



City of Peabody
Conservation Commission

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5782

MINUTES

DECEMBER 12, 2018
DEPARTMENT OF PUBLIC SERVICES
50 FARM AVENUE

MEMBERS PRESENT

Chairman Michael Rizzo
Vice Chairman Bruce Comak (arrived at 7:47)
Melissa Feld, Secretary
Craig Welton
Travis Wojcik
Stewart Lazares

MEMBERS ABSENT

Bryan Howcroft

Also Present: Brendan Callahan, Assistant Director of Planning; Ward 5
City Councillor Joel Saslaw

CHAIRMAN RIZZO CALLED THE MEETING TO ORDER at 7:00 pm

PROPOSED NEXT MEETING DATES- January 16, 2019 AND February 20, 2019
DPS- 50 Farm Avenue

****Please note meeting location has changed- The Commission will meet at the Department of Public Services located at 50 Farm Avenue, Peabody MA until further notice.**

NOTICE OF INTENT

1. A continued public hearing on a Notice of Intent submitted by Elizabeth Wallis & Peter Ogren (Hayes Engineering) for Seven Dearborn Limited Partnership c/o Joe O'Donnell (owner). The applicant proposes to construct a parking lot with associated drainage and stormwater systems as part of site redevelopment for a new apartment building. The property is known as 7 Dearborn Avenue, Map 78, Lot 19, Peabody MA.

Motion to continue as made by Ms. Feld. Seconded by Mr. Wojcik. Adopted unanimously.

2. A Public hearing on a Notice of Intent submitted by Matthew Salem of Solitude Lake Management for the City of Peabody/Community Development. The proposed work is the management of excessive aquatic vegetation and algae in Bartholomew Pond, Crystal Lake, Devils Dishfull Pond, Elginwood Pond and Sidneys Pond through an integrated management plan utilizing US EPA registered & state approved herbicides and algaecides. The property is known as Bartholomew Pond, Crystal Lake, Devils Dishfull Pond, Elginwood Pond and Sidneys Pond, Peabody MA.

Present: Kara Sliwoski (Solitude Lake Management) and Matthew Salem

MS SLIWOSKI: I am not sure where you want me to start since there are so many waterbodies. I can do a general overview. The city is ultimately looking to manage the nuisance aquatic vegetation as well as invasive aquatic vegetation within all of those ponds that you just listed. It is a monthly management program that we will be doing with the city. We will treat when there are nuisance conditions. If there are any invasives we will monitor. If there is an algae bloom we will treat for those. Those can obviously have health implications to not only people but aquatic organisms. The products that we have proposed to use in the NOI all will not be used necessarily in one season at all the ponds. We just wanted to file and have all the tools available in our toolbox in the event that a new invasive species appears in Elginwood or Crystal Pond or something. We want to be prepared to battle that and get it while the invasion is small. The invasives can take right off and it will cost more money in the long run to manage that as you sort of chance it around. I am open for any questions. I can explain more but I figure that is probably the easiest way to start.

Discussion ensued. Residents spoke out without stating their name and address. A resident that lives on Devils Dishful stated there are clusters of plant roots that started forming small plant islands. Ms Sliwoski stated that it is not something they would typically treat but could if the commission gave them permission.

MS SLIWOSKI: That is not something that is in our purview. We are just going to be treating the weeds and the algae as necessary. Those are probably waterlily roots that you see that are floating. Often times in the winter if the water is shallow enough and the roots freeze they will ultimately die. Eventually because they are decomposing the gases that are produced during that decomposition makes them float and rise. We ultimately call them floating islands too. That is not something we are planning to manage. Obviously as it becomes a problem we can talk to you and others that live around there in coordination with the city there are other ways of management too. We can physically remove them.

Discussion ensued. Another unnamed resident asked if the chemicals would kill the lily pads.

MS SLIWOSKI: Not the in-water ones. We can target the lily pads if those are a nuisance. We obviously want to target some of the lotus that are in some of the ponds that are invasive. Ultimately lilies you want to keep to some degree. They are beneficial habitat to fish and aquatic

life and they are pretty. If they are impeding someone's access or that sort of thing the treatment for those is very selective. It is a topical treatment. It has to be done on a non-windy day. It has to dry on the pad itself. We are able to make channels for navigation and that sort of thing. It is a very selective treatment for the lilies.

Discussion ensued. Another unnamed resident asked if the wildlife would be affected by the treatments.

