



**TOWN OF TEWKSBURY  
CONSERVATION COMMISSION  
1009 Main Street  
Tewksbury, MA 01876**

Carolina Linder, Vice-Chairman  
Steve Deackoff, Clerk  
Dennis Sheehan  
Anthony Ippolito

**Meeting Minutes  
June 22, 2016**

The meeting was called to order by Carolina Linder, Vice-Chair, at 7:02 p.m. at the Town Hall, 1009 Main Street. In attendance were Steve Deackoff, Dennis Sheehan, and Anthony Ippolito. Also in attendance was Kyle Boyd, Conservation Agent.

**Approval of Meeting Minutes – June 8 2016**

**MOTION: Mr. Deackoff made the motion to table the June 8, 2016 meeting minutes to July 13, 2016; seconded by Mr. Ippolito and the motion carried 4-0.**

**A) Notice of Intent, FTO Realty Trust, 20 Riverview Avenue, Map 98, Lot 121, DEP #305-1010**

Present was Jim Hanley of Civil Design Consultants. Mr. Hanley explained that the Commission is rather familiar with this property as the applicant has attempted to permit the replacement of an existing single family residence for approximately 1 ½ years. A variance application was filed with the Zoning Board of Appeals (ZBA) in the fall of 2014 and the request was denied. The applicant came back to the Commission and an order of conditions for a similar plan was granted and subsequently appealed by the DEP. Mr. Hanley noted that the project was carried out for approximately 6 months before DEP finally denied the superseding order of conditions. At DEP's suggestion, the applicant re-petitioned the ZBA, with a slightly modified plan, and again received significant resistance from the abutters and neighbors; which the applicant feels partially resulted in another ZBA denial. Mr. Hanley explained that they are currently before the DEP through the adjudicatory process for the original denial. As an alternative, they have modified the plan to provide for a flow through foundation consistent with the State Building Code as well as eliminated the compensatory storage area. Mr. Hanley explained that an application was filed in April, 2016 and DEP comments were received on June 7, 2016. The applicant wanted DEP's input prior to coming to the Commission and they have made changes to the plan to address DEP comments. Mr. Hanley explained that the DEP has taken the position that the flood vents that the State Building Code endorses are considered a hydraulic restriction. Mr. Hanley noted that they disagree with this; however, in an interest to work with the DEP, they have modified the plan.

Mr. Hanley explained that the proposal is to raze the existing dwelling and shed. The square footage and volume of the existing structures that will be razed was looked at and the plan has been modified to be less than the existing structures. Mr. Hanley explained

that they are in essence eliminating the existing disturbance and replacing it with a smaller disturbed area.

Mr. Hanley noted that he has provided Mr. Boyd with a letter with the calculations and there is a slight reduction in volume. Mr. Hanley explained that they are not taking into account the volume in the foundation, as DEP is saying this is a hydraulic restriction, nor the volume below the existing residence, as the existing residence is on piles. Mr. Hanley noted that there is less square footage and they are providing additional flood storage volume. Mr. Hanley noted that he has also provided Mr. Boyd with an example of an identical project approved by the Commission that was not appealed by DEP.

Mr. Deackoff noted that he is having difficulty understanding the velocity that is being discussed and asked if this is the Shawsheen River. Mr. Hanley explained that the river rises at  $\frac{1}{4}$  of a foot to 3 inches per hour and it takes 24-48 hours to raise 4 feet. DEP feels that there could be a rush of water that would exceed the capacity of the flood vents; which are specifically designed to do that. Mr. Deackoff noted that there is a skirt around the existing home which has been there for approximately 50 years and nothing has happened. As a result, he is having difficulty understanding the requirement for the flood vents. Mr. Hanley explained that they feel that they meet the standard with the flood vents without taking away the residence or the shed and DEP disagrees with this. Mr. Hanley explained that every 4 feet along the perimeter of the foundation there are 16 inch vents and DEP feels the vents could potentially become clog and affect the flow of water. Mr. Hanley noted that they disagree with this; however, they want to work with DEP. Mr. Hanley explained that flood vents are required by State Building Code anytime you construct within the flood plain; however, in the past, they have used the same flood vents and DEP has allowed them to look at the volumes provided within the perimeter of the foundation, but below the first floor elevation, as compensatory flood storage. The area is not a basement and is a "crawl space". Mr. Deackoff noted that he is not fully understanding what the issue is and noted that he cannot see a reason to deny the proposal.

