

**Town of Foxborough  
Conservation Commission Minutes  
October 25, 2010**

**Members present:** Bob Boette (Chairman), Allan Curtis (Vice Chairman), Harold Blomberg, Doug Davis, Judi Johnson, Jim Marsh and Eric Nelson

**Also present:** Jane Pierce, Conservation Manager

**Meeting Opened**

Bob Boette opened the meeting, held in the Andrew A. Gala Jr. Meeting Room, at 7:00 p.m.

**Public Comments**

**Collapsed Culvert at 93 Mill Street**

Bob Swanson, Highway Superintendent, had called Jane this afternoon to ask about what he referred to as an “emergency” (24”) culvert repair at 93 Mill Street. Jane had asked him to attend tonight’s meeting to provide Commission with the details of this proposed repair.

Bob S. explained that last week they had discovered that the culvert at 93 Mill Street (at Law’s Farm) had collapsed after a recent water main break (repaired by the Water Department), creating a sink hole in the road. He wanted the Commission’s permission to perform an emergency culvert repair, since there wouldn’t be enough time to schedule a wetland hearing before the end of the paving season, which ended in November. He already had a contractor scheduled for the upcoming Thursday and Friday and was concerned that he would not have time to schedule another one, if he had to cancel this one, since contractors are very busy this time of year.

Bob Boette asked Bob S. to provide the Commission with an “after the fact” filing when the work was done. Jane has not visited the site yet and expressed her concerns about the proposed project (i.e. there were no plans, no de-watering and erosion control specifications, etc.). Bob S. stated that they would get the collapsed pipe out in one day, explaining that the existing metal pipe was 30” but he was planning to replace it with a 24” concrete pipe.

Bill Hocking, present in the audience, voiced his concerns, saying that there was a lot involved in replacing a culvert pipe and then asked whether water was currently flowing through the stream. Bob S. replied that they would block off the pipe prior to work to reduce the water in the culvert, saying that it might back the water up a little bit.

Judi (who works at the ACOE) asked about the Mass PGP River Crossing Standards, which include certain requirements such as embedding culverts to create a natural stream bottom. She said that if this were done, it would cause half of the culvert’s capacity to be lost. She explained that the ACOE had created a new set of stream crossing standards and they needed to be complied with.

Jane asked Bob S. why he was reducing the size of the pipe and he responded that they currently had the 24” pipe in stock, so they planned to use it since it was immediately available. Jane was concerned about replacing the current 30” pipe/culvert with a smaller one; she did not want to create flooding problems in the future.

Bob Boette quickly performed a mathematical calculation, comparing the area of a 24” pipe with the area of a 30” pipe and advised Bob S. that the area of a 24” culvert would be quite a bit smaller than a 30” pipe, asking how difficult it would be to get a 30” pipe. Bob S. said that he could get a 31” pipe, but if it cost more than \$5,000, he would need to get three estimates. He then indicated that he would work it out somehow and would order and use a 30” pipe.

There was more discussion about doing a temporary repair so that a filing could be reviewed and it was agreed that there was no feasible temporary fix. Judi Johnson stated that she understands the emergency nature of the repair, but expressed her desire for this work to be done according to the regulations. Bob S. asked Judi "what elevation do you want?" Judy indicated that it should be embedded; Bob S. stated that they could do that. He stated "you're looking for at the stream end depth to have some width? I'll figure out something."

Jane and Bob S. planned to meet at the site on the following day at around 11:00. Bob S. told Jane that he would call her as soon as he got out of an early morning meeting that he needed to attend.

### **Nadia Estates, DEP #157-493, Off Mechanic Street, Continued Notice of Intent**

This hearing was opened and continued to this date during an administrative meeting which was held on October 18, 2010 to satisfy the Wetland Protection Act's 21 day requirement. The project was not discussed at that time.

The applicant, Muhamed Itani, and his engineer, Jim Pavlik (Outback Engineering) were present to discuss the proposed construction of a 36 unit condominium off of Mechanic Street.

Before Mr. Pavlik began his presentation, Bob Boette explained for the record that he noticed an error on the NOI's abutters list, specifically, that two direct abutters had been omitted, so they had not been legally notified of tonight's hearing. After noticing this error, he asked Jane to inform Jim P. of the omission, which she did. Jim P. indicated that he had received the abutter's list from the Town's Assessor's Office. Mr. Itani reiterated this fact, adding that they would be happy to send a letter to this abutter after the meeting.

Bob stated that Barbara Durst (the abutter who was not notified) had experienced flooding in her yard from the site's vernal pool and had attended the ZBA's meeting for Nadia Estates.

