



**TOWN OF TEWKSBURY
CONSERVATION COMMISSION
999 Whipple Road
Tewksbury, MA 01876**

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

**Meeting Minutes
November 4, 2015**

The meeting was called to order by Jonathan Parker, Chairman at 7:00 p.m. at the Pike House. In attendance were Carolina Linder, Anthony Ippolito, and Steve Deackoff. Also in attendance was Kyle Boyd, Conservation Agent, and Melissa Johnson, Recording Secretary.

Dennis Sheehan was not in attendance.

Approval of Meeting Minutes – October 7, 2015 and October 21, 2015

MOTION: Ms. Linder made the motion to approve the October 7, 2015 and October 21, 2015 meeting minutes; seconded by Mr. Ippolito and the motion carried 4-0.

A) Notice of Intent, New Horizons Realty Group, 1201 Main Street, Map 60, Lot 39, DEP #305-

Present was Eric Gerard of TEC, Lawrence, MA. Mr. Gerard noted that the applicant, Dr. James Wu, apologizes for being unable to attend tonight's meeting. Mr. Gerard explained that he is present for the proposal of a new 8,000 square foot office building at 1201 Main Street. Mr. Gerard explained that he would like to review the current site, existing conditions, and jurisdictional areas at the property, future improvements, and proposed mitigation features to comply with regulations.

The site is located just north of the Chandler Street intersection and is abutted by both residential and office condominiums. To the west is primarily wetlands as well as to the north. The site is approximately 3.59 acres and zoned commercial and residential. The residential zone bisects the property. The front half is zoned commercial and is also within the town center overlay district; which promotes office and business uses such as what is currently being proposed. The site is located within the ground water protection district as well as the flood plain overlay district. Currently at the site is an existing 8,000 square foot office building with a medical office tenant and Coldwell Banker real estate tenant. The site was permitted in 2008 with review and approval by the Conservation Commission and Planning Board.

The site currently has 46 parking spaces, utility connections and storm water management; incorporating low impact development features, including a drainage swale to collect runoff from the existing pavement which discharges into an infiltration basin as well as a drainage swale on the southerly side that collects with storage and infiltration primarily at the front of the site.

Mr. Gerard reviewed the jurisdictional areas at the site including an intermittent stream at the far rear of the site and bordering vegetated wetlands (BVW) at the northerly portion as well as along the far westerly portion. Additionally, there is bordering land subject to flooding that cuts through the site. Mr. Gerard noted that approximately six weeks ago, in September, they received standard resource area delineation for approval of the limits of the BVW and intermittent stream.

Mr. Gerard reviewed the future improvements at the site which include the 8,000 square foot office building, parking, side walk enhancements, and standard utility connects. Sewer service will be connected through the rear at the existing sewer main. Water service is already stubbed in under the first phase and telecommunications will be tied in to the existing infrastructures in place.

Mr. Gerard explained that storm water management has been mimicked to what was done under the first phase using low impact development features primarily including retention areas, rain gardens at two locations; with one being at the center island that will primarily take sheet flow off of the pavement, clean it in the basin, and discharge into a larger shallow infiltration basin along the southwesterly edge.

Mr. Gerard reviewed the mitigation features which primarily include storm water management with water quality control, street sweeping, retention cells, and the infiltration basin. Mr. Gerard noted that the water quality control is primarily handled by the infiltration basin. Compensatory flood storage will be mitigated by recreating any flood storage that was disturbed during construction. Currently the proposed building sits over existing bordering land subject to flooding and to mitigate for increased storage in another area is being proposed.

Mr. Gerard noted that an interdepartmental review meeting took place yesterday where Mr. Boyd raised a concern with the wildlife habitat in the area due to the impacts to the bordering land subject to flooding. Mr. Gerard explained that they are currently reviewing this with their wetland scientist and will report back to Mr. Boyd.

Mr. Gerard noted that the proposed building slightly encroaches into the 50 foot no build zone. With the encroachment they are under the 10% called for as a maximum disturbance within the local bylaw. Currently they are at 1.1% of the total area. Mr. Gerard explained that they are open to mitigation and would like the Commissions suggestions on appropriate mitigation for the disturbance.