MS SLIWOSKI: The stuff that we use for the lilies is inactive once it hits the water. The in-water chemicals there is no repercussions. (Resident asked an inaudible question). That is really our ultimate target in any project is the invasives. Yes, the milfoil is on our number one list.

MR RIZZO: Will the treatment of these waterbodies happening concurrently?

MS SLIWOSKI: No. Well I guess what do you mean?

MR RIZZO: For instance, are you going to do Devils Dishful Pond this coming season and another pond another season? Or will you treat all the ponds concurrently for the same things? Will one pond be waiting years to get treatment?

MS SLIWOSKI: Right now, we manage the water supply for the city for algae. We are basically going to loop in the rest of these ponds with that management. We are at the water supply ponds twice a month. We plan to be at all of these once a month. The water supply second visit is for sampling. It is a quick visit. The plan is ultimately during each visit to each pond every month; it is kind of treatment on an as needed basis. If we see an issue, or if there is an algae bloom or nuisance growth or that sort of thing it will be targeted. Ultimately, we are there more for a monitoring visit. It is more of just checking things out and making sure everything is okay. If we need to do something we will do it while we are there. instead of the more reactive approach of the city or a resident calling us saying "I have a lot of lilies." Or "the milfoil has topped out." Or "there is a nuisance patch of weeds." We obviously have to react to that after the situation which is not good. Because then somebody is already dealing with that nuisance. In addition to that by proactively treating them we can sometimes use less product.

Discussion ensued. Unnamed residents asked if the city had the budget to pay for this management program. Commission staff was uncertain about the city's budget.

MS SLIWOSKI: Not to put anyone on the spot but honestly everything that goes onto the ground at this point ultimately ends up in some sort of waterway. Whether it is through surface groundwater runoff or actual groundwater ultimately all the salt on roads, the fertilizer on your lawn; the ingredients in your fertilizer that phosphorus and nitrogen obviously making your lawn grown green and beautiful is the same thing that the aquatic plants love and need. As all of that is coming in that fuels not only the plant growth but the algae blooms as well.

Discussion ensued. Unnamed residents continued asking questions. Solitude stated that they eventually may need access to properties along resource areas. Most of the ponds are small so work should be able to be done from a ten-foot johnboat (flat bottomed boat). Chairman Rizzo reminded everyone that cattails are a classic obligate species and they should not be treated or removed.

MS SLIWOSKI: In the maps that are going around the room. The maps show the vegetation and the general distribution of where we saw things when we surveyed this year. It has the plant species names. I am more than happy to provide everyone here the important species to know and what they look like. If you want to put a page on your ConComm website saying, "keep an eye out for these." That type of thing. We are happy to do that type of a thing.

MR RIZZO: If we have a picture of what an invasive may look like. Maybe if we have pictures we can put that on our website. Then the public can have access to them.

MS SLIWOSKI: That is easy for us to put together.

Discussion ensued.

MR LAZARES: When you come up with these educational materials could you also identify what plants are in each pond? And when you are going to treat them.

MS SLIWOSKI: I can give a general timeframe of when we are going to treat them. It is really when the nuisance conditions arise. For milfoil we know they reach a nuisance level in June. The visit will probably be the beginning of June to target the waterbodies that have that species. Some waterbodies have spiny naiad which is a later germination species. That comes out around late July. It hits nuisance level early August.

MR LAZARES: Will you be able to publish a list of links, what plants and a timeline?

MS SLIWOSKI: Yes, with a general timeline.

Discussion ensued.

MS SLIWOSKI: There are a few different herbicides we use. We like to have them available on an as needed basis. The primary one that we probably use is diquat and it is a contact herbicide. It is only going to kill the plants that are above the sediment that is in the water. It does not really impact the root system too much. After subsequent years of treatment, it does. That is usually about ten to fourteen days for the plants to completely fall. They will fall before that, but you will still be able to see them on the bottom. For the Clipper (Flumioxazin) that is mentioned that is probably a little bit quicker. That is because of its mode of action into the plants. I guess it is stronger in a sense. Fluridone which is Sonar that is listed. That one requires a kind of booster application. The concentration is needed to be maintained for a certain amount of days. Usually it is sixty to ninety days to completely impact the plants. That one is going into the roots of the plants. It really does vary. We can at least list that information.

Discussion ensued. Unnamed residents kept speaking out. Residents along Elginwood Pond/Crystal Lake were concerned with the use of Fluridone near their private wells. The unnamed resident stated that all the houses on Crystal Drive have private wells.

