete package, aside from the filing fees, she would have to include engineering plans, everything she has done under the ANOI, yes in duplicate.

So I pointed that out to her, that she is duplicating her effort and expense. She would have to submit a legal notice in the paper for this.

Lindsey Haight: The legal notice was actually published and said that I submitted a NOI. It does not say ANOI. So I am respectfully arguing is that the ANOI and the NOI are perhaps interchangeable, and are acceptable on both levels. Again, the regulations, section 7.6 include the ANOI as something that shall be heard under both the state and the local ordinance. That is what I'm arguing, and that letter that Mr. Boehl just read, I just received that tonight.

Kinsey Boehl: So John, could the applicant simply withdraw the ANOI and resubmit the NOI?

John Lopez: Yes, assuming it has the engineering plans and all the supporting information that accompanied the ANOI. That was the original plan.

Kinsey Boehl: I have a question that isn't related to beaurocracy also, but the substance of the application. I didn't see anywhere, the total area, you mentioned it was 77 feet from the resource area in the buffer zone. What was the total area within the resource area? Is it 100 %?

Lindsey Haight: So the total area is within the buffer zone, and you should have the plot plan, submitted with my original application. So if I were to extend my geometry, I would say not quite 100% of it would fall within the buffer zone, I'd say the majority of it would fall in the zone. And there is going to be excavation.

John Lopez: So to follow up, in reviewing the regulations pursuant to the ordinance, there is a very clear description of the permitting process. In that description, an ANOI is not listed. So I was puzzled by that and I didn't quite know what to make of it. The fact that we received an ANOI was puzzling to me. I reviewed our regulations and I kind of thought that's why we've never received one, because they are not allowed under the local, as my interpretation of the regulations. Then I reviewed the cover letter that accompanied the ANOI, supplied by the applicant's representative, and he himself said that the applicant would have to pursue a NOI under the local. That confirmed my suspicion and precipitated my initial conversation with the applicant.

Michael Bik: Re: the work that you've done in presenting us with the information, I think the easiest solution is to have the applicant do an NOI and move this out to Feb.

John Lopez: That is correct, and I've explained it to her, but she wanted to pursue the ANOI. She is within her legal rights to do so, but now the Conservation Commission is obligated to review it under the WPA, and then to have her submit a separate NOI under the ordinance, which would include engineering plans, abutter notification, etc.

Michael Bik: Is that going to stop her from building the house?

John Lopez: Correct. Essentially, Conservation Commission would be issuing two Orders of Conditions.

Lindsey Haight: I understand, but the reality is I had already submitted the packet. So whether I withdrew on the nineteenth of Dec. or not, I was going to be re-submitting, repaying and duplicating again. So I figured I'd just come before you, hedge my bet, and see what happens. If not, I am still ahead of the Feb. deadline, in hopes that if there were any concerns on the substance of the application, I would know that now, so that I could bring that to my contractors, the bank, etc. Our hope was that this project could start when the ground thawed in March. If I have to hire another consultant to confirm this delineation, then this project is likely pushed out until May at the earliest. So my hope was to hear any issues on the substance of this application tonight. Worst case scenario, you tell me nothing, and I have to re-submit again, notify abutters,

re-publish for the Feb. hearing, etc. The other issue at question: one of the provisions in the ordinance is for exemption. Number 5 under the exemption is “if the wetland area is as a result of direct negligence of the city or abutters.” I’ve had an unrelated wetlands expert who was asked to come review my property at the request of Mr. Lopez, who stated in no uncertain terms that the expansion of the wetlands on my property and the abutters property is a direct result of piles built up by an abutter located on Cedar Street. I brought this issue to the city’s concern last May. They worked on the issue in November. The owner finally removed those piles. Hopefully within the next five years, we’ll see some drainage. But I have significant movement of water onto my property. That corner of the wetland boundary that is 77 feet from my project is 100 feet difference than it was on the Mass GIS map. That change has occurred since 2009. It is 100 feet in the northwest direction, and about 53 feet in the northeast direction onto my property.