Ms. Linder asked if the numbers have been changed to include the flood skirt area for the existing residence. Mr. Hanley explained that they did not include the area below the finished first floor of the existing home and noted that they feel they should be allowed to include all of the volume below as well, as if a flood vent is considered a restriction, certainly the plywood skirt is as well. However, in an effort to work with DEP, they have excluded all of the volume and only included what is in the residence as the removal of a structure. Ms. Linder noted that she feels something is not matching based on what DEP is stating.

Ms. Linder suggested restoring the area where the trees were previously removed with additional trees. Mr. Hanley explained that the stumps will be removed and seed will be put down for a lawn. Ms. Linder asked why no trees will be planted and Mr. Hanley explained that it is not part of the plan at this point and explained that the trees were removed as part of an Order and then DEP intervened. Ms. Linder noted that this is a very sensitive area and is within the buffer zone, and that the trees that were removed were mature trees and serving a purpose. Ms. Linder requested additional trees be made a part of the restoration of this area as the flood storage is no longer needed.

Mr. Deackoff asked if the town engineer has reviewed the matter and Mr. Boyd confirmed this and noted that a letter has been provided to the members stating that the town engineer is satisfied.

Ms. Linder noted that there should be a net zero impact and there is an impact. Mr. Hanley noted that there is actually a reduction. Ms. Linder asked if there have been changes in erosion controls and Mr. Hanley explained that they are providing for all of the typical measures required by the Commission as well as Bernstein markers.

Ms. Linder opened the hearing to the public.

John Costa of 95 Bridge Street came forward and noted that he feels the town is more concerned with losing tax revenue than whether he gets flooded out or not. Mr. Costa feels that this is an unbuildable lot and noted that he has a “blind spot driveway already” and that the abutting property is overgrown worsening the conditions. Mr. Costa noted that this project has been denied before and that DEP had stated that if another structure is built there he will get flooded.

Mr. Deackoff noted that with regards to the flooding concerns, the Commission has seen much larger projects with larger potential impacts. From what he sees from the plan, there will be no flooding. Mr. Costa asked who is responsible if he floods as a result of this project and Mr. Deackoff explained that the builder would be and not the town or anyone who issued a permit. Mr. Costa noted that “the place is a mess now” and that he has “received three notices not to trespass”. As a result, he can no longer clear the area and cannot see out his driveway.

Mr. Hanley explained that the DEP originally denied the first plan because of the preliminary flood maps that have not yet been accepted that will increase the flood plain by 2 feet, according to FEMA. Mr. Deackoff asked if this plan takes the 2 feet into consideration and Mr. Hanley confirmed this. Mr. Costa asked what happens if the flow through foundation gets clogged and Mr. Hanley explained that there would be a homeowner maintenance and that the State requires flood vents any time you are within the riverfront.

Karen McCarthy of 50 Riverdale Avenue came forward and noted that she had her home lifted due to flooding and that she has no problem thinking that someone would purchase her home because it was raised. Ms. McCarthy noted that she has not seen Mr. Costa get flooding and she has flooded. Ms. McCarthy is in favor of the project and feels that and this would look much better than what is existing.

**MOTION: Mr. Deackoff made the motion approve Notice of Intent, FTO Realty Trust, 20 Riverview Avenue, Map 98, Lot 121, DEP #305-1010, standard order of conditions, the trees requested under the enforcement order shall be made a part of this plan; seconded by Mr. Sheehan and the motion carried 3-1. Ms. Linder was opposed.**

**B) Request for Certificate of Compliance, New England Power Company, M139/N140 ROW, DEP #305-991**

Present was Melissa Caplan on behalf of New England Power Company. Ms. Caplan explained that typically they do not attend these types of hearings; however, she was informed the Commission had some questions or concerns. Mr. Boyd explained that the Commission typically continues a matter if no one is present.

**MOTION: Mr. Deackoff made the motion to grant a Certificate of Compliance, New England Power Company, M139/N40 ROW, DEP #305-991; seconded by Mr. Ippolito and the motion carried 4-0.**

**C) Notice of Intent, Kristin Montbleau, 65 South Rhoda Street, Map 69, Lot 114, DEP #305-1012**

Leah Basbanes of Basbanes Wetlands Consulting came forward and noted that she spoke with DEP today and a file number has been issued: 305-1012. Ms. Basbanes explained that the proposal is for a 16x30 in ground pool with surrounding patio. The entire area is 430 square feet. Ms. Basbanes showed the location of the proposed pool on the plan and noted that a portion is within the 25 no disturb and 50 foot no build. However, the project has been designed to be below the 10% disturbance allowed by the bylaws. Ms. Basbanes noted that the calculations show that the amount that they would be allowed to encroach into this area would be 455 square feet and they are at 430 square feet. The area is currently lawn. Also, as part of the project, an existing chain link fence located to the rear of the property will be replaced with a white vinyl fence to match the fencing along the side of the property.