MS SLIWOSKI: Yes. It is a public water supply that is listed on that label.

Discussion ensued. The NOI application states the following *“Protection of public and private water supply-generally neutral but may have detriment at high doses (prohibition within .25-mi. of drinking water intake at doses >20ppb).”* The neighbors were very upset with the response from the consultant and stated she was wrong pointing out what was in the NOI.

MS SLIWOSKI: It is very safe, and it does not transport through the ground.

RESIDENT: Wait a minute in Massachusetts you are not supposed to put this stuff within a quarter mile of a well.

MS SLIWOSKI: If that is how close you are then it won't happen there.

RESIDENT: That means Elginwood Pond and Crystal Lake won't have that treatment? How did you put together this proposal without finding out who has wells down there?

MS SLIWOSKI: That is why there are multiple options listed.

RESIDENT: I understand that but that is not what you have in this tablet right here. Crystal Lake and Elginwood both are getting treated with Fluridone. It says you are going to treat the whole pond. The Diquat you are only going to use in spot treatments.

MS SLIWOSKI: We can do a whole lake treatment with Diquat.

Discussion ensued. One unnamed resident was very upset that Solitude and the city was considering using Fluridone near their private wells without offering alternatives.

MS SLIWOSKI: To give you some insight we do these treatments everywhere. We treated the Mystic River with Fluridone this year and last year. We have treated Lake Attitash. We treat Pillings Pond with Diquat every year.

David Pelletier, 5 Crystal Drive

MR PELLETEIR: You are going to treat the water and plants fifty feet from my wellhead. Actually, closer than that. If you treat the plants upstream, in Devils Dishful, that stuff is going to flow downstream. I know the house at 4 Crystal Drive has a shallow well.

MR RIZZO: That was my question. What are the depths of some of these wells and does that make a difference? If you have a well that is two or three hundred feet deep?

MR PELLETEIR: It would take longer like she said earlier. It is just going to take longer. This is a multi-year permit she is going for. What you spray today may not be in my well today, but it might be in there in a year and a half. If this is going to be approved I am going to suggest that you do baseline testing to these chemicals and testing forward. The city also has to know that there is no water down there. If my water gets contaminated someone is going to have to run a six-inch line down the length of Crystal Drive and then supply water to us. Right now, I do not pay for water. My water is fine. I am not looking to take on another bill.

MS SLIWOSKI: That is a very reasonable concern.

MR WOJCIK: Through the chair, did you in the back corner have a question?

The unnamed resident in back corner asked if you could swim in the water after treatment.

MS SLIWOSKI: Yes. Typically, we would close the water body the day of treatment. There are orange posters that are hung around the waterbody prior to treatment.

Discussion ensued. Unnamed residents kept speaking out. They asked for information to be posted on the city's website explaining if they can boat, swim, irrigate etc. One resident stated that people along Bartholomew Pond also have wells. Solitude said they will definitely work with the city to get information on the city's website.

MR WOJCIK: Hearing that there are wells on Bartholomew Pond as well this is even more concerning to me. Diquat may be a better solution for the Crystal Lake, Devils, Bartholomew and Elginwood Pond.

Ms. Sliwoski agreed that it would make sense to treat said ponds with Diquat instead.

RESIDENT: That is only one part of the problem. The other issue is that the weeds at my house are so thick and there is no water running. So, the deployment method (inaudible) isn't really

going to work. The reason you have all those things there is because for the last three, four, five or six years of the beavers' dam being broken and built. All summer there is no water flow there. The water goes down to nothing. That allowed all those weeds to build. Prior to that the water was always flowing everything was getting flushed through. Nothing grew there. My concern now is that you are going to go in there. Right now, the water is little bit lower because we had no rain. All the stuff is sticking out. If you spray that and kill that next year all you are going to do is create a big mud puddle out there. Beavers build the dam and the water is not flowing. It just turns to a stagnant pile of junk out there. I am basically saying the water (inaudible) is directly (inaudible) to my property. I have already spoken to the mayor about this and I really do not want that area treated. If you can not take out all the growth that is going to come with it. I read what this stuff does and what is it going to do. It is basically going to kill the plants. It is going to leave all the vegetation that is still laying in that pond to accumulate. It is not coming out. If we have a low water situation all that stuff will be exposed. If the city really wants to clean out that section of Elginwood Pond you need to come up with something for that beaver dam. They can not let it keep filling up and then break it. Then sit there all summer holding back water while the rest of it turns to a mud pit out there.

