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## CONSERVATION COMMISSION MEETING SEPTEMBER 21, 2015

CITY HALL AUDITORIUM @ 6:30 P.M.

62 FRIEND STREET, AMESBURY, MA.

MEETING CALLED TO ORDER AT 6:32 P.M.

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

**ABSENT:** None.

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

**Minutes: Aug. 31, 2015: Motion to accept minutes as proposed was made by Suzanne Egan to approve the minutes as presented. The motion was seconded by Alan Corey. Three approve and one abstention, Kinsey Boehl who was not present at that meeting.**

### ADMINISTRATIVE:

**Approval of Stantec - Environmental Monitor Contract.**

**John Lopez:** Originally, Horsley-Witten was the choice for environmental consultant on this project. However, due to excessive workload, they have had to pull out of the project. PLB hired Stantec, so it is advised that Stantec be ConCom environmental monitor.

**Motion was made by Suzanne Egan to approve Stantec as environmental monitor.**

**Motion was seconded by Kinsey Boehl. AIF.**

**Patten's Pond** –Pursuant to an Enforcement Order that was issued to DPW director for the unauthorized trimming of vegetation within a jurisdictional area to Patten's Pond. The E.O. required the director to secure the services of an Environmental Consultant, and to submit to ConCom a plan for review and approval, or approval as amended. It also stipulated other deadlines where the director was required to submit written notice that he would comply with the E.O. among other things. All deadlines have been met satisfactorily and now Mr. Desmarais' consultant is here to brief the ConCom.

**Bob Prokop, Wetland Consulting Services:** I was retained by DPW to address the E.O. I inspected the mowing / cutting along the edge of the pond. I supplied a report. It was my recommendation that, while the permitting was not approved, it really didn't cause any damage. My report says that most of the cut vegetation has already resprouted. The damage was minimal. I see no reason to do any replanting because the vegetation is resprouting so well. I suggest fining DPW a small fine, and possibly compensating it by doing a small tree planting elsewhere. But impact to Patton's Pond is minimal.

**John Lopez:** The director and I have determined that there was a breakdown in communication that caused this activity to occur. It is all easily remedied and I think we've all learned from that. Things seem to be regenerating on their own. This is also a bird sanctuary donated to town in the 1920s. The director would be willing to donate a few trees elsewhere in town. One thought: last year, we had a group of students come before ConCom who wanted to raise money to plant some trees. Mr. Desmarais has donated 4 trees to them that were planted, sugar maples. This may be an option that Mr. Desmarais could donate two trees (native non hybridized sugar maple, 2 inch breast height, to be planted where suited best by these school kids.

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**Rob Desmarais, director of DPW:** We could plant in a jurisdictional area. We have lots of work to do in the LMY, so that may be a strong option. I can offer suggestions, if you like. I can work that out with John, after a little bit of thought.

**Motion to approve a restoration plan as proposed, a draft plan as proposed, to amend the E.O. to allow for the implementation of the plan, with mitigation of two sugar maple trees to be planted where decided upon with the agent and director, and I'd say condition it to have Mr. Desmarais confer with the agent for the location of trees by Oct. 31, 2015. was made by Alan Corey. Motion was seconded by Suzanne Egan. AIF.**

**Enforcement Order/ Cease and Desist- (002-0704)**

**60, 75, 77 Merrimac Street – Hatters Point Marina Parking, LLC )**

**Agent proposed that this agenda item be moved to the NEW BUSINESS portion of the meeting.** This was an E.O. issued to the applicant for the placement of a structure without a valid OoC or negative determination of applicability. The structure was placed on site in 2007. The stipulation of the E.O. was that once the NOI was received, which had to be received by Aug. 31, once it was received, the ConCom would entertain the lifting of the E.O. The conditions of the E.O. have been met. The NOI for a permanent structure has been received. So this should be placed into the NEW BUSINESS section. Before any cert. of compliance is issued, or before any E.O. is lifted, it is always a good idea to review the record, to make sure that there are no outstanding debts paid by the applicant or property owner. Because this structure has been hooked up to water and sewer line, I checked with DPW for water and sewer billing. They no longer handle these issues, they deferred me to Pennichuck in Merrimack, NH. ConCom has correspondence dated Sept. 16, 2015 stating that the property owner is current with all outstanding water and sewer bills. ConCom has an e-mail dated Sept. 16, 2015 from the city tax assessor for the city, and in it he states that his office was unaware of the trailer. There were never any taxes paid on it, but they cannot collect back taxes. However, he did state that the assessor does not consider the structure temporary or portable, and that taxes are now in place as of Sept. '16, 2015. So we should move this to NEW BUSINESS.

**Request For Partial Release of Erosion Control Bond (002-1095)**

**56 – 58 South Hampton Road (Couillard)**

**John Lopez:** On matters of mutual interest concerning erosion control bonds, to streamline the process by allowing the PLB to assume primary responsibility for the erosion control bond. It avoids duplication of effort and streamlines the administrative portion of it. We have an erosion control bond which is about \$75000. The applicant has requested a partial release of those funds, amounting to \$30K. He's made this request to the PLB, who has solicited the input from ConCom. Documentation here is in an e-mail from ConCom's engineer, Domenic Renaldi of BSC, dated Sept. 21, 2015, stating that he has assessed the distance for the erosion control bond, and based his opinion on monitoring reports that we have received, stating that the project has consistently been in compliance with the approved project. So I think we have good documentation here to justify the ConCom's decision if it agrees that the release of \$30K is appropriate.

