

APPROVED



CONSERVATION COMMISSION MEETING MINUTES OCTOBER 3, 2016

City Hall Auditorium – 6:30 p.m.
62 Friend Street
Amesbury, MA 01913

ATTENDANCE: **Dennis Moccia, Adrienne Lennon, Steve Langlois, Alan Corey, Suzanne Egan**

ALSO: **John Lopez, Conservation Agent; Barbara Foley, Recording Secretary**

ABSENT: **Kinsey Boehl**

TRANSCRIPTION BY: Joan Baptiste

Meeting Called to Order at 6:35 p.m.

Three applicants have continued to another meeting.

NOI (002-1147) 9 - 13 South Hampton Road (Quintal) (*continued to November 7*)

NOI (002-1141) Village at Bailey's Pond (Fafard Development) (*continued to October 17*)

NOI (002-1139) Riverfront Drive & Pleasant Valley Road Map (Desmarais) (*continued to November 7*)

Minutes: September 19, 2016

Motion by Suzanne Egan to approve the minutes of September 19, second by Adrienne Lennon. AIF (5)

Continued Business:

NOI (002-1158), 6 Star Lane (Jennings)

John Lopez this is a NOI that was submitted in support of the repair of an existing sea wall at Lake Attitash. The Commission asked the applicant to submit a waiver because there would be work within the 25 foot no disturb zone. Applicant was unable to attend but I told him that I would represent his interests.

Motion by Suzanne Egan to approve the OOC for 6 Star Lane, second by Adrienne Lennon. AIF (5)

~~

NOI (002-1155) 425 Main Street (Sickler)

John Lopez this is a NOI in support of some improvements to an existing structure. The applicant was asked to consolidate all of the plans that he had submitted into an existing conditions

A P P R O V E D

site plan and proposed condition site plan. The applicant has just submitted them now after the submission deadline.

Curt Sickler, 425 Main Street – we propose a deck on two sonatubes and cutting down a tree.

Adrienne Lennon we don't have a problem with what you plan to do but there is the issue of due process. None of us have had the opportunity to look over this plan before the meeting tonight. We can't approve something tonight that will be date stamped tomorrow.

Suzanne Egan it is possible for you to create the two documents that we've asked for and what is required under the regulations. If you need help in understanding what we need then John (Lopez) would be a great resource. We are not asking you to take all of that information, some of which was irrelevant to what you're asking of the commission. We will continue it tonight.

Curt Sickler I only blew up the plans that I submitted last time.

Suzanne Egan that's not what we asked you to do.

Motion by Suzanne Egan to continue 425 Main Street to next scheduled meeting (October 17 or November 7) and request that the applicant submit an existing conditions plan and a proposed conditions plan, second by Adrienne Lennon. AIF

~

RDA - 34 Birchmeadow Road - Fence (McDermot)

John Lopez this is a proposal for a fence to replace what was an existing fence which was destroyed by a microburst in the Lake Attitash area.

Scott David, Tiger Property Services representing Jay and Shoran McDermot, of 34 Birchmeadow Road

We plan on replacing the fence but moving it to the boundary / property line but in doing so 27 feet of the fence would be within 97 feet of Lake Attitash. The rest of the fence is at 103 feet. It is shown on a plan.

Adrienne Lennon posts installed by hand, no heavy machinery?

Scott David yes – and no stockpiling of materials. One day installation.

Adrienne Lennon do you have a 2 x 3 sign ready to install and remain visible during construction.

Scott David yes - it will be a 5 foot cedar fence.

John Lopez the commission received abutter comments

Scott David it will be placed on the boundary line which is allowed under Amesbury zoning. We have met with the fence committee.

Abutter comment

Bernice Nagle, 2 Star Lane direct abutter no problem with the fence but when they put the pink tape up they wrapped it around the granite markers and I went to the engineering firm that surveyed my property and he said the boundary line is in the middle of the granite marker. They own, as I do, to the middle of the granite marker and the tape is on my side of the marker. I just want to make sure they put the fence on their side of the marker.

Suzanne Egan the red line shows the boundary line.

Bernice Nagle it's wrapped around the whole granite marker and half of that granite marker belongs to my side of the property.