Kinsey Boehl: I think you’ll have a hard time proving negligence on someone else’s behalf.

Steve Langlois: You might not want to go that route. I think that probably if you were to have come before us with an NOI, You possibly could have gotten it from us tonight. I looked at this on a GPS map, I know the property, it’s low impact. But we have to follow our agent’s guidance when it comes to the city ordinance, we really have to stick with it.

We could possibly do a site visit, you could go for the NOI for February, and ...

John Lopez: The Conservation Commission shouldn’t do a site visit if the applicant withdraws the ANOI. Then there is no legal grounds for a site visit. So one other thing, the applicant has an above ground pool in her back yard. The pool appears to be unpermitted by the building inspector. Based on wetlands delineation that was submitted with the ANOI, it is beyond the 25 foot no build. If there was a permit pulled for the pool, and it pre-dated our ordinance, it would be fine. But there is a little legal ambiguity here.

Lyndsey Haight: If I might interrupt: since I received your message this morning, I think this is a completely separate matter, and whether or not it gets entered into this record, I’m not sure. The pool was constructed around 2001 by the previous owner. So I tracked him down today to talk to him about the process. He said he did in fact pull a permit. He also had to pull an electrical permit, because they ran electricity down to it, involving significant excavation. Again, that 53 feet and change in wetlands, if you look at the original wetland map on the GIS, it is significantly further. It is about 50 feet from the wetlands. So there was in fact, I left a message for the building inspector today to look further into the file, but there is in fact and an e-mail from the original owner that he did file a permit and had it approved...

John Lopez: Can you supply us with copies of that?

Lyndsay Haight: He thought he supplied that to us with a copy of the permit when we closed on the house in 2006, but I couldn’t find that. I did find the mortgage inspection, which includes the pool in the drawing and clearly states the location of the building as shown either complied with the local zoning setbacks at the time of construction, or was exempt from violation, so...

John Lopez: If I may, the mortgage inspection is irrelevant. What is important is the building permit application. That is the only thing that matters. Because the mortgage permit just identifies the fact that the pool is there. But my point is that, because there is nothing from the building inspector, the pool would be in non-compliance with the ordinance. But that can easily be rectified with a waiver request by the applicant.

Steve Langlois: Just a thought: She has applied for an ANOI but not an NOI. So if we do a site visit this Saturday, and she applies for the NOI 21 days before the Feb.2 meeting, have we done anything illegal?

John Lopez: No, assuming your site visit is done under the act and not the ordinance.

Steve Langlois: We make that statement that we are doing this only under the act.

Kinsey Boehl: Excuse me, but I don't see why you are so reluctant to not submit the NOI. What's the problem? Procedurally it keeps the Conservation Commission in compliance and legally and doesn't put us in a funny situation, because you can't come in here and basically ask us to violate our own ordinances.

Steve Langlois: John said if we did a site visit, it would be illegal, because she hasn't legally applied for an NOI yet. So we can't do a site visit until then, under the local ordinance, but we can do it under the state.

John Lopez: There is nothing submitted under the local, so it is as if it doesn't exist. So all these proceedings are only based upon the WPA. For example, this pool violates the local but not the state.

Steve Langlois: Getting back on track, even though we're going to lose 30 days, it is best to do the NOI and go forward from there. What else can we do?

Lyndsey Haight: My interest is in streamlining this process. I will happily withdraw the ANOI and re-submit everything for an NOI for the Feb. meeting. I'd just like to give that feedback on the website. Not everybody is going to be looking to pay \$10K for a consultant to come in and do the whole project for them, especially on a minimal impact. But the website shows that the only form that is at the forefront, you have to do two clicks to get to the Form 3, and there are no instructions on the Form three on the website. The only instructions available are for Form 4, and if you meet those criteria, there is no reason why you wouldn't, because it mentions Conservation Commission. You might want to remove Form 4, because it is located elsewhere on the website. You might want to take it off here. I will withdraw my ANOI and submit my NOI by next Monday, Jan. 12, which is the deadline for the Feb. 2 meeting.

