



**Minutes of
The Danvers Conservation Commission
Thursday, April 11, 2013
Danvers Town Hall**

The Danvers Conservation Commission held a public meeting on Thursday, APRIL 11, 2013, in the Daniel J. Toomey Hearing Room at the Danvers Town Hall, located at One Sylvan 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
Janell Powers, Secretary

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

New Business:

Farr is putting together a workshop. Farr asked if the Commission heard about the dog park. The dog park group is not a town originated organization. They were told in the beginning that they would need to file for permits through the Conservation Commission. They were at a meeting and were hoping to start work this month but did not file yet. They were told to have the wetlands delineated. They are going to propose some clearing of trees also. Farr will let the Commission know more as she gets more information.

Minutes: January 24, 2013 & February 28, 2013 & March 28, 2013

Splaine motioned to continue the approval of the above minutes. Manuel seconded. All were in favor and the motion continued.

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

Pickering Street; DEP File No. 14-1222

Applicant, Rick Rodgers, Town Engineer was present. Mike Nelson from CDM Smith was also present. Bill Glynn had to recuse himself. Rick Rodgers stated that they are requesting an Order to replace a culvert between the Great Oak School and YMCA. Last year they had a steel plate on the road for some time. They noticed that the culvert had failed. They observed how they could repair it. It was constructed in the late 1950s. Many culverts this age have rotted. They are proposing concrete cast culverts. They have permanent easements from 1989 and 1990. They will replace some water and sewer while it is open. This culvert matches the old. It is the same as what they did on Cornell. He showed the plan showing erosion control and environmental protection. During low flow they can slide the new pipe next to the other. Nelson added that low flow is July 1st through September 1st, and they

are hopeful to start on July 1st. There is a lot of debris and it needs to be cleaned up, Manuel stated. Rodgers stated that they are making the cleaning part of the long term maintenance plan.

Waldman asked if there are terrible heavy rains, is there any potential flooding to abutters. The copper dam will be low enough in the stream. Rodgers does not feel that it would cause any potential flooding. The duration of the project is 2 months. They have matched flows on design. The road itself will be closed while the work takes place and school will be closed, so, it should work out perfectly for timing.

Splaine motioned to close the Public Hearing and issue an Order of Conditions for DEP File No. 14-1222. Waldman seconded. All were in favor and the motion carried.

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

31 Elliott Street; DEP File No. 14-1119

Nancy McCann, Attorney was present. John Thomson was present. Representative John Dick was present and stated that back in November and they came back with an approved site plan of 13 units. Originally there were 3 issues: First, the wetland in the vicinity of the turning circle. The hydrology has changed. When he went back in 2012, the state reformed the ditch and it took the ponding capacity out of the basin. Secondly, was whether or not the ORAD from 2007 was still in effect? This was checked, and it is. Thirdly, was there any new data? First of all, the riverfront is defined. What is mean high water? Mean high water is local and it varies. 4.65 is a benchmark that construction companies use for bridges. He had an Engineer run this benchmark 4.65 number on the plan. The greatest change was 7 to 8 feet. The calculation corresponds and it is an increase of about 9,000 square feet or so. John Dick stated that even if he agreed with this 4.65, they are still under the 10%. He stated it would move a line but it will not change the calculation. Glynn asked if John Dick was willing to make that change. In 2007, did the ORAD include the wetlands in the circle? Yes. Jeff Cary stated that he ran a scale bar and it was 20 to 30 feet in some places.

John Dick stated that the ORAD is the accepted delineation. You are supposed to comply with the definition. He did not review it in the ORAD application. John Dick submitted a plan that he does not agree with, just to show what it would look like if it was 4.65. John Dick then read from the 2007 ORAD. This plan shows riverfront with the benchmark at 3.86. Splaine asked how this was determined back then. John Dick replied that he determined this with his direct observation of the tidal cycle. It was stated by Jeff Cary that the mean high water mark is not "determined" in an ORAD, it is defined by regulation, therefore, it is a fact not a judgement call as may be true for a wetland resource. John Dick backed out on doing it again. There is no reason that they need to do it again. The client would have to pay them again. You are welcome to take what the state uses. He disagrees with it, but you can take it.