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Procedurally, we are not voting to release the \$30K. ConCom would be voting to draft a letter from the chairman of the ConCom to the chairman of the PLB recommending the release of \$30K.

**Suzanne Egan:** Where in our procedure is the commission authorized to do a partial release of an erosion control bond? I'd assume that is in place for the entire project, and then the bond you could look to at the end of the project that happens that wasn't done or there was some erosion caused by something else, during the site preparation, that is what that is in place for. But I'm not familiar with why there would be grounds to release a bond in the middle of a project.

**John Lopez:** There is nothing stipulated to say that ConCom cannot do a partial release. There is nothing saying you can or cannot do a partial release. It's just a request based upon compliance.

**Suzanne Egan:** My thought on this is that it is not appropriate to release a bond in the middle of a project. We need the bond to secure performance under the OoC.

**Kinsey Boehl:** I actually agree. I had the same thought.

**Alan Corey:** I agree.

**Motion by Suzanne Egan to deny this request for partial release of erosion control bond because the request comes in the middle of the project, well before the project is completed. So there is no reason to release a bond prior to completion. Motion was seconded by Alan Corey. Three yes votes, one vote nay by Steve Langlois.**

#### **Enforcement Order / Cease and Desist – 81 Pleasant Valley Road (DeGloria) Continued to Oct. 5**

**John Lopez:** During the last hearing, I was dealing with an altercation from the audience and called in the police, so I am unaware of what had transpired, and also did not have access to the draft notes until recently. The property owner called me and asked for some clarification as to what the ConCom was looking for, as well. The E.O. required a survey of the bank and a restoration plan submitted by a professional wetlands consultant. The applicant retained the services of a company that was charging \$10K for this. She asked the ConCom to reconsider and that is when I was distracted by the disturbance. She submitted at the discussion a list of plants that her daughter, who allegedly is a wetlands scientist, had drafted. The E.O. stipulated that the plants were to be selected from the ConCom selected list. None of the plants from that list were chosen. I brought this to the attention of the property owner and she agreed, saying "that was to be interpreted as just a draft of a draft, I guess. So she asked me how to proceed. The original E.O. required that the plan be submitted tonight for approval. We're a little behind. After reading the minutes, it seems as if the ConCom essentially held up the intent of the E.O. I didn't see any issues. One area that ConCom might want to consider for discussion would be the need to hire a professional surveyor to survey the bank. That might not be necessary and that would substantially reduce the cost to the applicant. So if the ConCom is willing to re-entertain this, they could modify the E.O. eliminating the need to hire a professional surveyor, but still require a professional wetlands consultant to draft a restoration plan with a site plan for the Oct. 5 meeting. It would be nice if we could approve a plan Oct. 5 requiring installation of plants by mid-Nov. before we go into winter.

**Steve Langlois:** Something I would suggest, since I did go out and look at that site, nothing was pulled out of the ground, no dirt disturbed...they cut the tops off of some of the trees. They probably won't die. But there are some invasive species on that lot. It might be more productive to have them go after the invasives so that the native stuff can flourish. That might be a good mitigation.

**John Lopez:** We're dealing with violations to the endangered species act, violations to the wetlands act, the Amesbury Ordinance, the rivers act, and from an engineering perspective, our concerns are if you lose the trees or vegetation holding the bank in place, you run the high risk of losing Pleasant Valley Road. That is where a lot of the concern to either re-vegetate or do something. But I think your invasive species idea is good.

**Suzanne Egan:** I think it's a good idea to have some sort of remediation or restoration of the site that goes to pulling out the invasive species. But I think we'd need an inventory of the plants that are there and their viability to determine how many native plants are on the site vs. how many invasives there are. If there is enough native plants that will actually take over and preserve the bank and serve the purposes of the wetlands areas, then that is a fine idea. I'd be in favor of amending the E.O. to eliminate the need for a land survey. I don't see where that serves the purpose of the vegetation.

**John Lopez:** Focus the language into a motion that amends the E.O. to provide a draft plan which would inventory and provide a method for removal of invasive species.

**Motion was made by Suzanne Egan to amend the E.O. to eliminate the requirement that a survey be done of the site, and also for the applicant to provide to the ConCom an inventory of the vegetation that is within the jurisdictional area, noting the invasive species vs. the native species, along with a plan to enhance the native species along the area. This would be done by a wetland scientist.**

**Motion was seconded by Alan Corey. AIF.**

### **Enforcement Order / Cease and Desist - 21 Rocky Hill Road - (Goodwin)**

#### **Continued to Oct. 5**

**John Lopez:** I don't know what to do with this one. The property owner had another E.O. He removed a significant amount of vegetation using an excavator. He was required to submit a restoration plan. He submitted a plan. I provided some direction to stabilize the exposed soils through planting of grass. But that was just an intermediate step. He assumed that was all that was needed. So he wrote a hand written note to ConCom that he has planted grass. He was also required to attend the last meeting. So I'm stumped.

**Steve Langlois:** I looked at that site also, as did Alan. You say excavator and stream, and everybody freaks out. The excavation wasn't that bad. The guy scraped some stuff out. I don't think he did anything.