MS SLIWOSKI: Unfortunately, I have no input on the beaver dam.

RESIDENT: They keep trying to fix it piecemeal but now they have finally gotten up to the point where you have a beaver dam up the end there. They got rid of the beavers this year. Unfortunately, we had two old guys up there building the dam.

Discussion ensued. Staff will make sure all Solitude documents are on the city's website. They also asked the consultant to submit a schedule for each lake, anticipated treatment timeline and what product would be used at each lake. The commission wants the schedule to be separated by each individual lake. Solitude needs to do research regarding the location of the shallow wells. Another unnamed resident stated he was aware that Pillings Pond in Lynnfield treats their water. He knows that there are shallow wells located near the pond. He suggested maybe Peabody could use the same chemicals they use in Lynnfield on Pillings Pond. Ms. Sliwoski stated they use Diquat at Pillings Pond. They also use other treatments at Pillings Pond.

Motion to continue as made by Mr. Wojcik. Seconded by Mr. Welton. Adopted unanimously.

CERTIFICATE OF COMPLIANCE

3. A request for a PARTIAL Certificate of Compliance made by Joseph Orzel (Wetlands Preservation, Inc.) on DEP file No. 55-800. The property is known as 252 Andover Street, Map 39, Lot 25C, Peabody MA.

Motion to continue as made by Ms. Feld. Seconded by Mr. Lazares. Adopted unanimously.

DISCUSSION ITEM

4. AMENDMENT: 47 Tremont Street update on amendment request from Attorney Jack Keilty.

Motion to continue as made by Mr. Lazares. Seconded by Ms. Feld. Adopted unanimously.

5. Discussion- BIG Y- O & M Plan detention basin maintenance work.

Present: Melanie Carr, WS Development-property manager of Big Y Plaza and Brian McCarthy, RJ O'Connell Associates- engineer

Summary: Big Y has been conducting site work. The O&M Plan for the detention basin from the original Order of Conditions has been misplaced. A new O&M Plan has been created and submitted to the city engineer as well as the ConComm for permission to follow through with maintenance of said detention basin. The ConComm was thrilled that a new O&M has been created and that the detention basin is being maintained after years of neglect. The commission gave their verbal approval.

APPROVAL OF MINUTES

6. MINUTES- November 14, 2018

Motion to accept as made by Mr. Wojcik. Seconded by Mr. Lazares. Adopted unanimously.

SUBCOMMITTEE REPORTS

•Land Acquisition Committee- Chairman Rizzo **NONE**

OTHER

• **Discussion: Request from Attorney Mary T Rogers to discuss the construction at 13 Goodridge Street.**

MS ROGERS: I live next door to 13 Goodridge Street. I provided a letter to the building commissioner and to the conservation agent with photographs. I believe she sent them to you. The issue is that we do have a water problem in this area and there is a wetland. When the plans were drawn up it did not account for any of that. Nothing was done except for removing plants and trees. They have been pumping out water consistently. What is better to know what will happen than to actually have it happen. They built the foundation which is enormous. I don't know if it is ten or fifteen feet deep. They have been pumping that water up over a hill of dirt into the back of my neighbor, next to me and into the wetlands. There is a very high-water table where the foundation is being built. I have pictures to show what I am talking about (showed pictures). This is the beginning of construction and you can see all the water there. What are we going to do with all this water? It must go somewhere. The property is also on a slope. There is almost no pervious land. They have the existing house, an enormous addition, extra-large pool, a shed, a trailer and a patio. I think there will be one tree left but it is in the corner where the water is, so it will probably fall down like one did before. My direct problem, besides the wetlands, is that the wetland is expanding. The water used to come above my shed. My shed is sloped down. It is a 16' x 20' structure. The water will come below my shed. What is happening now in real time; the water is going into my shed. In a years' time, or whatever, the bottom of my shed is going to be gone and my shed will eventually be completely destroyed. I have had it for twenty years when the water was only below it.

Discussion ensued.

MR RIZZO: One of the questions I have and maybe Mr. Geisel will know the answer; what are the soil conditions out there? Are those soils pervious? Or is it a lot of glacial till where the water just doesn't go anywhere? It will just sit there. Part of my question and concerns would be installing a new foundation, as opposed to a house on stilts that doesn't have a full basement. If the water table is currently twelve inches below existing ground over a normal spring/fall type condition, if the soil is not good and you put a full foundation that means the volume that the area is able to hold water will be pushed aside and goes onto someone else's property. I don't know the answer to that because I don't know the soil types. That certainly raises the question to me as to what the effects of a full foundation on a relatively small lot where there may be flooding issues.

