

APPROVED

**AMESBURY CONSERVATION COMMISSION
SPECIAL MEETING, CITY HALL AUDITORIUM
JUNE 17, 2015 MEETING CALLED TO ORDER AT 8:30 P.M.**

PRESENT: STEVE LANGLOIS, MICHAEL BIK, KINSEY BOEHL.

ABSENT: SUZANNE EGAN, ALAN COREY.

ALSO PRESENT: JOHN LOPEZ, AGENT, PAUL BIBAUD, RECORDING SECRETARY.

ENFORCEMENT ORDER – INTERSTATE 495 S – MASSDOT

John Lopez: This is pursuant to an Enforcement Order that was issued on May 20, 2015, pursuant to violations of the Mass. Wetlands Protection Act. The Amesbury Wetlands Ordinance, and Mass. General Laws, Chapter 131 Section 80 A, as it relates to the breaching of beaver dams. The applicant was required to submit various documents, which are stipulated in the attachment to the enforcement order. All documents have been met in the time prescribed, with the stipulation that a special meeting be held today to discuss the draft restoration plan. The purpose would be to approve or approve as amended, or deny, for that matter.

Steve Langlois: Now this is along 495 going southbound?

John Lopez: Correct. This violation was initially brought to my attention by staff from the DEP northeast region wetlands division, who observed the excavator parked on the side of the road. They also noticed what was described as dredging and excavation within a most likely bordering vegetated wetland. I investigated the site the next morning and documented it.

Kinsey Boehl: The restoration plan overall looks pretty good. It has a 2 year monitoring period referenced in it. One thing we should discuss: I believe this is the third violation for the project?

John Lopez: Well, it is the third violation concerning DOT within Amesbury on various topics, one of which is ongoing, being the relocation of a stream to a different location, and the grading of it. One enforcement issue is ongoing: the DEP has assumed responsibility for it. That would be for the filling in of a wetland along route 110 in front of Stop and Shop, and also for the relocation of a stream in a location which was not authorized. Also what is legally defined as fill, the DOT lined the bottom of this stream with rip rap, and that too was unauthorized.

Kinsey Boehl: Ultimately, what stops the violations? What do we need to do to make sure these don't continue?

Sandy Sprague, Environmental Engineer for District Four with MassDOT: The three violations, two are with construction. We have different divisions at MaDOT, so this is a maintenance one, so we like to keep them separate. This issue is the team got a phone call from the town. The maintenance guys got a call saying that there was flooding related to a beaver dam. So they checked it out and got permits from the Board of Health, then Amy called John the next day, but it didn't end up working out, and they saw that the stream was filled. So because it was part of the issue of flooding, they took out the dam. Going forward, we are coming up with different protocol on how to deal with issues. We're figuring that out as we go. It's only been a couple weeks since we sat down

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to do that. As for maintenance, we will definitely be handling it a different way. It will all be going through me, and I'll be checking it, giving them a checklist to go through, just to be sure.

Kinsey Boehl: Do you guys have training programs for your maintenance crews to go through? Things like, that looks like a stream, we probably shouldn't be digging in it?

Sandy Sprague: Yes. But, also you have to understand that most of the drainage on the wetlands on the side of the road is our drainage. So to them, they say its drainage, I know its wetlands. We're doing a training on looking at the GIS layers and all that of figuring it out for them. We have an SOP for them, we're changing it, since it is old, and to reflect the new Wetland Protection laws. But we will be coming before you guys, if we have drainage issues, if we have to clean out, because of flooding roads or whatnot, we will be coming before you guys for all the corrects permits in the future.

Kinsey Boehl: How does that trigger, procedurally, for you guys in your internal processes for sending out a road crew. What turns on to contact environmental engineers to go through the permitting process?

Sandy Sprague: So they look at a project and say, "OK, this is where we are," and they send me a scope of work. If they know like if it is curb to curb, they're good. If it is not, beyond the curbs, besides the typical mowing and whatnot that they are exempt, and they know their exemptions. They'll send it to me. I have a whole stack of them on my desk right now that I have to go through and make sure we're going to change things up. District Four has definitely come through, and we try to get on top of things, like getting someone who actually knows the permits, which is me. I used to do design and construction permitting for DOT. So they are trying. It was never intentional. They thought they were doing something right. There were people in your town being flooded out, so they fixed it.

Kinsey Boehl: For the other two violations, were there any fines?

John Lopez: Yes. But actually, you can add on another violation that I'd forgotten about. Two of them involved the filling in of a wetland, one on Route 110 that I mentioned, and I believe DOT was fined \$16K for that, and the DEP assumed responsibility for that. There is also an army corps of engineers issue, in that the army corps was requiring restoration and I believe it is going through DOT find a location to provide sufficient mitigation. That is hung up at the army corps level. The additional violation relevant to the bridge: we had one last winter, unauthorized open water dumping of snow into the river.

Kinsey Boehl: Then there was the dumping of fill too, right?

John Lopez: Right. There was a salt marsh under the Whittier Bridge that was filled, and I believe that was a \$32K fine...something like that, by the DEP, who assumed responsibility for that. Outside the fine, there is also a restoration plan that has to be implemented.

Sandy Sprague: We have our wetlands scientist here, if you want to go through the plan.

Kinsey Boehl: I reviewed it. I'm ok with the restoration plan. I'd be ok with amending the Enforcement Order to incorporate the restoration plan as written. The only other thing that might be on the table would be fines.

Steve Langlois: My opinion on the fines is, seeing that they have brought in this woman to take over this new position, we can give her a break on it. This is my opinion. If it

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happens again, we'll be very disappointed, and have to act differently. At least action is being taken to improve it.

John Lopez: There seems to be a real communication gap between DOT management and their either DOT field staff or contracted field staff. For what its worth, my primary contact throughout this was Ms. Lynch, and I believe she was unfamiliar with the beaver dam breach protocol on the laws. But once she was informed and was sent a copy of the law, she understood that this didn't allow for the complete removal, immediate removal, or the immediate breach of the dam. She actually provided some good information. Unfortunately it was after the fact and, for the record, the emergency breach request was denied by the commission, pursuant to the wetlands act and the Amesbury Ordinance, because there was no imminent threat. At that point, the dam had been breached, and any flooding hazard didn't exist.

I would suggest that if a commissioner feels that fines are appropriate, a motion could be made to fine or not to fine, with discussion and then a vote.

Motion was made by Kinsey Boehl to amend the enforcement order to include the restoration plan as written, which does include a two year monitoring period.

Motion was seconded by Michael Bik. Vote was unanimous to amend.

Motion was made by Michael Bik to fine them \$1K in regards to this violation.

Motion was seconded by Kinsey Boehl. Vote was two votes for a fine, one vote to not fine (Langlois). Motion to fine carries.

Motion was made by Michael Bik to close this hearing. Motion was seconded by Kinsey Boehl. Vote was all in favor.

Meeting adjourned at 8:45 A.M.