Mr. Boyd noted that the far bottom left corner of the plans show the erosion controls tailing off and asked if there is a reason for this and Mr. Gerard explained that this is primarily to achieve the 115 contour to “pull in”. Mr. Boyd requested the tree line also be shown on the plans and Mr. Gerard confirmed this will be done and explained that there

are some other comments that came in with engineering, such as the reduction of a parking space or two, truck turns, etc., that will modify the plans.

Mr. Boyd explained that one recommendation the Town Engineer had was to “bank” some of the future parking spaces as the current parking is never fully utilized. This would be to design it but not build it out until it is necessary. Mr. Boyd noted that this would also be a good way to help mitigate the impact.

7:11 p.m. Mr. Deackoff arrived.

Ms. Linder asked if the tree line will be shown on the revised plans and Mr. Gerard confirmed this. Mr. Boyd noted that Bill Manuell is also currently reviewing this proposal. Ms. Linder discussed the “banking” of the parking spaces and asked how many trees will be removed and Mr. Gerard noted that he can provide this.

Mr. Boyd noted that one concern as far as mitigation is it seems to almost be a full build not leaving much area for mitigation without removing trees. Mr. Boyd explained that the applicant may have to get creative on the mitigation as it is always the Commissions stance that it does not make sense to remove trees to mitigate. Mr. Gerard noted that he will discuss this with their wetland scientist.

Mr. Parker opened this matter to the public.

Richard Rollka of 15 Crescent Street came forward and noted that lighting is currently an issue due to Phase 1 of the project and he feels this will only make the issue worse. Mr. Rollka noted that most of the trees are dead and suggested evergreens or trees that would block the light. Mr. Rollka asked why this is being allowed if it is a no build site. Mr. Boyd explained that the bylaw states the applicant is allowed to disturb 10% of the no build zone; they are proposing approximately 1.5% of the no build zone. Mr. Rollka expressed concern with the water flow and parking lot runoff and asked if this will impact the wetlands with additional runoff. Mr. Boyd explained that all storm water matters are reviewed by the town engineer so that the applicant is required to design the project so that no additional water from what is existing will be going off site.

Jo Rollka of 15 Crescent Street came forward and expressed concerns with the wildlife in the area as she feels that it has already been displaced due to Phase 1. Mrs. Rollka asked what good the study is if they will be displacing the wildlife anyway. Mr. Gerard explained that the first part of the study will be done by a professional wetland wildlife consultant and will determine if a full study is required based on the areas disturbed and, if it is required, it will determine what the impacts would be on the wildlife in the area. Mrs. Rollka noted that she would also like to echo her husbands concerns regarding the first phase with lighting and the visibility of Route 38 from their home. Mrs. Rollka suggested sound barriers as well.

Ms. Linder suggested incorporating the abutters concerns regarding the lighting and buffers. Mr. Gerard noted that they will look into this and that it is something that will also be discussed with the Planning Board in a couple of weeks. Ms. Linder asked if the first building was also done by the current applicant and Mr. Gerard confirmed this. Ms.

Linder asked if they projected to build the second building under the first filing and Mr. Gerard noted that he is not sure, but believes it was taken into consideration as the utilities were extended out. Mr. Boyd will look into this.

MOTION: Ms. Linder made the motion to continue Notice of Intent, New Horizons Realty Group, 1201 Main Street, Map 60, Lot 39, DEP #305 to November 18, 2015 at 7:02 p.m.; seconded by Mr. Ippolito and the motion carried 3-0.

B) Abbreviated Notice of Resource Area Delineation, Maple Estates Trust, 108/118 Maple Street and Memory Lane, Map 88, Lots 35, 25, & 36, Map 89, Lot 38, 36, 37 & 39, DEP #305-992

The matter was previously continued to December 2, 2015 at 7:02 p.m.