**John Lopez:** Well, there was a significant amount of exposed soils even on the riparian bank. He was trying to do the right thing. He had a lot of Japanese knotweed that he was trying to remove, but ...

**Steve Langlois:** I think we're just discussing how far we want to go with what this person has to do to correct it.

**John Lopez:** The commission could end this right now, if you say you could amend the E.O. to require the site be stabilized with the planting of grass. Erosion control has been established, the site is well on its way, and it was lawn to begin with. Procedurally, I

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don't think there is any more to be done. If you want, you can just amend the E.O. to approve his actions. The entire area is maybe from me to the wall. It may be 50 feet from the river. I'm mostly concerned with the portion of the excavated area that is riparian bank and within 25 feet of the bank. It's a perennial stream.

**Motion to continue this hearing to Oct. 5. Motion was seconded by Alan Corey. AIF.**

**CONTINUED BUSINESS:**

**NOI (002-1088) – Old Merrill Street (Toth)**

**CONTINUED TO NOVEMBER 2**

**Steve Langlois:** The ConCom is suggesting that you, the agent, send this applicant a letter, saying "what's going on? We're not going to keep you on the agenda."

**John Lopez:** This has been continued for about two years. The applicant has a piece of property that is riverfront, actually abutting a salt marsh. He ran into some construction problems. The first 100 feet jurisdictional to the rivers act is non-buildable. Because of the incline and the granite of the site, he has run into some complicated engineering issues. But I'll contact him, telling him he can withdraw without prejudice, meaning he can re-submit at a later date, or just withdraw his NOI.

**Motion was made by Suzanne Egan for Agent to contact the applicant and inform him to either withdraw without prejudice or withdraw his NOI, or to submit amended plans for the Nov. 5 hearing. Motion was seconded by Alan Corey. AIF.**

**NOI (002-1125) 23 CLINTON STREET (SCHUCK)**

**CONTINUED TO OCTOBER 5**

**John Lopez:** This is a property that is in receivership. We're working with the A.G. office on this. A NOI was submitted. It has gone through the Mill River peer review process. The applicant is in the process of amending the proposal to meet the recommendations of our consultant. I think by Oct. 5 we should be ready to entertain the amended version.

**Motion to continue to Oct. 5 was made by Suzanne Egan. Motion was seconded by Alan Corey. AIF.**

**RDA – 18 LAKE ATTITASH ROAD (DESESA)**

**John Lopez:** This is an RDA for the proposed removal of several trees, approx. 100 year old mature white pines in the applicant's back yard, certainly within the fall line of her house. Also for the removal of a brick patio and replace it with grass. ConCom requested at the Aug. 3 meeting a site plan with more information and documenting the location of the trees. The applicant stopped by to get additional information. I provided it to her. This was several days after the Aug. 3 meeting, and I never heard from her again.

**Motion to continue to Oct. 5 was made by Suzanne Egan and seconded by Alan Corey. AIF.**

**NOI (LOCAL ONLY)- 9 – 13 South Hampton Road (QUINTAL)**

**John Lopez:** This was previously opened I believe at the Aug. 3 meeting. This is for the construction of two houses. ConCom requested an alternative proposal. The applicant is here to propose. This would propose the filling in of an isolated vegetated wetland, jurisdictional only to the wetlands regulations and laws at the local level. Some of the concern was that the re-constructed wetlands, 2:1 ratio, would be located to the rear of the property, making abutter's property jurisdictional to the act and ordinance.

**Carlos Quintal, CAQ Engineering:** We listened to your comments last time around, and we're back with a proposal that we believe reflects your comments and we are now looking to build just one house. It will be a long and narrow house with a two car garage. In order to provide you with a 35 foot buffer from the edge of the proposed home, there is a need to fill in about 300+ square feet and replace it with a 2:1 600+ square feet of wetlands. Sewer and water will be coming off South Hampton Road. We're looking to hug the offset on that side.

**Bonnie Schultz, abutter at 122 Market Street:** Does the moved wetland, does that still come into our property, as far as the buffer zone? (Quintal: we're on the other side). And you're putting the driveway to the front, so this is a sideways house? (Quintal: yes). And you don't think there will be water runoff going that way? (Quintal: it'll run that way, underground.) BTW, it wasn't dry in March. It's always wet, always has been wet. I just don't want that wetland to come anywhere closer to our house.

**Steve Langlois:** What exactly are we here to decide tonight?

**John Lopez:** The ordinance and whether the project as proposed meets the regulations and performance standards at the local level.

**Steve Langlois:** Obviously we're not going to have a third party reviewer on a site like this.

**John Lopez:** I actually recommend it. I recommend a peer review pursuant to the Amesbury Wetlands Ordinance regulations and performance standards and storm water.

**Steve Langlois:** I'd like to do a site visit. It clears things up a lot. You look at it on paper, you can talk about it for an hour, but once you go out and look at it, you can see what's going on.

**John Lopez:** Also, this would be a precedent. ConCom has never allowed the filling in of a wetland. There are a lot of issues in town where this would set a precedent for...pending issues.

**Motion by Suzanne Egan would like to get a third party reviewer to look at this project, look at the site and proposal, do a stormwater.**

**Kinsey Boehl:** I'm not convinced we have alternatives. We went from two houses to one, but what options are available to keep the structure out of the resource area? Reduction in size, something through the ZBA? Change the orientation to follow the property line?