Ms. Linder opened the hearing to the public and no one came forward.

**MOTION: Mr. Deackoff made the motion to close the public hearing portion; seconded by Mr. Ippolito and the motion carried 4-0.**

**MOTION: Mr. Deackoff made the motion to approve Notice of Intent, Kristin Montbleau, 65 South Rhoda Street, Map 69, Lot 114, DEP #; seconded by Mr. Ippolito and the motion carried 4-0**

**D) Emergency Certification Request, New England Power, Map 139/N140 and 337/338 Transmission Lines**

Present was Melissa Caplan on behalf of New England Power Company. Ms. Caplan explained that the substation located along Power Company Road had a breaker failure approximately one month ago. National Grid has been trying to coordinate with ISO New England to bypass the substation to ensure no power outages occurred. Ms. Caplan explained that in order to tie the lines together with the 337/338 transmission lines, an emergency action was done to access the structures in the wetlands. The contractor who is working on the 139/N140 project place the mats. Ms. Caplan noted that in total there is approximately 6,000 square feet of matting that was needed and were made as minimal as possible at 16 feet wide. It was noted that the mats have been installed and the work is expected to begin next week.

Mr. Boyd explained that this warranted an emergency certification and he has no issues with the project.

**MOTION: Mr. Deackoff made the motion issue an emergency certification, New England Power, Map 139/N140 and 337/338 Transmission Lines; seconded by Mr. Sheehan and the motion carried 4-0.**

**E) Notice of Intent, Premier Storage Investors, 395 Woburn Street, Map 4, Lots 61 & 62**

Present was Attorney Richard O'Neill, Earl Bladgefod, 3 Congress Street, Nashua, NH, Civil site engineer, and Bob Prokop of Wetland Consulting Services.

Mr. Bladgefod explained that they are present to request a notice of intent for work within the buffer zone. The site is located at 395 Woburn and identified as Tax Map 4 and Lots 61 and 62 and also considered a single site located on the west side of Woburn Street. The parcel is 3.66 acres and zoned newly created Westside Neighborhood District; prior to which it was zoned heavy industrial. To the north of the site is a single family home. To the south is B&M Rail line and other industrial uses, and across the street is a mix of small commercial and residential uses. Mr. Bladgefod explained that the site is relatively flat and has historically been disturbed quite a bit and revegetated. The site is currently vegetated with ¼ having been cleared. Mr. Bladgefod noted that there is a lot of scrub brush and invasive species. In addition, there is a small 10,000 square foot wetland which is believed to be a manmade detention pond. Mr. Bladgefod reviewed the buffer zone locations on the plan and noted that there is no flood plain. The State database on endangered species has been reviewed and there are none on the site.

Mr. Bladgefod explained that there is an existing site plan that was done by Cuoco & Cormier that was approved and also received a special permit from the Planning Board. An Order of Conditions was issued by the Commission in November, 2012. Mr. Bladgefod explained that previous plan was for two small multi-tenant light industrial buildings. The footprint was similar to the footprint being proposed.

Mr. Bladgefod explained that the proposal is for two, two story self-storage buildings with 19 parking spaces. The brand name used will be "Cube Smart". Mr. Bladgefod noted that this type of use is a light traffic generator. Overall the footprint is smaller than the original plan and overall more compact. The encroachment is also slightly less towards the wetland area. Mr. Bladgefod explained that there is a closed drain system with catch basins and underground pipes collecting the runoff from the roof area and paving area. The entire perimeter of the site is curbed. An underground infiltration area is being proposed at the rear of the property. Mr. Bladgefod noted that they are proposing to use Storm Tech storm water chambers and the system is designed to handle all storms up to and including the 100 year storm. There are no increases.

Mr. Bladgefod noted that a portion of the north end of the property is located in the City of Lowell. As a result, they also reached out to the City of Lowell and provided them with the plan to see if there is anything they will be requesting. The applicant has requested

the City of Lowell provide a letter stating that they still take their original position that a notice of intent is not required.

Mr. Bladgeford referenced an email he sent to Mr. Boyd approximately three weeks ago outlining the total building paving areas and impacts within the buffer areas. There is a decrease of approximately 7,100 square feet of the total area on the site of pavement and building and both plans have no impacts within the 25 foot buffer. Mr. Bladgeford noted that the Cuoco & Cormier plan showed disturbances within the 50 foot buffer as 2,800 square feet and the plan being presented tonight is 900 square feet; a significantly less disturbance. The total previous disturbances to the 100 foot buffer was 17,000 square feet of building and pavement and they are proposing 14,600 square feet. In all cases, the plan currently being presented has less wetland impact than the previously approved plan.