C) Notice of Intent, New England Power Company, M139/140 Transmission Lines, Map 35, Lot 4, Map 34, Lot 33, and Map 32, Lot 3, DEP #

Present was Melissa Caplan on behalf of New England Power Company. Ms. Caplan provided the members with a copy of the plans for the project and explained that this is a fairly simple project of re-conducting; replacing five poles and installing two new poles in the right of way. This is the same locations in which the Commission recently approved soil borings. Ms. Caplan noted that if this matter is continued tonight it will be the third time and explained that the first time was not their fault as DEP had not yet issued the file number, the second time was so that the wetland consultant could review the matter, and now they are being told that the wetland consultant has not yet reviewed it. Ms. Caplan requested to go forward with the matter without the consultant looking at it as it is a fairly simple project and National Grid is under specific time frames in terms of outages.

Ms. Caplan explained that this is the re-conducting of the M139 and M140 transmission line right of way located between the Tewksbury substation on Power Company Road and Pine Street. The project is part of a larger project that runs through Tewksbury to Billerica and is primarily all maintenance. It is a total of 2.4 miles and runs from the Tewksbury substation to the Billerica town line at Donna Road. Ms. Caplan explained that the plan is to replace the existing wire with a heavier, higher class wire, replace some steel lattice structures, install two new "H" frame structures, ground reinforce and extend some structures to make them taller, as well as any other maintenance that may be required at the structures. A majority of the activities will not substantially enlarge or change the structures, and, as a result, are exempt under Wetlands Protection Act as well as the Tewksbury Bylaw.

Ms. Caplan explained that there are five structures that are being replaced that do not qualify for the exemption due to the larger base that will be installed creating a slightly larger impact by approximately 50 square feet each. There are also two new direct imbed structures going in; which means the structures go directly into the ground with no base, that are within the buffer zone. In total there are seven structures that are in jurisdictional areas; two are located in BVW and the remaining within buffer zones. Ms. Caplan noted

that this work also qualifies as a limited project. There is approximately 100 square feet of permanent impacts to the BVW. Ms. Caplan explained that they are requesting the Commission to waive the requirements of the 25 and 50 foot buffers based on the fact that the project is used for the public good.

Mr. Boyd apologized for the wetland consultant not being able to review the matter in time and discussed the potential vernal pool located at structure 9 and asked if National Grid has ever done any monitoring efforts or certifications and Ms. Caplan explained that they do typically do not and noted that the vernal pool is half on the right of way area and because it is not located within the project area they would not have done any specific studies. Mr. Boyd noted that it appears to be within the vernal pool buffer zone.

Mr. Ippolito noted that he would like to see signs marking the vernal pool area to ensure there is no dumping to protect the wildlife species. Ms. Caplan noted that they would not be opposed to designating the area as a sensitive resource area rather than designating it as a vernal pool.

Ms. Linder asked if any mitigation is being proposed and Ms. Caplan noted that there will be a 1 to 1 wetland replication area on the right of way and they would like to have a consultant look at it to determine the best area for mitigation during construction and will provide a report to the Commission on this. Ms. Linder asked if there is a plan to avoid the spreading of invasive species and Ms. Caplan explained that any swamp mats put in place need to be cleaned before and after the project to avoid the spreading of invasive species and that they also do vegetation management prior to the project and when the work is completed a conservation mix seed is applied. Ms. Linder suggested Mr. Boyd confirm when the mats are put in and Mr. Boyd explained that a preconstruction site visit can be done and suggested the project manager contact him on this. Ms. Caplan noted that the scheduling is a little strange due to the outages as it is a total of eight months with four months in 2016 and four months in 2017. Ms. Caplan will inform Mr. Boyd each time so a site visit can occur.

Mr. Parker opened the hearing to the public and no one came forward to comment.

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

MOTION: Mr. Deackoff made the motion to approve Notice of Intent, New England Power Company, M139/140 Transmission Lines, Map 35, Lot 4, Map 34, Lot 33, and Map 32, Lot 3, DEP #, standard order of conditions, “sensitive environmental area” signs shall be installed at the potential vernal pool, Mr. Boyd shall be notified preconstruction to conduct a preconstruction review, monitoring of the wetland replication and potential vernal pool along the right of way shall occur, any mature trees or shrubs should be avoided; seconded by Ms. Linder and the motion carried 4-0.