Jim Marsh informed the applicant that it was his (applicant's) responsibility to ensure that every abutter was notified, stating that he did not feel comfortable moving forward with the hearing at this point. He explained that there was a reason for the abutter notification requirement, and that she should have an opportunity to attend the hearings.

Bob expressed his concern that the filing would be exposed to an appeal due to this administrative error and believed that the hearing should be continued to the next meeting without discussion, to allow the abutter to be notified. He indicated that he would talk to the Town Manager on the following day and would ask for town counsel's opinion on the matter.

Harold Blomberg made a motion to continue hearing to November 15 so that the abutter could be notified, to keep it legal, which was seconded by Jim Marsh.

Judi Johnson suggested continuing this meeting's presentation by Jim P. with the understanding that if the abutter (after notification) wished to hear the whole presentation, Mr. Itani and Jim P. would agree to come back to do it again next time. Mr. Itani agreed to her request. Judi stressed that it is the applicant's responsibility to obtain a correct list of all abutters. Jim M. indicated that while on another Conservation Commission, a similar situation had occurred and the Commission made the applicant continue their hearing without making their presentation. Harold Blomberg withdrew his motion.

Mr. Itani reiterated that the Assessor had given them the list which was incorrect, stating that he would hold the Town responsible for what he referred to as "intentional delay tactics." Bob Boette stated that he was not going to respond to Mr. Itani's allegation, reminding him that the Commission has a consensus to continue with the discussions.

Jim P. then began his presentation of their proposal to construct 36 condominium units in three buildings on an 18.96-acre site containing bordering vegetated wetlands (BVW) and an isolated land subject to flooding (ISLF)/vernal pool. The resource areas were delineated and approved by the DEP's Superseding Order of Resource Area Delineation (DEP #157-486), issued on June 4, 2010.

Proposed work within the Conservation Commission's jurisdiction involved the installation of a force main/utility conduit for the project's subsurface sewage disposal system in an existing cart path within the northern part of the ILSF. In addition, a fence and plantings in the same area were required in the Zoning Board's 40B Permit's conditions of approval.

Their limit of work would be, at minimum, 25 feet away from the ISLF. To mitigate the potential for erosion and sedimentation into the wetlands during construction, a silt fence would be installed per the plans as a limit of work.

They proposed to install an on site Bioclear septic system (which removes nitrates) that would be located over 100 feet from any wetland area. They would be temporarily disturbing an area of the ILSF to install the septic line. A 4" PVC sleeve would be installed around the 2" (schedule 80 PVC) force main in the vicinity of the ILSF, which would be sealed on both ends to prevent leakage.

Doug asked whether it would be monitored; Jim P. replied that they would perform monthly inspections early on, followed by quarterly inspections. Bob Boette expressed his concern that the pipe would be at the frost level; Jim P. responded that they planned to go three feet deep, but could go to four feet. They planned to follow the existing cart path and would use a small excavator; Mr. Itani stated they would use the smallest machine possible. They planned to trench and close on the same day.

Jane asked where the pump station would be located; Jim P. replied that it would be 125 feet, at the closest, from the ISLF. There will be two septic tanks and a chamber, which will be pumping clear liquid. Judi asked how often the tanks would be pumped out; Mr. Itani stated that this would usually be done every six months. Judi asked who would be responsible for the maintenance of the system; Jim P. replied that it would be the condominium association's responsibility, as described in the Operation and Maintenance Plan.

Jim P. described the drainage system's catch basins and water quality inlets which will have oil separators and hoods. The WQIs will be located at the roadway's low points to collect surface runoff, which would then be discharged to underground leaching systems. The buildings will all have roof drains for clean roof runoff, leading to underground infiltration chambers; none of the roadway drains would be discharged to the roof drains' basins. They will use water quality swales where appropriate.

Doug Davis stated his concerns about the underground basins, stating that the Commission has had problems in the past with sand accumulation during construction. Jim P. stated that they have a combination catch basin with a water quality inlet, adding that from his experience they work very well. Bill Hocking explained that problems develop during construction, so they would need to protect the WQIs with hay bales or mesh to prevent silt and sand from entering the system.

Judi asked what would prevent migrating vernal pool critters from getting sucked into the WQIs and catch basins. Jim P. replied that the catch basins were over 100 feet away from the vernal pool. Judi wanted to know what the impacts would be and asked for a Wildlife Habitat Evaluation to assess possible impacts. Jim P. responded that there would be no way to prevent critters from falling in. Judi asked the applicant to look into whether there were any products available that made WQIs safer for the migrating amphibians.

Jane asked about the overflow system for the roadway and Jim P. stated there was a low area within Harris Street which would allow for some puddling in case of an overflow.