John Lopez: Under the act, not the ordinance, does the Conservation Commission wish to have the wetland line confirmed by a peer review?

Lyndsey Haight: I just paid for a consultant from GOVE ENVIRONMENTAL in Exeter to come and delineate the lines. His delineation did nothing but cause me to have to come before you. Obviously, third party review is fine, but that is my concern. If that is the case, then I would like that determination now, so I am not pushed out to May, so I can inform all interested parties that the project is pushed out to May.

John Lopez: On one hand, it seems to be within the outer buffer zone, so I don't know how critical it would be to have a peer review.

Kinsey Boehl: So maybe the easiest solution is to formally withdraw the ANOI, we would continue this ANOI for 2 Pine Street, re-submit and potentially plan a site visit after we formally receive the NOI before the hearing.

John Lopez: Not to confuse, but you can do a site visit under the ANOI under the act tomorrow, then she can withdraw it the next day.

Steve Langlois: The reason I thought it would be good to do the site visit was because we can look at it and maybe see that we really don't need a delineation here. Sometimes, you just look and you know. There may be some specifications as to putting up silt socks when you are building the foundations, this and that. She's not going to ruin the wetland.

John Lopez: All you need is a quorum and a vote to approve the site visit. Also, my review of the proposed project under the act, in my cursory review under the act, and I've discussed this with the applicant, I was looking for mitigation. It's a relatively innocuous within the outer buffer zone, but are there opportunities for mitigation? The applicant told me that there is a stand of Japanese knotweed, an invasive species, relatively close to where the addition would be, but it

is on the abutting piece of property. So it would probably be inappropriate. We talked about perhaps submitting some sort of simple mitigation plan about going into the wetland area and removing the bittersweet. That is something she could consider. Landscaping, if there is an opportunity. It is a relatively tight lot, not too much land there. Another mitigation possibility would be to have some sort of boundary markers, with the wetlands “do not disturb beyond this point” sign, because the wetlands, because the land slopes down to a wooded, wetland area. These are all proposals that the applicant would consider doing.

Kinsey Boehl: At the same time, we’d bring the pool into compliance?

Lyndsey Haight: If a permit was pulled in 2001 when the pool was constructed, then it was in compliance, and it pre-dates the regulations.

John Lopez: But we don’t have documentation of that yet. So I think the pool is where it is. The easiest way to solve this problem is with a waiver. The applicant would submit a waiver under our local ordinance, stating the reasons that this pool was put in a long time ago, no one could find the building permit.

Lyndsey Haight: To clarify: is this a quid pro quo, get a waiver on the pool, are these related matters?

Kinsey Boehl: No. Under your application for the NOI, you would include with that a waiver for the pool. That way, you’d have the pool in compliance.

When you go to sell the house, you wouldn’t have any outstanding issues. It makes it legal and you record that with the deed, and it can’t be called into question at a later date by other commissioners.

John Lopez: We have a separate waiver form that I can help you with.

Steve Langlois: So for a site visit, looks like later tomorrow about 3:30 PM works for myself, Michael, and you, Lyndsey.

Motion was made by Michael Bik to do a site visit tomorrow afternoon at 3:30 pursuant to the ANOI strictly limited to Ma. general law chapter 131, section 40, at 2 Pine street.

Motion was seconded by Kinsey Boehl. AIF.

Motion was made by Michael Bik to continue this hearing under the act for 2 Pine Street to the Feb. 2 meeting. Motion was seconded by Kinsey Boehl. AIF.

Motion to adjourn was made by Michael Bik and seconded by Kinsey Boehl. AIF.

Meeting was adjourned at 8:52 P.M.