D) Enforcement Order, Donald Carter, 60 Victor Drive, Map 73, Lot 33

Present was Donald Carter of 60 Victor Drive. Mr. Carter explained that he is present as the result of a complaint that he was filling wetlands. Mr. Carter explained that the fill that is presently at his property was part of the Tewksbury sewer project from approximately 8-10 years ago. Mr. Carter explained that he had contacted one of the contractors doing the sewer project and they informed him that prior to bringing in any fill he would have to contact the Conservation department. As a result, he met with Walter Polchlopek, the former conservation agent, who approved it with the contractor and fill was brought in and the area has been like that since. Mr. Carter explained that he took out a foot of fill approximately 105 feet from the wetlands and would like to bring in a foot of loam to install a fence and vegetable garden. Mr. Carter noted that he is proposing to bring in approximately 300 cubic yards of loam for the vegetable garden and explained that he has the opportunity to buy some loam from the developer that is working on Victor Drive and save on the trucking cost. The entire vegetable garden is approximately 105 feet from the stream. Mr. Carter noted that Mr. Boyd visited the site and he did have some issues with the steepness of the area and explained that the garden will be sloped towards the driveway and in to the woods so there will not be any water runoff from the garden into the stream.

Mr. Boyd noted that his concern is the stabilization as there is a significant drop off from the where the work ends and the forest below and explained that if an applicant were before them the Commission would require a 3 to 1 slope and to be stabilized. Mr. Boyd noted that a lot of fill would be brought in right at the 100 foot line and there could potentially be some other resource area out there, but at this point he is not sure. Mr. Boyd explained that if it were pulled back over 100 feet away and the slope stabilized, the potential vernal pools could be investigated in the spring. Mr. Boyd noted that he feels the site needs to be stabilized and the slope be made appropriate.

Mr. Ippolito noted that if there are in fact vernal pools they should be marked out with proper signage. Mr. Boyd explained that they could not be determined until the spring. Mr. Carter noted that the area is currently dry.

Ms. Linder asked if the clearing happened a long time ago and Mr. Carter confirmed this. Ms. Linder asked who delineated the wetland line to determine the distance and Mr. Carter explained that Mr. Polchlopek visited the site and determined the distance. Mr. Boyd noted that it appears that the work was being done right at the 100 foot buffer and the work started to go beyond that. Mr. Boyd explained that due to the amount of fill, the area should be stabilized and sloped appropriately. Mr. Carter noted that he would have to cut trees to stabilize and Mr. Boyd suggested pulling the garden in and Mr. Carter noted that this is not something he would want to do.

Ms. Linder noted that the wetland line was delineated approximately 10 years ago and explained that wetland lines change over time and could be even closer or farther away than thought. Ms. Linder explained that it would have been beneficial to file a Request for Determination of Applicability.

Mr. Deackoff noted that an alternative would be to install erosion controls and explained that most construction requires a 3 to 1 slope so that there is no erosion. Mr. Deackoff noted that 300 yard seems like a lot of loam.

Mr. Boyd explained that the enforcement order was issued because the toe of the slope is in the buffer. Mr. Boyd suggested erosion controls be put in place and the Commission make a site visit to make recommendations.

Discussion took place on the requirement of a Request for Determination of Applicability and Mr. Carter noted that it would be a large expense to notify the abutters due to the condominiums. Mr. Deackoff explained the Certificate of Mailing process with the post office. Mr. Carter explained that he may have to abandon the project based on the cost. Mr. Deackoff explained that a RDA should be filed if Mr. Carter decides to continue with the project and then the Commission would make the site visit. Ms. Linder asked if something would still need to be done if the project is abandoned and Mr. Boyd explained that the area would still need to be stabilized.

MOTION: Mr. Deackoff made the motion to ratify Enforcement Order, Donald Carter, 60 Victor Drive, Map 73, Lot 33; seconded by Mr. Ippolito and the motion carried 4-0.

MOTION: Mr. Deackoff made the motion to amend the enforcement order, the applicant shall file a Request for Determination of Applicability prior to any work being done on the site if the applicant decides to continue with the vegetable garden and the Commission will then make a site visit, or the project can be abandoned and the slope be stabilized to the satisfaction of Mr. Boyd and the Commission; seconded by Mr. Ippolito and the motion carried 4-0.