Suzanne Egan I would suggest that what we need is a little bit more detail showing us the exact dimensions of where the fence is. If it's a two foot setback from your boundary line then we can

A P P R O V E D

consider it if that's what we have. But since this looks like you've drawn the red line on that line and there's no dimensions then it makes it challenging for us.

Scott David the fence will be on the applicant's property line on their side of the granite bounds.

Motion by Adrienne Lennon to make a negative determination for the RDA 34 Birchmeadow Road under the condition that the posts are installed by hand with no heavy machinery and no stockpiling of materials on site and a two foot by three foot sign installed to remain visible from a public way reading ACC 002-34 during the duration of installation. Second by Dennis Moccia. AIF

~

New Business:

NOI (002-1161) 34 Birchmeadow Road - Dock (McDermot)

John Lopez this is a NOI in response to a positive determination issued April 14, 2016 requiring the applicant to submit an NOI. The proposed dock is of aluminum construction. Abutter comments have been received.

Woody Cammett, Engineer 297 Elm Street representing Jay and Sharon McDermot. They are proposing to install a seasonal dock in Lake Attitash across from the driftway that they have rights to. The dock is going to be four foot wide, 36 feet long with a platform at the end that is another 8 x8. It will occupy 208 sq ft of the great pond and will be taken out at the end of the season and stored on their property which is at the end of the driftway where they currently reside. DEP had no comments on the application. They are using the rolling dock system which provides large wheels to roll the dock sections in and out. They are adjustable from the surface. The dock will be totally within the water, it will not be attached to the shore line.

John Lopez the dock itself is reflective of best management practices. The abutter questioned the location of the dock. Her claim is that the dock is being proposed on property owned other than the applicant. The address given on the notice of intent (34 Birchmeadow) is not reflective of the actual physical location of the dock which is between 2 and 4 Star Lane.

Hal Beattie, Healey Deshaies Gagliardi and Woelfel attorney representing Jay and Sharon McDermot As I read the application it describes the location of the project as being between 2 and 4 Star Lane the abutter, Ms. Nagle is at #2 and the other abutter Ms. Bellisle is at #4. The driveway runs between those two properties to Lake Attitash. The dock itself will be within the great pond known as Lake Attitash. So the applicant is certainly not trying to mislead anyone – that was the best way to describe the street address of the project.

Adrienne Lennon your client has easement rights and water access rights to the driftway?

Hal Beattie yes – that was actually the subject of extended litigation that went to Mass Appeals Court and they confirmed the land court's decision and judgment that in fact the McDermot's do have the legal right to pass and re-pass along the entire length of this right of way known as the driftway.

Steve Langlois an easement usually states who has the rights. Who is who in this case?

Hal Beattie those rights have already been adjudicated. The easement is ancient. Once the easement is identified the landowners who abut the right of way have the right to use the entire length. It is not restricted.

Steve Langlois if two other abutters have legal right of way and the dock is attached to the ROW does that dock become a ROW for the three?

A P P R O V E D

Hal Beattie the dock is not attached to the ROW. The dimensions of the driftway only extend down to the high or low water marks. My point is the dock is entirely within the great pond. It is not attached to the drift way, there is nothing physical attaching the dock to the driftway and so the case law says when you're in a great pond no private parties the bed of the great pond. The abutters don't have property rights in the physical location where this dock is going to be situated.

Suzanne Egan Are you saying that your clients have property rights to exclusively use that portion of the great pond.

Do they need a chapter 91 license?

Hal Beattie this is how this all arose. The form of license they are applying for is a simplified license under chapter 91.

Suzanne Egan do they have one?

Hal Beattie no private property owner have exclusive property rights in the bed of the lake but under chapter 91 the landowners with a pertinent right to use the lake such as the McDermots do have the right subject to your approval to put the dock in the lake with certain parameters. It can't go more than half way out to the other side of the lake, things like that.

Steve Langlois We have nothing against anybody putting a dock in the water – it just seems that when it's an easement it stretching it a little bit.

Hal Beattie attached to the NOI is a letter that I had written to DCEP that explains some of that and sites some of the cases. One of the cases that pertains to some of the issues here is attached to that. Letter dated June 3 to Phil Dipetro of Mass DEP that answers some of the questions.

Suzanne Egan so if this is on the basis on being on property that others have an interest in it seems to me that they should also sign the application. If your clients don't have exclusive legal rights to this property then all others that have an ownership interest in that land should also be signing this application. Because our application says these are the property owners and we're requesting permission to do this and you're saying that we have an easement on this and therefore have that right, but we typically have everyone who has an interest sign the application. So that they are saying we all agree.