**John Lopez:** I think as part of the motion, documentation from the ZBA should be requested, to support the applicant's claim.

**Amendment to the motion by Suzanne Egan: To hire a third party consultant to review this project, and to request from the applicant information from the ZBA.**

**Paul Gagliardi, attorney for the applicant:** As far as ZBA, I don't think the applicant has ever been before ZBA requesting a side yard setback variance. They have been to ZBA to create two lots, because one of the lots did not have the required width. That

expired, so they went back again for it. That is when ZBA told them not to come back for a width variance again. But they were not there for a side yard setback variance. I agree with the chairman. I think a site visit before you start hiring consultants might not be the worst idea. I think if you visit the site, it may not be as huge an issue as you think it is. But that is your call.

**Kinsey Boehl:** I think from the ZBA's perspective, there is definitely a hardship on the property. That's what you need for justification through Zoning,

**Suzanne Egan: My motion was to hire a third party consultant.**

**Steve Langlois:** And what about zoning?

**Suzanne Egan:** I think the issue regarding receiving something from ZBA has been resolved, because apparently the applicant hasn't actually been to the ZBA. So they don't have anything to present to us.

**Kinsey Boehl:** In my opinion, they need to exhaust all the resources, in my opinion, before even considering the proposal.

**Suzanne Egan:** We were asking for the information from the ZBA because the applicant just told us that he'd already been there. They were told that the ZBA would give them any further relief. So it would be appropriate to get something from the ZBA, if that had in fact been accurate. But apparently it is not accurate. They have not been and they have not requested a variance.

**Steve Langlois:** So they haven't been for a building permit yet?

**Suzanne Egan:** No, you have to get a variance before you can go to the building inspector. They can go today and ask ZBA for a sideyard setback variance and move that house out of the wetlands area.

**Steve Langlois:** We are talking about setbacks. Does this house need a setback for that area, as proposed?

**Carlos Quintal:** Yes it does.

**Paul Gagliardi:** I don't think the lot requires us to go look for a variance from ZBA before we can come here.

**Suzanne Egan:** I don't think we're saying that. We're saying that...

**Kinsey Boehl:** What I'm saying is, there are other options / alternatives, like alternative analysis, either change the house size or variances through the ZBA, relocate the structure to get out of the ...

**Paul Gagliardi:** I doubt very much the ZBA is going to give us a sideyard variance to allow us to build within 5 feet of the sideline.

**Kinsey Boehl:** Show us that.

**Paul Gagliardi:** You're going to ask us to go through a futile effort? The current setback is 15 feet. You want us to go back and ask for 5 feet? I don't think...

**Kinsey Boehl:** Then the only other thing I can say is we don't have all the information to approve it.

**Suzanne Egan:** Or that you don't meet the requirements to approve it. So we're saying we are looking at its too close to the wetlands, that you can do other alternatives available to you. It doesn't look like you have explored those options. You don't have to, that is your right as an applicant. We can look at the application as presented to us like that.

**Motion by Suzanne Egan to have that third party consultant hired and that, if we can, when we do a site visit, have the consultant there with us. Motion was seconded by Kinsey Boehl. All in favor of a site visit was unanimous.**

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**John Lopez:** Two things now: does ConCom know who they would like to retain, and also to what date certain would you like to continue this? So this would be a review pursuant to the Amesbury Wetlands Ordinance. Typically we'd have BSC with Jillian Davies and Domenic Renaldi.

**Steve Langlois:** What about Mill River?

**John Lopez:** I believe Mill River would have to subcontract an engineer. I can find out. I will look into either BSC or Mill River.

**Motion was made by Suzanne Egan to continue this hearing to Nov. 2. Motion was seconded by Alan Corey. AIF.**

**John Lopez:** For the record, the plans of record now are for the project NOI with wetland replication dated Sept. 8, 2015.

**NOI (002-1115) – 13 LAKE SHORE ROAD - (GREENFIELD)**

**John Lopez:** The applicant has requested that this be continued to Oct. 5. up-date: BSC has conducted a site visit with the applicant and they have provided some recommendations for some changes to the sea wall that is being proposed. Ms. Davies would like to see a softer, greener approach. That is being addressed and the applicant anticipates having something for ConCom by the Oct. 5 meeting.

**Motion was made by Suzanne Egan to continue this hearing to the Oct. 5 meeting. Motion was seconded by Alan Corey. AIF.**

**NOI (002-1096) – 127 KIMBALL ROAD - (SCIMONE)**

**John Lopez:** This is in reference to a contract for a peer review. This has been on our agenda for almost a year. The house that presently exists on site is sinking. So the applicant has submitted a plan to remove the existing structure and to replace it with a new structure. ConCom selected BSC and I have a contract for you to approve. The question here was whether or not the proposed project should be reviewed under the wetlands act and the ordinance, but from an engineering perspective, as well. BSC determined that a GEO Technical engineer would be required to do a full comprehensive review. BSC does not have a geotechnical engineer on staff, so they are limiting their review to wetlands. In consultation with a few of my colleagues, notably the director of Public Works, we sensed that a geo technical engineer review is beyond the scope of the wetlands act. We should limit ourselves to just that. The technical review is the building inspector's area of responsibility. I've notified him to be aware of this. But at this point, I'm asking ConCom to ratify the BSC proposal pursuant to review under the group and ordinance. So I recommend BSC for a wetlands review.