E) Enforcement Order, Anthony Venuti, 82 Pinta Drive, Map 8, Lot 72

Present was Tony Venuti of 82 Pinta Drive. Mr. Venuti explained that his property is approximately $\frac{3}{4}$ of an acre and surrounded by conservation land. There are a couple of permanent features of the property; one being the corner of his driveway and the other being the corner of the patio, both of which were existing when he purchased the home in 1998. Mr. Venuti noted that the two features are roughly “four paces” from the visible wetlands and that the line between the cattails and his grassy area that he has maintained as his property when he moved in. Mr. Venuti explained that over the years the corner area of his patio has started to slope towards the wetlands. Last year he had a few yards of “tailings” to try to correct this. The plan was to stabilize this and bring in loom and plant grass. Mr. Venuti explained that while doing the work he saw it as fixing the problem and did not view it as an impact to the wetlands and that when he brought in “tailings” he tried to create a buffer with boulders in an attempt to prevent anything from going into the wetlands.

Mr. Venuti explained that this year he had sand brought in to go under the loom so he could ultimately plant the lawn; however, he was unable to do this due to the death of both his father and mother in the same year. Mr. Boyd has requested Mr. Venuti stop work to determine how this should proceed.

Mr. Boyd explained that he understands the issue at hand and noted that there is also a large beaver dam that is causing a significant backup which could be causing the wetlands to change and are growing onto this property. Mr. Boyd suggested erosion controls be put in place immediately as the area is currently eroding into the wetlands as well as finding the beaver dam and taking the necessary steps to breach it. Mr. Venuti explained that the town came in some years ago and breached the dam with a “beaver deceiver” which worked for approximately two to three years and then the beavers returned. Mr. Boyd noted that the beaver dam may be on town property and he will look into this further, however, the area should be stabilized immediately.

Mr. Ippolito noted that there is a lot to this matter and suggested making a site visit for the Commission to provide the best recommendations to solving the problem. Mr. Venuti was advised to install erosion controls immediately and not to use hay bales and that any restoration could be done under the enforcement order; however, if Mr. Venuti intends to bring in fill, etc. a Notice of Intent would need to be filed. Mr. Deackoff discussed a restoration plan and conservation mats. Mr. Venuti will contact Mr. Boyd for more information on this.

Mr. Boyd suggested ratifying the enforcement order and requiring a restoration plan be filed to determine if a Notice of Intent will be required.

MOTION: Mr. Deackoff made the motion to ratify Enforcement Order, Anthony Venuti, 82 Pinta Drive, Map 8, Lot 72, seconded by Ms. Linder and the motion carried 4-0.

MOTION: Mr. Deackoff made the motion to amend enforcement order, Anthony Venuti, 82 Pinta Drive, Map 8, Lot 72; erosion controls shall be properly installed immediately with a sedimentation fence being satisfactory, a restoration plan shall be filed within one week for Commission review at their next meeting on November 18, 2015 at 7:04 p.m. to determine whether the filing of a Notice of Intent is required; seconded by Mr. Ippolito and the motion carried 4-0.

Mr. Venuti explained that this all came about as he is trying to connect to town sewer and asked if he is able to continue with that. Mr. Boyd explained the distance from the wetlands to the sewer would need to be measured out and if it is within 100 feet, it would also require a filing.

E) Vote on NOI Guidance Document

Mr. Boyd noted that he has provided the members with an updated copy of the guidance document and explained that the town engineer is reviewing this as there are some submittal requirements that should be consistent with the town engineer’s requirements.

Ms. Linder reviewed “submittal Form C” and its applicability to tonight’s enforcement order hearings was discussed.

MOTION: Mr. Deackoff made the motion to continue the vote on the NOI Guidance Document until November 18, 2015 7:12 p.m.; seconded by Mr. Ippolito and the motion carried 4-0.

F) Notice of Intent, Maplewood Road, Map 54, Lot 2, Map 40, Lot 26, DEP#

Mr. Parker noted that this matter will be continued to November 18, 2015.