Glynn stated that he does not understand, if we did want him to accept the 4.65, he would like the calculations. The new riverfront is 4.65. The misapplication is a plan where the mean high water is. Cary wants to use what we are supposed to use. Glynn would like to formally have it submitted with a modification of a new line. Glynn asked how far apart the topo shots were. John Dick replied that the topo shots were to the tenth of a foot. The elevations have not changed, John Dick stated. Glynn states that they have changed on the adjacent property. Cary would like to see the new topo points. Cary stated that he would like new plans. It clearly states to use the definition. John Dick said the regulations say mean high water. Glynn stated that the mean high water is a definition not delineation. Dick stated that they have an ORAD, he will re-submit it but he does not agree with this benchmark 4.65. Cary would like John Dick to check the elevations again; he would like to have it official.

Nancy McCann stated that she has the ORAD plan and it shows mean high water and riverfront. They go through the ANRAD process to get the ORAD. John Dick, wetland scientist, observed this and this is how they got the number in 2007. They have not resurveyed the site. Glynn stated that irrespective

of what it could be today, is what they are asking us to take another look at this. The topography and the flood points may not be the same as 2007. McCann stated that that is your Order and it clearly defines the riverfront area. McCann added that they agreed to present you with the information if we went contrary to the order just to satisfy your request for this meeting. Now, that seems to not be enough. They go through an ORAD process, they did this, this is not fair. They have a site plan approval and using the line you agreed to, you do not want to go through it. You cannot delineate the mean high water as it is defined by statute. The ORAD does delineate the riverfront. It is on the plan. The 100 and 200 foot are on the plan based on the mean high water. If you had a question about mean high water, it should have been asked in 2007. We satisfied this and used the other elevation that John Dick doesn't believe is correct and we presented information to you. They would like the 4.65 on the plan. They want them to change the wetland line. McCann stated that the Commission is proposing to invalidate the 2007 ORAD. John Dick stated that this benchmark happens to be in Beverly. On the basis on that benchmark, they used the old FEMA maps. Mean sea level as 4.65 is for construction. The 4.65 is consistent for bridge crossing for construction to be done. McCann stated that now that he has presented evidence, you are still not happy.

The Commission is not satisfied with this response. Cary stated that based on the email from the DEP analyst, they need to comply with the tidal chart. The delineation can stand McCann stated. The Commission has always done their job McCann stated. We went through this process so we don't have to come back through this again. The Commission is not satisfied, Splaine stated. McCann stated that she made this argument at the last meeting. Glynn stated that they are asking them to do more. McCann stated that it is time and more money and she feels it reduces the integrity of the process. How can any of my clients come before you and get an ORAD? They did not define the mean high water. Mean high water is a physical phenomena? McCann stated that this ORAD is still in effect, 3 years plus state legislation has added four years to that. You did not have to issue an ORAD back in 2007.

Waldman stated they did everything that they already asked. They are asking them to revise the plan to reflect a benchmark that they do not agree with that does not change the lines too much. Waldman does not feel we should be-labor it anymore. Dick stated if they change the plan, it has to be on all plans. He will not change it on planning board site plans, they will not understand. We all understand it has changed and we are all in agreement. The mean high water has not moved according to DEP. Cary stated but the mean high water line is defined by regulation. Back then they were supposed to use the definition. That is the fact, that is the elevation, McCann stated.

They find the definition is 4.65 NGVD. John Dick stated that he disagrees with this. NAVD is today's data. We don't have the plan in NAVD. It cannot change. John Dick stated you cannot convert it very easily from the old data NGVD to the new NAVD. Every contour line has 8/10ths of a foot. Splaine would like it on the plan. John Dick will put the information on the plan. John Dick states that it irks him. They would like this noted on the plans.

Splaine motioned to issue an Order of Conditions for DEP File #14-1119 approving with the notation that the applicant will issue a further exhibit delineating the 4.65 the mean high water level based on definition. Waldman seconded. Cary would like to see another plan and wait another meeting. Cary, Manuel & Glynn voted nay.

Manuel would like to continue the public hearing. Glynn would like a blown up version of the revised plan with spot elevations that show the contours in a more defined manner. McCann would like to know exactly what they need. To define the difference of the two benchmarks, we want the defined elevation. It will mean nothing without both lines on it. Dick will call it an exhibit plan. Elevations will be labeled. The next meeting is the 25th.

Manuel motioned to continue the Public Hearing for DEP File No. 14-1119 until the next meeting. Cary seconded. All others were in favor and the motion carried.

