



**Minutes of  
The Danvers Conservation Commission  
Thursday, May 2, 2013  
Danvers Town Hall**

**The Danvers Conservation Commission held a public meeting on Thursday, MAY 2, 2013, at the Danvers Senior Center, located at 25 Stone Street, Danvers, MA 01923.**

**Members present:** William Glynn, Chairman  
Jeffrey Cary, Member  
Michael Splaine, Member  
Tom Manuel, Member  
Neal Waldman, Member

**Members absent:** Lisa Austin, Member  
Matthew Lallier, Member

**Staff present:** Kristan Farr, Planner

William Glynn opened the Conservation Commission meeting at 7:00 p.m. with a reading of the "Commission Statement."

**New Business:**

**Continued Public Hearing [310 CMR 10.05 (4)] – NOI**

**31 Elliott Street; DEP File No. 14-1119**

Nancy McCann, Attorney was present. The applicants, John Thomson & Gordon Thomson were present. Representative John Dick was present and stated that back in November and they came back with an approved site plan of 13 units.

McCann stated that at the last meeting they discussed the ORAD which is still valid and in existence until 2014. That ORAD gives them the areas of the resource delineation. If they were to change the number of the high water mean level, the project would still be in full compliance and that information and data was provided at the last meeting. McCann provided the language for the Order for the Commission to consider including in the Order language to address the Commission's concerns. They had a question of what would happen if they changed the mean high water level. Glynn stated he thought they were going to submit a revised plan. McCann stated that they have the exhibit plan. They can provide a larger exhibit plan. Her concern is if they submit a revised plan, it would be interpreted as changing the mean high water level and the resource area. This would also require much more work needed by the applicant. The exhibit plan was very detailed and provided full calculations also on it. Splaine asked if McCann was stating that the Order of resource delineation regardless of what it is today, the prior order trumps that? McCann replied that the prior order determined the resource area. No one is saying that the mean high water has not changed. The reason is so that the developer knows what he is working with. The plans you have now is not the same as prior. Cary's point was that the high water mark is not the same as it was back then. McCann appreciates the Commissions concern about this and that is why they provided an exhibit plan.

In general, the mean annual high water is defined it is not delineated (it is not a judgment call to be made) Glynn stated. That definition is not part of the ORAD. It is a fact. It does not become a judgment call in the ORAD. Cary stated that the email from DEP to Farr stated that. The ORAD is delineating wetland resources primarily. If they agreed in a changed mean high water level, it will not change the ORAD.

McCann stated that you can change the mean high water level in your thinking; the ORAD sets the resource area or riverfront area. The river front is set based on the high mean water level. McCann stated that going forward during the course of construction; they will have to re-look at the resource area. It is valid and it is binding on both the Applicant and the Commission's concern. Normally it is 3 years, but, because of the permit extension act, it stands. McCann stated that mean high water is not the same as mean annual high water. He is telling you an inland river is not the same as coastal. Once you are in a tidal regime, there is only one definition. There is another mean high water level that is used. You cannot have different levels. The datum is the same. Tidal is local. They are talking about the tidal. They have to extrapolate and adjust. John Dick stated if you go to Gloucester Harbor you go to Boston. If you go to Annisquam you go to Gloucester. They keep reducing the number of reporting stations, due to the cost. The elevation changes as you go up and down. The tides are constantly going in and out. If there is a dry basin, there are variations in the tidal cycle. The best way is direct observation and the use of v-datum. It is complicated science. This is John Dick's specialty. The v-datum is outdated. They are still making adjustments. McCann stated that was accepted as the mean high water level.

Cary stated that he thinks that is the way for it to be done. The Commission is using diversion John Dick stated. Cary stated that there is a definition. Cary thinks John Dick came up with his own method. There is a reason that it is a definition. DEP stated that you must use the definition. Cary stated the wetlands are protected by the bylaw which is defined by the mean high water line. This doesn't affect the Order and that it stands for the 3 years plus extension, Splaine asked? Make sure the mean high water is used, and it is not on the plan. He thinks that if you use the high water value.

How is 3.63 and 4.65 different, Glynn asked? They average 8.63 apart. 8 foot further in 8 foot. Cary thinks that 2 homes will be in the inner riparian. Unit 11 & Unit 12 would be in the inner riparian. They are still under the 10% of the impact. At one time, the inner riparian was more important than it is now.

Glynn stated that if 4.65 is the plan, the two units being in the riparian, does not do anything. Glynn thought that development in the 100 foot buffer zone is not allowed. It is 10% of the total riverfront area, if you move the line, the area moves. Cary stated that it should have been done right the first time. Glynn stated that they can agree to disagree and they will leave it at that. Manuel stated that he assumes you are going to set this up as an association or individual lots? Manuel worries about future requirements of the association, the rules and regulations have to be brought forward. He knows that through the years, they have gone down hill after owners change hands. He would like to see in perpetuity for the future owners. The performance after 10 to 15 years, the projects go down the tubes. McCann stated what she has done in the past for this; they put in the condo documents. Glynn stated that they think that the owner of the property has all the way to the riverfront and develops on it not knowing. Manuel would like the condition of in perpetuity put on the deed for all future owners. Manuel asked if they moved the houses out of the riparian, would that affect the zoning board of appeals.

Manuel stated that the Commission can make mistakes and they are looking to correct it. Splaine stated that they can agree with you on the ORAD but they would like them to move the houses out of the riparian. If there was anything to justify not moving the houses out of the 100 foot, he would say okay. It is dollars, changes, are dollars, Dick stated. If you move the home 8 feet, they would have to do a full revised filing through the Planning Board, McCann said. They complied with the ORAD. They are supposed to go through Planning Board prior to Conservation Commission. They complied with the

ORAD in the design. Under the wetlands protection act, they must go before the other boards before the Conservation Commission. Manuel would like to see the units moved. McCann stated it is not a small matter to change these buildings. McCann reiterated, this is not borderline, they are not just under 10%, they are a lot under 10%. Manuel knows that they made a mistake back then, but, they are trying to fix their mistake. They would like to see the buildings moved further away from the wetlands.

It is always after the fact, Cary stated. It is always after construction. Cary stated that he feels this is the last piece of land that is riverfront; he just wants to get it right. The houses are 3000 square feet. It is about 1000 square feet of river front in the riparian zone, Manuel added. Manuel is asking how intrusive this is. Splaine stated that he feels that it is not that intrusive. They were not part of the Commission back then, this Order still stands. Splaine stated that they will keep getting smarter as a Commission. Glynn stated that he will entertain a motion.

Splaine motioned to close and issue an Order of Conditions for DEP File No. 14-1119 for 31 Elliott Street with the conditions of perpetuity of maintaining and references made that unit owners would be able to look at their deed and see that they cannot build on the resource area. Waldman seconded. Cary was nay. Manuel, Splaine and Waldman were in favor. Glynn did not vote.

McCann asked why Glynn did not vote. McCann would like Glynn to vote. Glynn stated as the Chair he would not like to vote. Glynn stated in all fairness of this project they tried to make amends and they disagree on the high mean water mark, the impact is not that much. Glynn voted in favor.

McCann stated an order must be signed by a majority of the members that are in office. They should clarify this through Farr with Town Counsel.

**Adjournment:**

Waldman motioned to close the meeting and adjourn at 8:00 p.m. Splaine seconded the motion. All were in favor and the motion carried.