**Motion was made by Suzanne Egan to approve BSC as the third party reviewer of this project and to continue this hearing to Nov. 2. Motion was seconded Alan Corey. AIF.**

**NOI (002-1120) - 128 KIMBALL ROAD - (SWIFT)**

**John Lopez:** This was for the proposed removal of the existing structure, and replacement in kind. ConCom selected a peer review by Bob Prokop, who is here to brief the commission. Also, there's been a substantial change in the proposed activity. Plans have been submitted to ConCom. I request that the applicant's representative also brief the ConCom on the proposed changes prior to Mr. Prokop's review, as well as to sign the amended plans for the record.

**Michael Seakamp, Seakamp Environmental Consulting, representing Daniel Swift:** We're actually proposing substantial change to the original plan. Originally, the plans called for demolishing the house and replacement in kind.

(speaker was in front of podium next to a plan to show the changes, but he was too far from the microphone to pick up his soft voice and muffled speech).

**John Lopez:** An earlier proposal had directional drilling under the abutting wetland. Some concern was if the pipe wasn't placed deep enough, it would freeze and burst. Engineering dept. of the city had those concerns. This would effectively discharge effluent subsurface into the wetlands in perpetuity, we'd never know, and would ultimately enter into the city's drinking supply.

**Mike Seakamp:** ( again speaking too far from the microphone to pick up his faint speech.)

**Suzanne Egan:** Has this plan been submitted to ConCom? Do we have copies of that?

**John Lopez:** It was forwarded approx. 2-3 weeks ago, and should be in your meeting packet. I know it was forwarded electronically.

**Mike Seakamp:** (muffled sentences response).

**Suzanne Egan:** This is what was submitted to us, which is very different from what you have there being shown. So we haven't had an opportunity to see that actual map.

**(unintelligible Seakamp response, far from microphone).**

**John Lopez:** Mr. Prokop is here.

**Bob Prokop:** The project has now been reduced to simply a sewer and a water line connection. My report shows I have no issues with it. DPW was fine with the project, running sewer and water lines there. (the majority of Mr. Prokop's briefing was also now too far from the microphone to hear him clearly, standing over by the map on the tripod 6 7 feet away).

**Bob Prokop:** (applicant also stood on far side of plan tripod and his sentences could not be understood on tape until he finally took the podium).

**Suzanne Egan:** Are all those suggestions contained in your report?

**Bob Prokop:** The only one that is not there is item 6, which you may not have, under Suggested Additional Information. But these are not critical. Essentially it is all buffer zone impact or riverfront impact. It is good to know where they are going. That's my only real concern is where these things are going. That may be a DPW issue, but the applicant should work with DPW for where they are going to put these things. So I suggest a new construction sequence and how you control traffic during this, because it is school time, with busses running through there on Kimball Road. So you have to know if they are going to have to close the road down during this.

**Suzanne Egan:** So would you recommend that this matter be continued so that the information is submitted to ConCom and we can then vote on the plan as revised?

**Bob Prokop:** I would like to see it all in one complete package. New construction sequence, plan showing detail for the jacking pits, where they are going, and a narrative would be important too, because you want this for the record. If something is being dug up, you should show it on the plan. These are just details, but otherwise it's an approvable project.

**Mike Seakamp:** I'd like to point out that we did submit 10 copies of the revised project narrative and 10 copies of the revised construction sequence, at the same time that we submitted this revised plan, so with that, the only thing that is missing would be where along Kimball Road the holes are going to be dug. I suggest that DPW gets up there and says "well, the hole can't go where you show it on the plan, it has to go 10 feet the other way," it really is not going to make any difference as far as where the erosion control is, or where the wetlands are, or where the hole is going to be. So we actually have sufficient information on this plan to protect the wetland resource areas. As far as the abandoned septic tank, the pipe is going to be cut, and that's it. There won't be any other action taken, not dug up, etc. So it's not an additional impact to the buffer zone or the river front. I think we have sufficient information here for the plan to be approved, because it shows that the interest of the ordinance and the wetlands protection act are being adhered to. The only potential problem is that when they dig these holes, that the material could erode into the wetlands, and because we'll have this erosion control, that'll be taken care of.

**Kinsey Boehl:** To modify the drawings, how long would that take?

**Mike Seakamp:** It's just a couple dots on the plan, on the road, one over here, and another here, obviously. So two dots, and a third for the sewer hole. It wouldn't take long. You could probably approve this, if you insisted on getting a plan showing those, conditionally to getting those 3 spots noted on the plan. If we had an approval, we'd get it into you, and you could issue the Order of Conditions, subsequent to us making those changes.

**John Lopez:** What the ConCom usually does in similar situations is to remand to the applicant for further proceedings consistent with the peer review findings, resubmit to Mr. Prokop to insure that all his recommendations have been met to his satisfaction. Then the ConCom would act on it.