Hal Beattie I respectfully disagree but I can understand why you're thinking that way. That was one of the first issues that I had to look into. Within this letter I explain with a case noted where an abutting land owner who owned the land at the waterfront protested that the application should be subject to the written consent of the landowner and the court ruled that because no private owner has ownership of the water that the applicant does not need the consent of an abutting landowner. The bed of the great pond is owned by the public (every inhabitant of the Commonwealth of Massachusetts). If you take the avenue you are exploring to it's logical conclusion it would mean that it would have to be signed by every inhabitant of Massachusetts.

Adrienne Lennon so they are going to walk into the water to get to the dock? I'm impressed.

Steve Langlois we have a person on the left and a person on the right of the driftway, do the McDermots live on either the right or the left.

Hal Beattie they live on the other side of Ms. Nagle. She is at #2 but the driftway extends up past Ms. Nagle's property and Ms. Bellisle's property and runs along side a portion of the McDermot's property.

Steve Langlois I don't feel comfortable making a decision on this.

Hal Beattie according to the state with a simplified license within certain parameters which they have fallen into (can't be too large, can't extend beyond half way point in the body of water). This will be a seasonal installation. I think your reluctance is understandable until you read the information we have submitted.

A P P R O V E D

John Lopez for clarification the dock does not touch the bank

Hal Beattie it doesn't touch the driftway and it doesn't go beyond the limits of the great pond. There may be times when the water level drops. But the dock does not exceed the limits of the great pond.

Woody Cammett they are not in the bank.

Dennis Moccia the dock will not touch the property on the easement? Does this commission have the authority to approve anything that isn't on the property owner's property?

Steve Langlois this is a new one.

Suzanne Egan so the application states "Property owner" if different from the applicant. Then you go to the signature page and you see signature of applicant and then signature of property owner if different. The regulations and our application require a signature of an applicant and property owner.

Hal Beattie that's when an applicant is using another person's property. But in this case where the applicant has property rights that allow the access to the body of water, they don't have to be a waterfront owner. This application is design for the situation in which the applicant is not the owner of the property. The dock is going to be situated on the bed of the great pond and it's not any private person's property.

John Lopez Mr. Bailey the harbormaster would make a judgment pursuant to the waterways act and not the wetlands act. In McDermot v. Nagle I think the court reserved judgment on whether or not a dock could exist until the applicant exhausted all administrative options including the submission of a Notice of Intent or an RDA for the dock.

Hal Beattie not exactly. What the judgment actually says is that the court doesn't have jurisdiction to make a determination as to whether the dock can rightfully be put in the great pond because it's within the jurisdiction of the state and in some cases the commission. As far as exhausting administrative remedies what the court was talking about was the fact that the opponents in that case have not exhausted the administrative remedies to challenge the placement of the dock on the lake and now this is what the opponents are doing is the administrative remedy of when it comes up before the state or conservation commission in lodging their objections, which they have. So this is that part of the process. The court issued a finding that it did not have jurisdiction because the jurisdiction is with the state and then depending on the circumstances also with the conservation commission. Initially, the McDermot's position was that they were repairing and maintaining a dock that had been there prior to the enactment of the act. That is a difficult fact to convince someone. They did a cost / benefit analysis and figured it was better to do the NOI than to try and conclusively proof that the dock predated the act and therefore they wouldn't have to do an NOI.

Suzanne Egan I feel like this matter has been involved in a lot of litigation and I am unclear as to whether or not we have the authority to issue an OOC for this. SO I would suggest we have this referred and continue it for one month and get some legal opinion on this issue, reading the cases, because there is a lot of legal information presented to us.

Motion by Suzanne Egan to continue this to next meeting (November 7) and to request legal opinion from town counsel regarding the commission's authority to issue a OOC in this matter, second by Adrienne Lennon . AIF

Alan Corey have we spoken to Jack Bailey about putting in the dock.

Hal Beattie I sent a letter similar to this to the harbormaster but that was in the context of a seasonal 10A document. Then the McDermots decided to go for a chapter 91 simplified license.

A P P R O V E D

The Conservation Commission has the right to decide if an NOI should be filed and rule on that. I did speak with the harbormaster earlier.