Discussion ensued. The commission asked Ms. Rogers if she received a letter from the building commissioner. She stated that he responded to her letter within fourteen days per the law. Discussion ensued regarding groundwater and other site issues. Fred Geisel brought in copies of a plan and passed them out to the commission. Mr. Geisel works for the property owner. Mr. Greg Boghosian, the architect, was also present.

MR GEISEL: I am a professional civil engineer working with Civil Environmental Consultants. We did the original site plan on this and we got a permit from building. The plan does meet zoning requirements. I think it is an addition for an in-law apartment plus other features. The existing house is what they call one and a half stories. Full story and then there is basically a dormer roof to add living space to the second floor. This matches that same. The architect is here if there are any questions about the design. The homeowners and the contractor are here also.

Discussion ensued. The architect stated that the new structure being added is only one story with a roof and attic space. The full basement will be for storage. The engineer has drafted a dewatering detail for the project. Discussion ensued regarding the location of the wetlands and various issues in the neighborhood. Some neighbors believe that pipes are crushed under Lincoln and Hingston streets in the neighborhood. The engineer is designing a dry well or some stormwater feature to help alleviate the flooding to abutters. They also mentioned planting trees to help with runoff. The commission felt that maybe the stockpiling on site is not allowing water to percolate into the ground and therefore pushing it onto other properties. Mr. Geisel explained that the building department never notified them that they may need to file with the commission. Mr. Geisel said they will file an after the fact NOI showing how they will mitigate runoff.

MR RIZZO: You need to look at our Wetlands By-Law. I think that bordering land subject to flooding is resource. You are in that buffer zone.

Discussion ensued.

Steven Georgian, owner of 13 Goodridge Street

MR GEORGIAN: That water problem has been there for years. Before Ms. Rogers even bought her house. Her shed was three feet (inaudible). I worked at Eastman Gelatine I know the water area okay. That water comes from (inaudible) out back. It comes down across Lincoln Street under the culvert. Into Mr. Innis's property. Circles down by Mr. Yuno's (spelling). Comes into Ms. Rogers and then into my corner of my property. It is like an "S". If the city cleaned the culvert on Lincoln Street and cleaned the culvert on Hingston Street that water from the wetland. I used to go out there skating. We would go across and end up down by the school. Out down through South Essex Sewerage.

MR RIZZO: Maybe that is something we can look into. Maybe Public Services can go take a look.

MR GEISEL: The pipe is definitely clogged. It might need to be replaced. I think it is a twelve-inch corrugated metal or even smaller. It fills up and doesn't have a slope to it.

MR. GEORGIAN: If they had cleaned the culverts last year we wouldn't be here talking to you.

Discussion ensued regarding the history of the neighborhood. Residents felt that the city has not maintained the culverts. They asked if the commission could request DPS to inspect said culverts. The commission agreed. The commission did not give the property owners permission to conduct any further work. The commission asked for topography on the plan. They also asked for a landscape plan. There was a brief discussion regarding the zoning. The commission reminded everyone that ConComm has no jurisdiction on zoning related issues. **Discussion ensued** regarding the Mother's Day storm in 2006. An unnamed resident stated that the city had

to pump them out for one full week. The contractor stated that all the fill on site today will most likely all be needed for backfill. The representatives for the property owner asked for an Amendment to the Violation Order to continue working on the footings, foundation and backfilling. The commission did not give any verbal permission to move forward with construction.

Motion to continue the VO as made by Mr. Wojcik. Seconded by Mr. Lazares. Adopted unanimously.

Items 7 & 8 were discussed together.

VIOLATION ORDER

7. A continued Violation Order issued to Emmanuel Papanickolas for DEP File No. 55-822. The property location is 25 Farm Avenue. The alleged violation is adding fill and crushed aggregate pad in the location of a proposed stormwater basin as approved by the commission under DEP file no. 55-822.

Item discussion below.