**Bob Prokop:** (standing near plan on tripod, too far from microphone to pick up).

**Dan Swift, applicant:** I'm the guy looking to do this. About the jacking pits, we don't know where they are going to go. We can put them on the plan, but the contractor is going to decide that, DPW might decide that, we won't know all that until we actually get out there. It is going to be in the street. I can tell you right now, we are not going to be on anyone's private property. As far as relocating wetlands along the street, we'd do more damage getting in there and rocking the flags. We will concede that the road is in the buffer zone. No question, regardless of where flags are placed. Septic system? It's right there (points out on map on tripod). If you saw fit to approve this tonight, we could have the plan back to you with those additions in a couple days, if you approve it conditional to that. Traffic control, I think that would be a DPW issue. I do what they want. I'm not sure what that has anything to do with conservation. Re: the pits, they are going to be wherever DEP wants them. We'll protect the wetlands any way we can. When we did the original plan, we thought, we were really protecting things by running underneath the wetlands. It got rejected, so I don't have any problem running down the road, we've

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already made that change. I'm asking you to approve it conditionally on our submitting a plan showing the septic system. You can make it conditional on disconnecting the septic system and leaving it alone, whatever you want to do.

**John Lopez:** I fail to see why ConCom is not adopting the recommendations of their consultant. That is very troubling.

**Suzanne Egan:** That's what I'm wondering.

**John Lopez:** Put it on a plan, allow our peer consultant to review it, to insure that all recommendations have been followed, then it'd be ripe for approval at the Oct. 5 meeting. It would take 30 seconds.

**Suzanne Egan:** That's why we went through a very contentious meeting last time when we asked this applicant to hire a third party consultant with the fees involved. So we hired a consultant and its in the ConCom's best interest to follow those recommendations.

**Motion was made by Kinsey Boehl that the applicant respond to the request of our engineer and then to continue this to Oct. 5, to make the changes to the plan, then give it to Mr. Prokop. Motion was seconded by Alan Corey. AIF.**

**RCOC – 145 KIMBALL ROAD - (REGAN)**

**John Lopez:** I got a phone call from Mr. Regan, but Mr. Regan, you didn't put your phone number in your message. This has turned out to be far more complicated than I originally thought, and I have shared that with Mr. Paulson, his consultant. There appears to be a superceding OoC that was issued on this project. This is the file here. There is a long history of court cases. Lots of these houses on Kimball Road were part of the same project, went through appeal. The DEP issued a superceding OoC on the DEP 002-526. They approved the project, they proceeded, they incorporated the Amesbury Wetlands Bylaw into their decision, so that means DEP approved the project under state and local, they incorporated it, but then we received a phone call from the former property owner's mother, Mrs. Cain, who stated that she was under the impression that there was an enforcement order issued for a violations and that she thought that maybe that fines were implemented but maybe were never paid. I found the file and also consulted with my colleague at DEP who was the Agent here at the time. We can't confirm that there was ever an Enforcement Order was issued. We think there never was, and that Mrs. Cain is confusing the superceding OoC with a violation. In DEPs order, it stated that " pursuant to their site visit, they found no violations and everything was in order. So what does all this mean legally? Because there's a superceding order, the ConCom does not have the legal authority to issue a CoC under the Act under the state law, you do have the legal authority to issue a CoC under the local, and at the time it was the Amesbury Bylaw, however DEP requests that they assume the lead on this. There are a number of violations that have taken place, which Mr. Paulson documented on the as-built plans. DEP wants the lead on this after they had issued a CoC. They request the ConCom entertain a CoC under the local. They requested Mr. Paulson to submit a request for a CoC pursuant to the superceding order, as well as as-built plans to them. I forwarded that request to Mr. Paulson. That's where things stand.

**John Regan, owner of 145 Kimball Road:** After ConCom spoke last week, you were teetering on the idea of issuing the CoC but you didn't have the initial NOI in front of you. We have that on a poster today for you. We just didn't have the paperwork

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submitted to the ConCom. It is submitted to ConCom now. I'm here to recap what happened last time and nothing more has changed. The letter of the law was followed, there's no impact on the wetlands, we're very far from the high water mark.

**John Lopez:** Everything Mr. Regan said is true, but all that took place before we were aware of the superceding OoC. A superceding OoC was issued pursuant to an appeal launched by attorney Dallas Haines, on behalf of a number of people, that the project didn't meet the conditions of the wetlands protection act. Upon review, DEP approved the project saying it did meet the regulations, and they issued a superceding OoC affirming ConCom's approval. So they said everything is fine, it can proceed, but because it is superceding, ConCom does not have the legal authority. They've asked to take the lead because they are the bear. Legally, this ConCom acts on DEPs behalf. We are their local agent. But when they request to take the lead to review this, I think we should give that consideration. So if DEP reviews this, and they do determine that the modifications that have taken place, such as the deck, if they wish to pursue something on those grounds, then we would have issued our CoC in violation of the law.

**Suzanne Egan:** It's not going to do any good for us to take action on this, because the state could trump that decision. It's in your best interest to allow us to continue this. Once DEP issues you a CoC, then you could come back to us with their CoC then the ConCom would entertain issuing a CoC from the local level. Commissioner Corey just asked if Mr. Regan would have to come back here for that, and I don't think so. It's an administrative exercise. So if I got a copy of DEP's CoC from DEP, then we could just issue it at the appropriate meeting, but let us continue this to the November 2nd meeting.