Public Hearing [310 CMR 10.05 (4)] – RDA
Route 1, DCC File No. 2013-02

Andrea Norton from Mass DOT was present to represent the proposed conduit project. Norton stated that they have an active ongoing project from Peabody to Boxford installing new cabling. They would like to add conduit, starting at North Street in a southerly direction. They would like to do 2 conduit runs 1060 feet. They would be located at the top of the slope behind the guardrail. There would be a trench about 30 inches deep by 6 feet wide. They will fill it with 6 inches of sand, backfill, and remove any extra excavated material. They will close up each section as they go. Erosion control will be going in. Farr went out with them. They cross near Norris Brook on the southbound side. They are putting cable in. They are ready to do this as soon as they get this Order approved.

Manuel motioned to issue a Negative Determination of Applicability for DCC File No. 2013-02 using applicable erosion control. Splaine seconded. All were in favor and the motion carried.

Continued Public Hearing
128R Water Street - Bylaw only order of conditions

Manuel recused himself. Rich Williams stated that they had a site walk on Tuesday night and went through the entire project. They will vegetate something that they can get in and weed whack. They would like grass. It would not be manicured. It would not have any chemicals. They would just plant seed and keep phragmites out. Waldman asked if there is any recharge area. There is an overall improvement. They discussed infiltration and putting storm water into the ground. He would suggest that they do not do this because of the hazardous area. They do not want to move hazardous material. The parking lot edge run off goes to the grass. They proposed gravel on the slope. Cary stated overall it is an improvement. Splaine is happy that it is capped. The LSP, Luke Fabbri from Geological Field Services was present and stated that there is an AUL on the site. They found low metals which were below residential standards. They used a method 3 risk characterization. It fails because of agricultural and farming. It is a custom AUL, when you have lead in soil, for agricultural purposes, they restrict gardening, fruit trees, etc. They restrict single family homes. On the property next door, there was a significant amount of oil. If you look at the contours on the site you can clearly see where the run off goes. The project will require all standard procedures of an AUL restricted site. There are no restrictions for construction workers. The AUL was recorded and everything has been done. He will be out there on the site. He is in touch with Jeff Bunk frequently. There is a bunch of fill in this area. They will be engaged. There will be some sub-surfaced utilities. They have a site plan review process that they have to go too. The neighbor should see some improvements. The neighbor is concerned about fluids from the boats. Bunk stated he has been there for 12 years and he polices everything pretty good. Anything can happen.

James Cheever, Liberty Marina owner, neighbor stated that he has great concern. There are contaminants. He feels that we are giving him permission to drain off these contaminants into the wetlands. Cheever asked why the Commission is not asking him to put collection basins with oil/water separators like he was instructed to do. All run off from Bunk's property comes onto his property. They are reducing the amount of runoff from the current conditions on rate and volume, William stated. Cheever said he was ordered to put in a system. It will discharge to the landscape areas. Williams feels that a 20% reduction will be reducing what runs off onto Mr. Cheever's property. Cheever stated that there is another issue in the spring, there will be a sheet of ice. It is a turn around; it will be a sheet of ice. Williams stated that there will only be an improvement. If it ices now, it will continue in a lesser

fashion. Cheever stated that right now, at this moment, it is flooded. Any water is going to come right back over. There is no way to redirect it. Williams stated that they cannot change the grade of the access road. There is a break there and that flow will still go that way. There is a reduction, Glynn added. Cary asked about possibly tiering levels? Williams stated that no, they cannot tier the levels. It is a 45 degree slope, and they will be using crushed stone. Rock is a velocity reducer. Any chance of contamination should not be allowed. Cheever stated that boat bottom paint and sand and scrapings from the bottom of the boats can be hazardous. He has oil and water separators to protect the environment. Bunk stated that they vacuum and clean it up the area after working on the boats. Cheever feels that he is cleaning and protecting the riverfront and why does Bunk not have to. It is a catch basin; it is not a big deal to have him put one in. Someone replied that they are outside of the 200 foot riverfront.

Glynn stated it is best practice. Glynn stated that there are improvements to the current conditions. Glynn added, they are trying to determine if this is enough to satisfy the Commission. If he put in a storm sceptor it would have to flow to the rocks. It would have to go to a point source. The water that runs off will be cleaned by the stone and infiltrated. Particles will go into the stone. Glynn would ask what the storm sceptor would do? The storm sceptor would have to be cleaned also.