Mr. Bladgeford noted that the erosion controls are detailed on the plan and that they have also include an operation and maintenance plan and storm water report.

Attorney O'Neill explained that the Westend Business District is a newly created zoning district that is intended to help transition between the heavy industrial uses along Woburn Street and the residential homes in this area. Attorney O'Neill explained that on this side of Woburn Street, they are still allowed to utilize the heavy industrial and commercial district uses that were part of the district when it was heavy industrial. The area was rezoned from heavy industrial to Westside Neighborhood District. Attorney O'Neill explained that the Planning Board put the setback at an area where the side and rear were 15 feet as opposed to 50 and the front yard was 25 feet as opposed 50. The applicant has informed the Planning Board that they will continue to maintain the 50 foot setbacks. As a result, they have given up a lot of space. Attorney O'Neill explained that should they get approval tonight, they will be going before the Planning Board in July. As at the last town meeting the Planning Board made a change in this district with respect to the building to area lot coverage. As a result, they will be seeking a waiver to move from the 15% to 35%.

Mr. Boyd asked if it is possible to move the project 12.5 feet to have the front yard setback at 37.5 feet. Attorney O'Neill noted that the Planning board would likely not be happy with this. Mr. Bladgeford explained that the landscaping is located at the front of the property so this would likely not be a good option.

Mr. Boyd noted that for sites with drop and retaining wall, he has seen trash be dumped and suggested a condition that no dumping take place. Mr. Bladgeford explained that these are secured, managed sites. Mr. Boyd explained that there is additional review still to come; an IDR meeting will be taking place next week and Bill Manuell also has to review. Mr. Boyd noted that DEP also had a couple minor comments on their website.

Ms. Linder asked if it is known when the storm water basin was constructed and Mr. Bladgeford noted that he does not. Ms. Linder asked if there have been any signs of a potential vernal pool. Bob Prokop Wetland Consulting Services explained that there could be a potential for a vernal pool; however, there is an inlet and outlet. Mr. Prokop noted that the storm water basin is fairly well vegetated so it has been there for a while. The

perimeter of the pond area is heavily invaded with invasive species. Mr. Prokop noted that there are masses of Spider Wart which is unique to anything he has seen.

Ms. Linder opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Deackoff made a motion to continue Notice of Intent, Premier Storage Investors, 395 Woburn Street, Map 4, Lots 61 & 62 to July 13, 2016 at 7:02 p.m.; seconded by Mr. Ippolito and the motion carried 4-0.

Mr. Boyd explained that he is now requesting a Notice of Intent be filed for enforcement orders and noted that the Commission needs to ratify the enforcement orders.

- F) **Enforcement Order, Peter Conlin, 2 Kingfisher Road, Map 110, Lot 17**  
**MOTION:** Mr. Deackoff made the motion to ratify the enforcement order for Peter Conlin, 2 Kingfisher Road, Map 110, Lot 17; seconded by Mr. Ippolito and the motion carried 4-0.
- G) **Enforcement Order, Paul Lebrun, Rounsevell Road, Map 109, Lot 53**  
**MOTION:** Mr. Deackoff made the motion to ratify the enforcement order for Paul Lebrun, Rounsevell Road, Map 109, Lot 53; seconded by Mr. Ippolito and the motion carried 4-0.
- H) **Enforcement Order, James Cioffi, 12 Kingfisher Road, Map 110-18**  
**MOTION:** Mr. Deackoff made the motion to ratify the enforcement order for James Cioffi, 12 Kingfisher Road, Map 110-18; seconded by Mr. Ippolito and the motion carried 4-0.
- I) **Enforcement Order, Clark Weston New England, Clark Road, Map 11, Lot 21**  
**MOTION:** Mr. Deackoff made the motion to ratify the enforcement order for Clark Weston New England, Clark Road, Map 11, Lot 21; seconded by Mr. Ippolito and the motion carried 4-0.
- J) **Enforcement Order, Indelicato Guy Jr. Tr., 17 Munro Circle, Map 47, Lot 55**  
**MOTION:** Mr. Deackoff made the motion to ratify the enforcement order for Guy Indelicato Jr. Tr., 17 Munro Circle, Map 47, Lot 55; seconded by Mr. Ippolito and the motion carried 4-0.
- K) **Enforcement Order, Francisco Gonsalves, 15 Garland Avenue, Map 10, Lot 78**  
**MOTION:** Mr. Deackoff made the motion to ratify the enforcement order for Francisco Gonsalves, 15 Garland Avenue, Map 10, Lot 78; seconded by Mr. Ippolito and the motion carried 4-0.