**Motion was made by Kinsey Boehl to continue this to the Nov. 2 meeting. Motion is seconded by Alan Corey. AIF.**

**REQUEST FOR CoC - (002-1076) - 277 ELM STREET (BEANPOD PARTNERS)**  
**Motion was made by Suzanne Egan to continue this hearing to the Nov. 2 meeting.**  
**Motion was seconded by Kinsey Boehl. AIF.**

**RCoC (002-0704) - 60, 75, 77 MERRIMAC STREET**  
**HATTERS POINT MARINA PARKING, LLC**

**John Lopez:** This is in reference to the request for a CoC for the marina portion of the area at Hatters point. This concerns the trailer and the Enforcement Order, which we've discussed. It was determined at a meeting in August that once the applicant had submitted the E.O. for the replacement of a permanent structure, that would be entertained. There were a number of outstanding issues relevant to this request, concerning storm water, etc. The applicant's representative briefed the ConCom on those several months ago. The hearing was continued until tonight.

**Charlie Weir, Meridian Associates:** We submitted the CoC several months ago, and we went over it in some detail. I believe the only issue was for the parking lot across the street from Hatters point. The ConCom was poised to issue the CoC when the issue of the temporary building came up. So it was decided to put the CoC on hold until such time as the issue of the temporary building was addressed, and there was an Enforcement Order was issued that we would file for a NOI for a permanent structure on the site. That was

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filed as was discussed earlier in the evening, and is next up on the agenda. So I request that ConCom issue the CoC for this project.

**Motion was made by Alan Corey to approve the CoC. Motion was seconded by Suzanne Egan. AIF.**

**NEW BUSINESS:**

**NOI (002-1129) – 60,75,77 (HATTERS POINT MARINA PARKING, LLC**

**John Lopez:** So this is the NOI for replacement of the trailer. The stipulation with the E.O. was that ConCom would entertain lifting the E.O. if the applicant submitted a NOI for the trailer's replacement by Oct. 31. You can see that the applicant has done that. All conditions of the E.O. have been met. So procedurally, I think we should discuss the E.O., and if you feel it should be lifted, then lift it, then we can entertain the NOI.

**Motion was made by Kinsey Boehl to lift the E.O. on #002-1129, 60, 75, and 77 Hatters Point Marina Parking, LLC. Motion was seconded by Alan Corey. AIF.**

**Charlie Weir:** Re: the NOI. It's the trailer. It is placed in that position mostly because there is a sewer easement triangularly comes right around it underground. This is the one place on the site that it fits and doesn't run into any of the other parking or drop off areas or easements. We're proposing that this piece of pavement right here was not approved under the existing order for Hatters Point. That little bit of pavement will be for a temporary drop off. It is allowed to be in that area as a drop off to serve the marina. The marina building itself is within historic tidelands, allowed under Chapter 91 license as a water dependant use. The residential piece is residential use, not a water dependant use. The parking and building had to be kept outside of the historic tidelands.

**John Lopez:** Clearly, requirements call for the building to be on an open pile footing. However, a waiver was submitted, although there was no real great articulation as to why, it was just the waiver of these regulations.

**Paul Gagliardi, atty. for the applicant:** The marina is owned by an LLC of which Mr. McPartland is one of the members. The land itself is owned by the condo associations, and we have easement rights to have the marina building on there. Those rights is a part of this. The developer of the condominiums requests that we move it from where it is over to where we're proposing to place it. One of the things as I talked to Nipun was, Now I was unaware that the PLB had already hired a consultant to review the permits that we have before them. Nipun had mentioned to me that I should ask the ConCom to use the same peer review consultants hired for the condominium, since they'd know the area best.

**Charlie Weir:** I will submit a revised plan to ConCom at the Nov. 2 meeting.

**Motion was made by Suzanne Egan to continue this matter to the Nov. 2 meeting, to have submitted amended plan by the deadline that is compliant with the regulations, then we can send it out to BSC, a review pursuant to the act, ordinance and storm water standards. Motion was seconded by Alan Corey. AIF.**

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**AMENDMENT TO OoC - (002-1111)**

**HATTER'S POINT CONDO ASSOCIATION**

**John Lopez:** This is a request for an amended OoC. There were some minor changes that are being proposed concerning a retaining wall. These were some issues that were brought up during a subsequent discussion.

**Charlie Weir:** In developing the construction documents for Hatters point, there was very minor changes to the site plans. There were some very small raised areas in the green space so that we can provide for aesthetically pleasing landscaping as possible. There was also some changes to the retaining walls along the street, but those are all outside the buffer zone, anyways. Mostly minor changes to grading, overall a reduction in impervious surface from what we proposed originally. Very small changes on the plan that we will build, the official plan.

**Motion was made by Kinsey Boehl to approve the amended CoC. Motion was seconded by Alan Corey. AIF.**

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

**RDA – 58 MACY STREET - UNITY ON THE RIVER - (GALLANT)**

**John Lopez:** This also includes a waiver request. The applicant is the Unity Church, requesting the modification of a landscape to construct a meditation garden within riverfront area. The waiver request would be pursuant to their status as a non-profit. To request their status as a church, non-profit.

Two women stood before the ConCom in the middle of the floor, did not introduce themselves, and spoke far away from the podium and microphone, so none of it was audible on tape.