NOTICE OF INTENT CONTINUED

8. A continued Public Hearing on a Notice of Intent submitted by Emmanuel Papanickolas. This is an “after the fact” filing. The property owner is requesting the commission to allow existing filled pad to remain in buffer zone. No stormwater components are proposed at this time. The property is known as 25 Farm Avenue, Map 69, Lot 6, Peabody MA. (DEP File No. 55-860)

Present: Attorney John Harding (Lew, Brisbois & Smith LLP), Members of the Papanickolas family & Christopher Mello ELSAI

ATTY HARDING: I am counsel for the petitioner. What I would suggest particularly in light of the hour our goal here is to address some of the concerns and the frustrations that have been expressed in the prior hearings. Chris Mello has a conceptual plan that he would like to discuss with you. I think it might address many of the concerns about stormwater management and other issues relating to wetland protection. If it meets with your approval I would turn this over to Mr. Mello to discuss the concept that he has come up with to respond to the concerns and the violation orders.

Chairman Rizzo asked for an update on the violation order before discussing the NOI.

Crystal Papanickolas

MS PAPANICKOLAS: It was my understanding that Mr. Talarico had given me a letter through Brendan at the site visit. A Cease and Desist for Mr. Puzo (spelling) that was the fill was next to the Jalbert lot. It was my understanding it was also Mr. Jalbert and Mr. Burgos's (spelling) lot. When I basically tried to get the tenants to leave, Mr. Burgos and Mr. Puzo gladly did so. Mr. Jalbert ended up calling Mr. Saslaw. Who in turn called Mr. Talarico. He got permission to stay since his permit from his previous NOI had been approved. So, he moved his belongings so Mr. Karamas could start the work. It was my understanding that Mr. Karamas was supposed to start the next day. It wasn't brought to my attention until this afternoon that there is a cement retention thing. A manhole was sitting there. Long short of it is that he was not granted the permit to begin the work because Mr. Burgos has gone through four tow truck companies trying to get one final vehicle out and they won't grant him the permit until that vehicle is gone. There is one truck in his lot. He removed ninety-five percent of his belongings that immediate day and half after. He was supposed to have a tow truck company get that truck out this afternoon. They cancelled on him. He got somebody that guaranteed to get it out by Saturday. Once that happens it is to my understanding that Mr. Karamas will then be given the permit to go ahead and begin that work. I thought it was already started but that is what happened this afternoon.

ATTY HARDING: Karamas is prepared to move forward as soon as he gets the permit. Which is contingent on that one truck being removed.

Discussion ensued. The commission requested that they are notified after the vehicle is removed off site on Saturday. The property owner stated they would call on Monday.

MR MELLO: This is the log lot (inaudible too many people speaking at once). It was discussed that we would put in logs. You asked for some other stuff that was not done. We put the logs in. I put them on a plan and submitted the plan and Crystal submitted it to you. This is the plan that I brought. It shows the area that was being worked in. The green line was the wetland flag that Bill Manuell flagged. The red line was the best I could get of the wetland line dealing with DEP and the prior tenant. That being said what we have done is we have looked at this from an idea of what we could do with stormwater management. We have a very flat site. We don't think we have a lot of soil that is above standing water. Assuming it might be similar to the groundwater. The edge of the flagged wetland runs between elevation 156 and 157 and a little 158 in the ditch. The general site itself is about 160. What I have proposed to do is build a series of swales. One separate swale and two interconnected swales along the edge of the property. Somewhat parallel and concentric with the BVW line that Mr. Manuell flagged. Those lines I know are a little difficult because they are in color at the moment. The double line here would be a six-foot swale in the green line. That would flow from the front of the property to a low spot here at 156.6.

MR RIZZO: We don't have that plan?

MR MELLO: No. This is the only one I got, and it is in color. I am bringing it to you as a concept.

Discussion ensued. Regarding the location of the proposed swales. The commission was not fond of the "log" barrier around the perimeter of the work area. The applicant stated it was a temporary solution to appease the commission. They plan to place either boulders, a post and rail fence or a guardrail of some sort. Discussion ensued regarding a barrier to help keep trucks from backing into the resource area in the future. The commission expressed that they would prefer a guardrail. Commissioner Wojcik thinks there should be a no disturb zone. There was a discussion regarding the no disturb zone and signage. Mr. Mello will submit a new plan showing all items as discussed (soil stabilization, guardrail, no disturb zone, swales etc.).

Motion to continue the **NOI** as made by Mr. Rizzo. Seconded by Mr. Wojcik. Adopted unanimously.

The commission continued to discuss the Violation Order.

MR COMAK: Through the chair. There is not much to talk about. The detention basin that has not been constructed yet. I understand that Karamas went to start it and he couldn't. The city wouldn't give him the permit because the truck wasn't off the site. One of the things I asked for, which I don't see, is there a definitive schedule. I don't want to be here in May saying, "hey when is Karamas going to finish the detention basin?" Crystal you are the owner. Either he does it or you find someone else. We need some sort of a timeline. This can't keep going forever. That is all I am asking for. That is not unreasonable.