## New Business

Mr. Deackoff suggested Mr. Boyd ensure the Board of Selectmen and DPW are aware of the flood plain elevation changes as 2 feet is significant and an action plan should be prepared.

## Old Business

Mr. Boyd explained that the boardwalk has been completed and funding is being requested for an additional 2 bridges.

Mr. Boyd explained that Long Pond will be going out to bid for the cleanup work. A Friends of Long Pond group is being put together. A group of retired teachers have volunteered to help maintain the rain gardens.

## Adjourn.

**MOTION: Mr. Deackoff made the motion to adjourn; seconded by Mr. Ippolito and the motion carried 4-0.**

*Approved: 7/13/16*

List of documents for 6/22/16 Agenda  
Documents can be located at the Community Development Office

Approval of Minutes June 8, 2016

- A. Notice of Intent, FTO Realty Trust, 20 Riverview Avenue, Map 98 Lot 121, DEP #305-1010
- *'Grading & Utility Plan' prepared by Civil Design Consultants, Inc., signed and stamped by James E. Hanley dated December 4, 2016 with a final revision date of June 21, 2016*
  - *Notice of Intent submittal package dated April 19, 2016 prepared by Civil Design Consultants, Inc.*
  - *Submittal letter from Jim Hanley dated June 21, 2016*
  - *Notification of Wetlands Protection Act file number from DEP dated June 7<sup>th</sup>, 2016*
  - *Review email from Kevin Hardiman dated May 20, 2016*
- B. Request for Certificate of Compliance, New England Power Company, M139/N140 ROW, DEP # 305-991
- *Letter from the BSC Group signed by Theresa Portante dated April 21, 2016*
  - *Request for Certificate of Compliance Form 8A*
  - *Site Photographs submitted by the BSC Group dated February 2016*
- C. Notice of Intent, Kristin Montbleau, 65 South Rhoda St, Map 69 Lot 114, DEP #
- *Notice of Intent submittal package submitted by Leah Basbanes*
  - *'Plot Plan for Proposed Pool' dated May 18, 2016 signed and stamped by David D. Lanata*
  - *Letter from Linda Basbanes dated June 8, 2016*
- D. Emergency Certification Request, New England Power, M139/N140 and 337/338 Transmission Lines
- *Emergency Certification Request letter from the BSC Group dated June 8, 2016 signed by Melissa Kaplan*
  - *Plan titled '337/338 Emergency Measures' submitted by the BSC Group dated 6/7/16*
- E. Notice of Intent, Premier Storage Investors, 395 Woburn St, Map 4 Lots 61 & 62, DEP #
- *Pre-existing Order of Conditions DEP # 305-951*
  - *Notice of Intent WPA Form 3*
  - *Project Narrative titled 'Cubsmart Selfstorage Facility'*
  - *Wetland Delineation letter submitted by Wetland Consulting Services signed by Robert Prokop dated June 9, 2016*
  - *Letter correspondence between Earle Blatchford and Kyle Boyd dated June 02, 2016*
  - *Aerial Map submitted by HIS dated June 9, 2016*
  - *Memorandum to the City of Lowell submitted by Earle Blatchford dated June 15, 2016*
  - *Site plans submitted by Hayner/Swanson signed and stamped by Paul C. Liversidge and James M. Petropulos dated May 20,*

2016

- F. Enforcement Order, Peter Conlin, 2 Kingfisher Rd, Map 110 Lot 17
  - *Enforcement Order WPA Form 9 dated June 13, 2016*
- G. Enforcement Order, Paul Lebrun, Rounsevell Road, , Map 109 lot 53
  - *Enforcement Order WPA Form 9 dated June 13, 2016*
- H. Enforcement Order, James Cioffi, 12 Kingfisher Rd, Map 110-18
  - *Enforcement Order WPA Form 9 dated June 14, 2016*
- I. Enforcement Order, Clark Western New England, Clark Rd, Map 11 Lot 21
  - *Enforcement Order WPA Form 9 dated June 13, 2016*
- J. Enforcement Order, Indelicato Guy Jr. Tr., 17 Munro Circle, Map 47 Lot 55
  - *Enforcement Order WPA Form 9 dated June 13, 2016*
- K. Enforcement Order, Francisco Gonsalves, 15 Garland Avenue, Map 10 Lot 78
  - *Enforcement Order WPA Form 9 dated June 15, 2016*