**Motion was made by Kinsey Boehl to conditionally approve a negative determination as long as we get a list of plantings on here that are non-invasive, non-hybridized, local species to be reviewed by the agent, also included on the contingent negative determination, I'd recommend waiving the fees due to the tax status of the organization, with a stipulation that the revised plan be submitted to the agent no later than Oct. 31. Motion was seconded by Alan Corey. AIF.**

**REQUEST FOR MODIFIED - OoC (002-1076)**

**277 ELM STREET - BEANPOD PARTNERS**

**Continued to Nov. 2. meeting.**

**NOI (002-1128) - 91 WHITEHALL ROAD - (GILBERT)**

**John Lopez:** This is a proposal to demolish an existing deck and reconstruct it within the existing footprint of a greenhouse, which is also proposed for removal. The applicant also proposes to remove a remnant concrete block wall and a dog run to revive an existing lawn. Activities are within the 100 foot buffer zone to Lake Gardner. A lot of this is within the existing footprint of the existing structure. In addition, a kitchen will be placed on site as well.

**Alan Roscoe, Cammett Engineering:** This is a buffer zone project. Kate Gilbert wishes to remodel the family home. Most of the property is within the 100 foot buffer zone of one resource area or another, be it Lake Gardner water front wetlands or land subject to flooding. It's a remodel within the same footprint. There is a very insubstantial change in the overall square footage. This project has been proposed in a very environmentally sensitive way. The exterior footprint of the full foundation construction is not going to change at all. The screened porches and the decks at the rear of the property are going to be reconstructed slightly different from the existing footprint in a way that will increase setbacks from all those resource areas we just talked about. It's a little bit more than a deck replacement but it is a buffer zone project and all setbacks will be increased as a result of this. We have asked for a waiver to restore the dog run lawn area, because it occurs within 25 feet, but we do have evidence that it was a maintained lawn at some point. There is a concrete block retaining wall below it between the dog run and the water body. That's what we're here for tonight is to clean up the back yard, remove some of the concrete block retaining walls lying around, restore the grass lawn, and then perform the remodel. There is a concrete block foundation beneath the greenhouse now, but it is in disrepair, but it will be replaced with a poured full concrete floor wall in the same footprint that will allow a slight increase in the square footage of the home, although it is not an increase in the square footage of the footprint. The proposed kitchen will be there on that new foundation piece.

**Motion was made by Suzanne Egan to issue an OoC conditioned on review of response by National Heritage review. Motion was seconded by Alan Corey. AIF. Motion to grant the waiver request as submitted regarding the dog run. Motion seconded by Alan Corey. AIF.**

**Motion to allow an open column footing for the new decks was made by Alan Corey. Motion was seconded by Kinsey Boehl. AIF.**

**Motion to close was made by Suzanne Egan, seconded by Kinsey Boehl. AIF.**

**NOI (002-1130) - 355 Main Street - (Gail Welch)**

**John Lopez:** This is an NOI for a proposed project to demolish an existing garage and construction of a new garage. Additional work will include the removal of 24 inch of a 24 inch maple tree, as well as the expansion width of a paved driveway. Applicants states that the demolition of the existing structure would remove 80 square feet from the FEMA flood zone.

**Alan Roscoe, Cammett Engineering, Representative for Gail Welch (not named):** There is a portion of the existing garage that lies within land subject to flooding along the Merrimac River. The garage itself is in disrepair and needs work, but rather than replace it in its current position, we felt it best to move it out of the resource area. We're proposing to take similar footprint of the garage and slide it forward on the side of the home towards Main Street. By widening the driveway, we still maintain parking for at least two cars and provide the reconstructed garage. Other than that back portion, all the other work is proposed within a buffer zone of some other resource area. But the new placement of the garage puts it outside of the flood plain. We're working within the buffer zone so it will require a waiver.

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**Motion was made by Kinsey Boehl to include a planting plan for 2:1 restoration for the maple tree that is being removed, then resubmit the plan and we hope to wrap this up at the Oct. 5 meeting, when this hearing will be continued. Motion was seconded by Suzanne Egan. AIF.**

**NOI (002- 1131) - 4 NOEL STREET - (SPARHAWK ENDEAVOR LLC)**

**John Lopez:** This is a proposed project to enhance the site with a 1373 square foot addition to an existing structure. The addition will serve as classroom space as well as reconstruction of a handicapped ramp and parking area, reclaiming pavement, installation of erosion control. Applicant states that only a portion of the proposed project is within the 100 foot buffer zone to bank and bordering vegetated wetlands. This is more or less a drainage swale.

**Alan Roscoe:** Pretty small addition of the additional classroom. Some of the parking spots adjacent to the building will be re-configured and providing handicap access. But there is an overall increase in impervious with the additions. The simplest way to mitigate that is again to create an infiltration strip along the existing edge of pavement so we pick up that increase in flow and increased pavement, we pick it up first before it gets discharged into the catch basin that is down stream and closer to the bank on Noel Street. That's how we mitigate the increase in runoff and it is sized to contain 7 inches of rainfall over the new impervious area.

**John Lopez;** Also included in the NOI is an Operations and Maintenance plan for the trench which seems appropriate. That should be included as conditioned in perpetuity.

**Steve Langlois:** So you're putting two additions onto the building: 891 and 482 square feet?

**Alan Roscoe:** Correct.

**Motion was made by Kinsey Boehl to approve with a draft OoC for 002-1131.**

**Motion was seconded by Alan Corey. AIF.**

**Motion to adjourn was made by Kinsey Boehl and seconded by Alan Corey. AIF.**

**Meeting was adjourned at 10:22 P.M.**