Pete Clement, Town Meeting Member, stated that he knows that the EPA is asking the boat owners to do things that follow regulations of types of paints used for example. They are changing the paint base. The regulations are all being changed. The sanders have vacuums and are mandated. The gravel will take care of the oil. What if they made the back part of the parking lot gravel, someone asked? Bunk replied that he will gravel the whole thing if needed. They would use pea stone. It just allows broad infiltration. Will that significantly reduce run off? Williams guess would be that it would reduce runoff more than 50%.

The problem with the gravel is that goes into the ground. You have to control it. It goes all down hill and goes into his property. It was never a boatyard. Glynn stated that if they put ½ gravel, there will be more infiltration. It will be all gravel. They will condition them to issue a new plan.

Farr stated that marinas are usually considered higher pollutant. Marinas are a special category. She is not sure that they should gravel the whole area. Marinas are in a category that states uses of higher pollutant loads. They need to comply with this, she will check with the Town Engineer about this. Bunk stated that he goes from state to state from boat yards from Maine to Connecticut and he sees a lot of gravel boatyards. A few years ago the Jubilee had 2 boats tip over. ENPRO came right out dug it out and put fresh new gravel and it was done. The Commission would prefer to see if the Engineer agrees with the gravel lot. Bunk stated that there will still be a concrete apron in front of the doors.

Splaine motioned to continue the Public Hearing for 128R Water Street so that they can ascertain if the Town Engineer accepts a gravel boatyard. Waldman seconded. All were in favor and the motion carried.

Public Hearing [310 CMR 10.05 (4)] - NOI

28 Colby Road; DEP File No. 14-12

Bill Manual from Wetlands Management was present to discuss the proposed addition. He stated that it is an in-law apartment of about 750 square feet with an attached garage on the east side of the road most of it is on an already paved yard. There is an existing driveway. There is a 4 foot vertical bank to the water level. There are flags there now; he flagged it in the spring. The work is outside of the no build, no disturb area. Approximately 500 square feet hangs over clear open lawn area. They would have to move a sewer line and eliminate one manhole. The driveway will be torn up and repaved. There is no removal of trees. There is a fence and lilac shrubs that have to come up. The total addition

is 1,280 square feet. The total amount outside of the paved area is 500 square feet. This will be on a slab. Someone asked if there would be roof drains? Bill Manuel stated that right now there are gutters and downspouts and it is working great with no erosion. They will tie it into this system. The closest spot is about 50 feet to the wetlands. Someone asked did you consider going to the back of the property with the addition instead of to the side. Manual replied that you have to make it work, he cant make it go up. The other side is a water easement. He can't go to the back, it will be contorted and not flow with the existing house. Potentially Glynn would like to see some recharge added. They feel like there is adequate run off now. Glynn stated that it is only 1250 square feet. They may be able to run a a stone trench and a perforated pipe. Glynn explained that would be good, it would give the storm water the chance to infiltrate into the ground. It is all trees before the wetlands, the owner added. Farr stated that they cannot close this without a DEP File Number and comments. They will also have the contractor investigate the soils and determine what type of soils there are present.

Splaine motioned to continue the Public Hearing for DEP File No. 14-12 for 28 Colby Road until the next meeting. Manuel seconded. All were in favor and the motion carried.

Public Hearing [310 CMR 10.05 (4)] - NOI
34 Harbor Street, DEP file no. 14-1221

Bruce Eaton was present with his daughter and son-in- law are going to remove a portion of the house and add to it. This project falls within the riverfront area. He showed the plan that shows a location and stated that they are proposing a silt fence. The land is relatively flat at about 15 or 16. Approximately 1,740 square feet will be added. 320 square feet will be removed. They are making it less non-conforming. This is a two story with a garage underneath design. Waldman asked where does the river flow? Eaton replied that Porter River was actually named after his great great, great grandfather. He explained that there are two houses between the water and the construction.

Pete Clement asked where is this house located. Eaton explained. Manuel asked about the paving. They will be removing paving and they will add more. Someone asked if there will be roof drains? Glynn stated that you are adding a lot more pervious than there is now. The roof drains are fine now, Eaton replied. Can you put a trench drain or dry well, Glynn asked? The applicant stated that they can put dry wells.

Splaine motioned to issue an Order of Conditions with the condition of adding dry wells. Manuel seconded. All were in favor and the motion carried.

Violations/Enforcement Orders

None

Adjournment:

Manuel motioned to close the meeting and adjourn at 9:15 p.m. Waldman seconded the motion. All were in favor and the motion carried.