MS PAPANICKOLAS: I thought the work was already started by now.

MR COMAK: I am worried that it is going to start and a little will get done. Then a little will get done later. Then six months later we are going to be here, and you are going to say, "I don't know he is working on it." You cannot do that.

ATTY HARDING: We will press to pin him down and communicate.

MR COMAK: At the next meeting. I don't care if he says "I can't do it with the winter conditions and I can't do it now until March. If I start it in March it will be done in May." That is what we need. We need something concrete. We can't just say okay whenever you get to it.

ATTY HARDING: That is more than reasonable so we will do that.

The item was open to members of the public for comments.

Discussion ensued. Attorney Panos was present as legal representation for the abutter Mr. Weiss. He stated he would like to be able to look at the revised plan for the NOI once it is drafted for Hayes Engineering to review. Mr. Mello stated he would be happy to provide a couple copies directly to Attorney Panos once they are completed. Mr. Rizzo brought up the broken/crushed culvert again. Discussion ensued below regarding the culvert.

ATTY PANOS: It is on the JD Raymond portion of the site. It is adjacent to the violation site. It is on 25 Farm Avenue. And to the current NOI site which is a little further down the road. What that culvert is doing is it is broken and clogged and so forth. It is creating a barrier of the free flow of the water. It flows in that direction from the Manos side all the way through under the JD Raymond side towards the violation site and out over to Route 128. Hayes is under the impression that if the culvert is cleared, fixed and maintained that it will do a lot to alleviate the current flooding and pooling. That you witnessed at the site visit.

Discussion ensued regarding the repair of the broken culvert.

ATTY HARDING: We were happy to investigate anything, but I don't think this is within the scope of what we are here tonight about. Or the condition of it has been presented or documented. We don't necessarily agree with the characterization of it. Obviously, there are issues here in terms of what we think is the change in the roadway on the 27 Farm Avenue new property actually creating the problem for our property and it has nothing to do with the culvert. Again, we don't see this as the scope of what we are here tonight about, but we are happy to investigate and see what the conditions are and deal with it in an appropriate way.

MR COMAK: That is a nice way of saying no that you are not cleaning the culvert. That is fine. I am telling you that I want to get this off the table. At this point, all I want to do is clean the culvert. You can see from the road that it is clogged. That is fine if Mr. Papanickolas doesn't want to clean the culvert. We are going to have to investigate how to get these culverts clean. Whether it is a private culvert or if we can have the city try to clean it. I am not really sure where we go from here. It is a culvert pipe that is blocked, and it should be fixed. That was a fluffy way of saying no.

ATTY HARDING: I didn't really say that. I said I think we need to investigate a little more to see what the condition is. If there is a blockage, do we know what caused it? What needs to be done. If it is just sweeping leaves out that is one thing. I don't know if it is more complicated than that. That I all I am trying to suggest. Not that we won't or shouldn't do it.

CLLR SASLAW: What bothers me sitting here as a councillor layman, I sit here, with all due respect counsel, you weren't here last month. Crystal was here, and she knows (inaudible). And I listen to the board and they talk about what you just approved based upon a plan. Basically, you are putting your goodwill tell your father that we are not delaying it. We just need to see the plan and we are going to approve it. I see goodwill from the city. Crystal knows about the culvert. I as a layman now know about the culvert. This is not new. What disturbs me is that fact that I understand the differences between Weiss and the Papanickolas goes deep over many years. What I see is the fact that it is a simple problem. If your father allowed the city or the Mr. Weiss on

the property to look at it, rather than stalling. That is what I see and that is how I feel. With all due respect I agree with the Commissioner Comak. It is a nice way of saying no. You weren't here but she knows. She doesn't have to say anything. I don't expect her to say anything, but I know what is going on. I know the delay tactics. I don't appreciate it. When you as a board go out of your way to say we want to accommodate them and they won't even let you on the property to see it. That bothers me as a city official. This is a question I do want an answer to. There are a lot of tow companies out there. You said you contacted four tow companies?

MS PAPANICKOLAS: I did not. The tenant did.

CLLR SASLAW: So once again passing the buck. It should have been done. Everything is passing the buck and they won't allow anyone on the property. This is frustrating. No one is trying to harm anybody, we are just trying to alleviate situations. Mr. Manos, his property is getting flooded now. I feel your frustration Mr. Comak. You are right. It is time to move. It is time to figure it out what we have to do. I understand it is a legal issue. If they could come to the table in goodwill and allow them to go on the property and figure it out rather than delaying it another thirty days with more excuses. That is not goodwill. That is not working with the city or your neighbors.