Bob asked about the proposed ILSF overflow pipe. Jim P. indicated that after the recent March storms' flooding issues, they believed that it would be a good idea to create an overflow pipe for the ILSF, once it reached the same elevation as the low point of Morris Street. Mr. Itani added that in case of a severe flood, the drain would provide an emergency overflow for the ILSF, which would discharge to the nearby BVW.

Jane asked about the topography of the cart path, through which they proposed the overflow pipe; Jim P. stated that it was fairly flat at around 309.3. She then asked why they hadn't just proposed a small swale in the area of the path to allow the ILSF to overtop through the swale, if necessary. Doug stated that he didn't want to an underground overflow pipe and Jane agreed. Bob added that there should be no gullies in the swale. Jane stressed that the level of the swale should not be lower than the vernal pool/ILSF level of 310.1. Bob then advised the applicant that the pipe should be removed from the plans.

Jane stated that the vernal pool's water took a long time to go down after the heavy flooding in March and wondered how this affected the water table. Mr. Itani responded that this was due to surface water, only. Jim P. stated they dug several test pits at the site and found the water table at 308' or less; they used a groundwater level of 309' for design purposes. He indicated that the BVW was at 303', Mechanic Street was around 306', and the ILSF's perched water condition was 310' and that all of the drainage systems are elevated above that.

Jane explained that the Wetland Protection Act requires that there shall be no change in the water quality or quantity, pre- vs. post-construction.

Judi asked whether the paper street issues had been resolved and Bob stated that they had.

Residents from Holbrook Street expressed their concern about where the additional water would go and how this project would impact their property during future storms, adding "if there is a problem, who can they call?" Mr. Itani responded that the Town had hired its own engineer to check their calculations and that test pits were dug after the flooding. He reassured them that the stormwater is being kept on the property and that they are following the State's rules and regulations.

Jim P. stated that there will be two retaining walls on both sides of the entrance roadway, 34 feet in length at most, which will be made out of precast blocks. Doug indicated that a Wildlife Habitat Evaluation should be submitted to determine whether an amphibian crossing culvert would be necessary, under the roadway.

Mr. Itani stated that an environmental study was unnecessary, since they had minimized impacts. Judi stated the most important upland habitat was within 100 of a vernal pool at a minimum; some studies indicate that upland areas within 600 feet of vernal pools should be preserved. She agreed that a Wildlife Habitat Evaluation should be submitted to demonstrate possible impacts to the vernal pool inhabitants, since they were proposing extensive impervious surfaces and natural vegetation impacts.

Jim P stated that we have taken safeguards, ILSF, only actual impact on ISLF is the temporary disturbance in the existing cart path which will take a day or two to complete.

Regarding the ditch through the ILSF, Mr. Itani stated that nothing will stay open over night and they will work minimize impacts; he indicated that he felt comfortable having the Commission include conditions regarding siltation prevention in the Order. Mr. Itani stated that he is willing to accept the Commission's recommendations.

Jane suggested that in lieu of a Wildlife Habitat Evaluation, she believed that a water quality study, to be used as a baseline (pre-development) would be more useful in demonstrating that the

development had no adverse impact on the vernal pool's water quality and quantity. She thought that a water quality baseline, pre-development, could be used to demonstrate that the Act's no change to water quality and quantity performance standard had been met, post-construction, i.e. at the time of the CoC.

Mr. Itani stated they would be willing to do water quality testing.

Jane indicated that one of her main concerns was that the south facing slopes of the vernal pool be permanently protected as open space. Judi explained that vernal pool amphibians will not go to just any vernal pool, but always return to their original pool, so the impacts to this vernal pool and its upland habitat, are permanent. Jane suggested placing small educational signs about the vernal pool along the 25 foot NDZ, as well as a permanent conservation deed restriction. Mr. Itani said that they could do that and put the language in the condominium legal documents.

Jane discussed her application review report dated 10/25/2010, which listed outstanding issues (see report for details).

Regarding concerns about the underground detention basins, Mr. Itani stated that plans could be modified to include manholes to allow viewing and access.

Bob stated that the Commission will need Town Counsel's opinion and therefore the hearing should be continued to November 15. Jane asked Jim P. to send her copies of his revisions as soon as possible, so that she would have time to review them before the next meeting.

#### **46 Beach Street, DEP #157-494** - Jeffrey & Andrea Lovely

The property owners, Jeffrey and Andrea Lovely and their representative Bill Buckley (Bay Colony Group) attended the meeting to discuss the proposed construction of a single family home, within 100 feet of the Neponset Reservoir.