Abutter comment – from the audience (inaudible)

~~

RAOoC - (002-1079) 39 & 39A Water Street (Boston Gas d/b/a National Grid)

John Lopez this is a request to amend an OOC pursuant to an order of conditions which was issued as amended on August 17 2015. Work associated with the remediation of a former manufactured gas site at the end of Water Street on the banks of the Powow River. This was a year long review process. Mill River was retained. The applicant is here requesting an amendment to that approval. Also in consult with the applicant they have a proposed construction timeframe. In order to be proactive, I've taken the liberty of soliciting a letter of engagement from Mill River consulting for environmental monitor services as required under the OOC.

Mark Manganello with LEC Environmental also Steve Raymond from GZA (project engineers) and Mike Giamo from Robinson and Cole. Since the OOC was issued, National Grid and the project team have secured all the additional necessary environmental permits. They have hired a contractor and plan to go to construction as soon as October 18th. We are here to amend the amended OOC for a construction related change to the equipment access road.

Steve Raymond provides a brief overview to the project.

Mark Manganello we are here to ask for an amendment to the OOC which will allow us to put asphalt on the construction access road instead of gravel.

Suzanne Egan what's the plan once completed?

Mark the area will be completely restored.

John Lopez there is a planting plan

Motion by Adrienne Lennon to amend the OOC for the 39 39A Water Street Boston Gas/National Grid DEP# 002-1079 limited to the plan entitled Erosion and Sedimentation Control Plan drawing C-7 dated June 2016, second by Dennis Moccia, AIF

Motion by Adrienne Lennon to approve the Mill River proposal to monitor the site, second by Dennis Moccia. AIF

Additional amendment of Water Treatment to Sewer System. We have made application to the City for permission to do it.

Suzanne Egan I suggest that Mill River conduct a review and provide us with their recommendation at the next meeting.

~~

NOI (002-1159) 84 Macy Street (Kucich)

John Lopez this is for the proposed redevelopment of an existing fast food restaurant within 100 feet of a buffer zone to bordering vegetative wetlands. The work would include the demolition

A P P R O V E D

of an existing structure (McDonalds) as well as associated site amenities and landscaping. I have secured a letter of engagement for a peer review from Mill River.

Eric Daboul, Boehler Engineering representing McDonalds. Site is 1.5 acres developed with paved areas and 4200 sq. ft. building. Existing wetlands are delineated on the plans. On site Stormwater is collected by catch basins. Shows proposed work. Building will be approx. 500 additional sq. ft. Will be reducing impervious area by appx. 3100 sq. ft. Shows grading and drainage plan and stormwater management plan. Propose pre-treatment by installing deep sump and hooded catch basins. Will correct runoff and erosion from and of the site by building a concrete headwall. None of the work will take place in the wetlands. Shows Erosion Control plan. Proposes silt fence and straw bales all around the perimeter of the site to ensure no sediment is getting into the wetlands during construction. All catch basins will have filter sacks. Soil stockpile area outside of 100 foot buffer which will be surrounded by silt fence and straw bales. Shows landscape plan. Propose all new landscaping along Macy Street. They will be going before Planning Board as well.

Motion by Adrienne Lennon to continue the hearing to December 5 and to retain Mill River Consulting for peer review, second by Suzanne Egan. AIF

~~

NOI (002-1162) 473 Main Street (D'Arcy)

John Lopez this is a notice of intent for the support of renovation of existing single family house. Proposal is to demolish the outbuildings which the applicant claims have deteriorated and no longer safe for occupancy. The demolished structure will be replaced with a two story structure measuring 36 x 36 with an unfinished basement, three car garage, living space on first floor. In addition the applicant would like to remove an existing driveway and relocate it elsewhere. The driveway would measure 10 x 18 and would connect to the main living space and would be angled differently. In addition a brick patio would be installed. There are a number of trees that would have to be removed to facilitate the project. Replacement ratio is 2 to 1. He has been provided with a list of native shrubs. I have solicited a letter of engagement from Mill River for peer review.

Joel D'Arcy orients the commission of the property location on the corner of Old Main and Evans Place. We propose to eliminate the existing driveway and relocate it. The proposed plan shows a 2 ½ car garage that resembles a carriage house. Garage entrance will be at street level. Would like to put foundation in before frost.