MOTION: Mr. Ippolito made the motion to continue Notice of Intent, Maplewood Road, Map 54, Lot 2, Map 40, Lot 26, DEP# to November 18, 2015; seconded by Mr. Deackoff and the motion carried 4-0.

New Business

Mr. Boyd explained that there are trails and open space land in Tewksbury, both existing. Through the Bay Circuit Trail and himself they have found two areas in Tewksbury that are preventing a long distance trail from being established that could link to Andover. Mr. Boyd noted that one of the boardwalks already came before the Commission for approval. There is one location remaining to connect the trail to Andover. Mr. Deackoff asked if there is the ability to waive filing fees for nonprofit organizations and suggested taking this into consideration when determining the fees. Mr. Boyd will look in to this and noted that there will be opportunities for people to get involved through committees and suggested anyone interested to contact him.

Old Business

120 Poplar Street, Enforcement Order

Mr. Boyd noted that he has provided the members with an update and explained that the violator, Patrick McCarthy, no longer lives at the property; however, he still has stuff on town land and within the buffer zones. Mr. Boyd suggested the Commission ratify enforcement order to be sent to the new address. Mr. Boyd explained that Mr. McCarthy still owns the property, but there is a restraining order to not go onto the property. Mr. McCarthy was supposed to file a Notice of Intent by July 1, 2015.

MOTION: Mr. Deackoff made the motion to resend Enforcement Order, Patrick McCarthy, 120 Poplar Street to the violator's new address, a restoration plan must be submitted by November 18, 2015; seconded by Mr. Ippolito and the motion carried 4-0.

Adjourn.

MOTION: Mr. Ippolito made the motion to adjourn at 9:00 p.m.; seconded by Ms. Linder and the motion carried 4-0.

Approved: 12/2/14

List of documents for 11/4/15 Agenda
Documents can be located at the Community Development Office

Approval of Minutes October 21

- 7:02 P.M Notice of Intent, New Horizons Realty Group, 1201 Main Street, Map 60 Lot 39, DEP #305-997
- *Notice of Intent submittal dated October 9, 2015 prepared by TEC*
 - *Review letter from Conservation Agent dated October 19, 2015*
- 7:04 PM Abbreviated Notice of Resource Area Delineation, Maple Estates Trust, 108/118 Maple Street & Memory Lane, Map 88 Lots 35, 25, & 36, Map 89 Lots 38, 36, 37 & 39, DEP # 305-992
(Continued)
- *Original ANRAD plans titled "Conservation Plan" dated January 1, 2015 signed and stamped by James D. Aho*
 - *Continuance request from Norse Environmental dated September 15, 2015*
 - *ANRAD Submittal packed dated June, 2015 submitted by Norse Environmental*
- 7:06 P.M Notice of Intent, New England Power Company, M139/N140 Transmission Lines, Map 35, Lot 4, Map 34, Lot 33, and Map 32, Lot 3, DEP #305-996
- *Notice of Intent Submittal New England Power Company prepared by BSC Group dated September 2015*
 - *Plans Titled "M139/N140 Transmission Line Reconductoring" prepared by BSC Group*
- 7:08 P.M Enforcement Order, Donald Carter, 60 Victor Drive, Map 73 Lot 33
- *Enforcement Order issued on October 30, 2015*
 - *Violation pictures taken by Conservation Agent on October 29th, 2015*
- 7:10 P.M Enforcement Order, Anthony Venuti, 82 Pinta Drive, Map 8 Lot 72
- *Enforcement Order issued on October 30, 2015*
 - *Violation pictures taken by Conservation Agent on October 29th, 2015*
- 7:12 P.M Vote on NOI Guidance Document
- *Guidance Document with final revision date of October 29th, 2015*
- 7:14 P.M Notice of Intent, Maplewood Road, Map 54 lot 2, Map 40 lot 26, DEP #
- *Letter from DPW Superintendent dated December 3, 2015*
 - *Culvert replacement plans submitted by Joseph Guiliano*
 - *Notice of Intent Package dated September 23, 2015*
- Old Business
- 120 Poplar Street Enforcement Order
- New Business
- Wetland Boardwalk Construction-Tewksbury Greenway