The site is an 83,136+/- sf parcel of land located on the west side of Beach Street, about 1,000 feet north of and opposite Ira Von Circle. This property is currently vacant, heavily wooded and contains a gravel pathway that is used by local boaters and fishermen to launch their light craft. The upland on the property is separated by a portion of the Neponset Reservoir into a main parcel that abuts Beach Street and an island about 100 feet off shore. There are bordering vegetated wetlands on the property, as well as land under a water body and bordering land subject to flooding. The site is shown on the FEMA Flood Insurance Rate Maps.

The applicants propose to build a new 4-bedroom dwelling, approximately 48 feet by 44 feet. A driveway will be located in the front of the house as will the septic system. A new septic system will be built in the front yard, a little over 150 feet from the BVW. The rear of the house, facing the water, will contain a roofed over porch and a 20' x 24' concrete or brick patio, located about 30 feet from the BVW at its closest point. A rip-rap slope will be placed between the edge of the patio and the 25 foot No-Disturb Zone, which will also contain an erosion control barrier. A seasonal roll-in, roll-out dock is also proposed for the site in the area of the existing canoe launch. A Floe© type dock, which has been installed at other homes on the reservoir, is proposed.

Judi asked how much vegetation would be cleared and Bill pointed out the areas on the plan; Judi indicated that she was pleased with the small amount of clearing. Doug asked if they had any plans for the island and they replied that they did not.

Judi asked about the dock being outside of the 25 foot buffer and Bill stated that put in and take out dates, as well as where dock could be stored could be included in the OoC .

Bill indicated they would fix the scale (shown as 20', but should be 30') on the plan, clear away debris that was piled along the shore and develop a list of native plant materials to be used.

**Motion** by Judi Johnson was made to close the hearing for DEP #157-494. Seconded by Doug Davis. **Vote: 7:0:0**

**Reported Wetland Violation, Cocasset Street VFW, Erik McKenzie**

On October 7th Bill Casbarra, Foxborough's Building Inspector, reported that he had received an anonymous phone call about trucks that were dumping gravel to the rear of the VFW property, adjacent to a wetland area. Bill C. and Jane then went to the site to observe what had occurred. Jane called the owner of the property, Erik McKenzie (ZBA Chair), who reportedly bought the property a year ago, but was unable to reach him so she sent him a "Notice of Reported Wetland Violation" form letter via email, instructing him to (1) immediately cease any alterations, (2) contact the office to schedule a site visit, and (3) attend the October 25, 2010 meeting at 9:00.

Erik called the Jane at 4:00 on the 7<sup>th</sup> to discuss the reported dumping, indicating who he believed had been dumping. Jane told him that regardless of who was dumping, he was the one who was responsible since he owned the property. He told Jane that he would have the dumping stopped immediately. When Jane checked the site on the 12<sup>th</sup>, it appeared that dumping had not stopped.

Bob visited the site today and said that a backhoe had been working, hauling dirt out. Bob spoke to the Highway Department Superintendent, Bob Swanson, who told him that his department was not doing any work at the VFW.

When Jane spoke to Erik before the meeting, he indicated that he was going to get his lawyer involved. He said that he has a camera on the building and will review it with his attorney. Jane will call Erik tomorrow to tell him that the backhoe should be removed from the property and that the restoration work will need to be completed before winter. A Cease and Desist Enforcement Order will be prepared per the Commission's directions; the Commission signed the EO's signature page.

**Motion** by Doug Davis to sign the Enforcement Order. Seconded by Eric Nelson. **Vote: 7:0:0**

**78 Cocasset Street, DEP #157-488 - Request for Certificate of Compliance**

**Motion** was made by Doug Davis to sign the Certificate of Compliance for DEP #157-488, per Jane's recommendation. Seconded by Eric Nelson. **Vote: 7:0:0**

**3 Summerville Road, DEP #157-482 - Request for Certificate of Compliance**

**Motion** was made by Judi Johnson to sign the Certificate of Compliance for DEP #157-482, subject to a site inspection by Jane. Seconded by Doug Davis. **Vote: 7:0:0**

**October 15, 2010 Minutes**

**Motion** was made by Allan Curtis to accept the October 15, 2010 meeting minutes, as distributed. Seconded by Eric Nelson. **Vote: 4:0:0.**

**Meeting Adjourned**

**Motion** was made by Allan Curtis to adjourn. Seconded by Eric Nelson. **Vote: 7:0:0**

The meeting adjourned at 10:30 p.m.

Draft minutes submitted by Judy Leahy: 10/28/10

Reviewed by Jane Pierce: 11/22/10

Approved by Commission: 11/29/10