Suzanne Egan is there an increase or decrease to the impervious area?

Joel D'Arcy The net will be significantly less impervious.

Dennis Moccia Could you put sedimentation control on your plan for the next meeting?

Joel D'Arcy yes

Adrienne Lennon you plan to fill some of the riverfront? That should be highlighted.

Joel D'Arcy the fill would be a positive thing.

Motion by Adrienne Lennon to ratify the proposal for peer review from Mill River Consulting with comments from the DPW director and to continue the hearing until November 7, second by Suzanne. AIF

A P P R O V E D

~

RCoC (002-128) – Pleasant Valley Road, Bartlett’s Reach (Gemini Property Management)
John Lopez this is in reference to a OOC which was issued on June 16, 2006 for the construction of the subdivision known as Bartletts Reach. The applicant’s rep is here with an assessment and has provided as built plans.

Woody Cammett, Cammett Engineering representing the Bartlett Reach Condominium Association. Researching this OOC we were originally involved with the developer of the property. The economy went south and he then gained a partner for the job to complete it. In that they filed an OOC with an environmental consulting firm that is no longer in business. We do not have the original NOI. We know there was replication on the site. We had our wetland scientist flag the existing wetlands as it sits now and compared that with the plan of record. We came up with quite a differential between what was originally the wetland area and what the wetland area is now. It is our belief that the dashed area on plan is the replication area that occurred on the site.

Motion by Adrienne Lennon to issue a certificate of compliance for DEP #002-0128 Pleasant Valley Road, Bartlett’s Reach, second by Dennis Moccia. AIF

~

NOI (002-1160) – Pleasant Valley Road, Bartlett’s Reach (Kitsakos)

John Lopez this is for the proposed repaving of an existing driveway. The paving would be within the existing footprint. No expansion is proposed. There is a slight modification – the existing island at the entrance will be replaced with new of the same size but different configuration and plantings.

Woody Cammett, Cammett Engineering representing the Bartlett Reach Condominium Association. This is to repave a large portion of the existing access road and driveways. Reconfiguration of entrance island with new planting plan. Propose silt sock erosion control between the back of curb and wetlands. We will grind existing top course and replace with new top coat. We will be using raised granite curbing for the outline of the island.

Suzanne Egan motion to issue an OOC for DEP #002-1160 Pleasant Valley Road, Bartlett’s Reach on the condition that a landscaping plan for the entrance with Commission’s approved plants be submitted to John Lopez within 30 days, second by Dennis Moccia. AIF

Motion by Suzanne Egan to close the hearing, second by Adrienne Lennon. AIF

~

NOI (002-xxxx) Clark’s Road, Birchwood Point (Castiglione)

Woody Cammett – this does not yet have a DEP # and the applicant’s check to them has not yet been cashed. We have to assume that the check has been lost. This is a repaving the parking lots as they exist today. There will be erosion control between the parking lot and where there are wetlands which are minor.

A P P R O V E D

Motion by Susan Egan to issue a negative determination for the project Clark's Road at Birchwood Point for the purposes shown on the plans and that all conditions contained within our standard OOC shall be attached, second by Adrienne Lennon.

Suzanne Egan motion to amend by adding a sign shall be displayed during construction which reads ACC 002 19-25, second by Alan Corey. AIF

~

Motion by Suzanne Egan to adopt a letter permit process to cover repaving so that applicant's don't have to come before the Con Com, second by Adrienne Lennon.

Discussion –

John Lopez suggests that the Con Com form a subcommittee to review trees, paving, fences.
Suzanne Egan I have examples of some policies to share with the commissioners that can help us. This is a work in progress.

Motion by Suzanne Egan to create a subcommittee to review minor matters including repaving, trees and fences, second by Adrienne Lennon. AIF

Motion by Suzanne Egan to appoint Dennis Moccia as a member of the subcommittee, second by Adrienne Lennon. AIF

Motion by Suzanne Egan to appoint Alan Corey as a member of the subcommittee for a period of three months, second by Adrienne Lennon. AIF

Motion by Suzanne Egan to have the proposed regulations for the subcommittee on the November 7 agenda, second by Adrienne Lennon. AIF

Motion by Suzanne Egan to close the meeting at 8:50 p.m., second by Adrienne Lennon. AIF