MR COMAK: It is not even that. Mr. Weiss was at the site visit, I believe Mr. Papanickolas was there too, Mr. Weiss said he would clean it. Mr. Weiss said he cleaned it in the past. He said he told me "to stay off there". Mr. Weiss told me, "I will go in. I will fix it. I will clean it. If it is broken I will put a new piece in." He said whatever it takes he would fix it. I know that Mr. Papanickolas doesn't like the fact that Mr. Weiss put a road through an easement or whatever. I got all that but when they came before us it was a legal thing and he has a legal right to do it. They came to us and they did everything right. They had engineered plans and they did everything right. Now the engineered plans don't work. Well, Mr. Papanickolas doesn't want them to work. I think it is because of a culvert. I don't know. I could be wrong. I just want to get this fixed. It seems like an easy thing. Mr. Weiss said he would do it. It seems like an easy way to get this whole thing resolved.

Discussion ensued regarding the location of the culvert. The culvert beneath the Raymond driveway is the culvert in question. The culverts under Mr. Weiss's access driveway are not crushed. Ms. Papanickolas stated she would speak with them regarding fixing the culvert.

ATTY PANOS: I would disagree with counsel. In that, we encouraged back in November that you have to look at the aggregate and the intensity of the uses. Then measure that around the impact of the surrounding properties. I will reiterate, we spend almost half a million dollars in engineering, construction, mitigation and we are already starting to see failure of our mitigation systems that were engineered to handle stormwater runoff at the time. It is only getting worse. Manos never saw flooding the way he sees it until a few months ago. Our roadway was constructed with the supervision of the commission, DPS, the DEP and the Army Corp of Engineers. We can tell you to a mathematical certainty that this is not the cause of the current flooding situation. That is causing our mitigation systems to fail.

Discussion ensued regarding the damaged culvert.

MR RIZZO: My observation on the property, it is clear that those large piles of mulch are leaching and running into their BMP. They are supposed to maintain that and make sure it works. Now there is runoff from mulch and stuff that has gotten into that system. For his system to work that cannot be happening. That will put him in violation because he is not able to maintain that system. The fact remains that there is activity going over there that over time has slowly encroached closer and closer to other properties and the resource area. We saw it. We are asking for help. We need to work together to correct this problem. They seem willing to do so.

This is a big piece of land and a lot of things are happening. If we put our heads together we can make it work.

ATTY PANOS: If I didn't make it clear at the last meeting, I will make it clear now. We are not against the use of the property. We are not against the mulch piles or the mulching operation. We got a special permit for a mulching operation. They don't have one. We have one. We are not against the use. What we are against is the further encroachment beyond when we got the special permit. And when we got our Order of Conditions. And when we got our MEPA ENF Certificate that I provided. Again, the engineering at the time was appropriate. The engineering now indicates that those systems that were engineered properly at the time are now failing.

MR RIZZO: You can see what we did tonight. We are trying to allow you to get things going on the other property. We want to help. Now you have another site that you need to put that BMP in. We want to work with you on getting that done. It doesn't make what is going on in the middle piece disappear. The issue has not gone away. We will have to address that at some point. This is the time to do that. This is the time to work together and try to get something that is going to mitigate that. Maybe pull the pile back?

MR COMAK: I don't if we should be talking to you, but your dad is not here. So, we are talking to your lawyer. You own the property. You tell your tenant to clean it up. They can't just do whatever they want to do. It is still your property.

MR PAPANICKOLAS: They operated there for over twenty years. They just passed their five year (inaudible by DEP).

MR WOJCIK: They kept expanding and they have encroached into wetlands. We didn't know about that because they never filed.

MS PAPANICKOLAS: It's all surrounded!

MR COMAK: All we are asking is move it back a little. It is a tiny thing.

MS PAPANICKOLAS: I'll talk to them. So, we are clear, are we talking about the side that's near his retention basin?

MR COMAK: There is mulch falling into the wetlands and his BMP. We could see it.

MS RIZZO: We walked around all the way down following Route 128. There is a skinny section of Mr. Weiss's property that goes up. All along there is a very elaborate Best Management Practice attaining and handling the runoff on the site. From his site. It is all on his property and it is beautifully done. It is clear as you get closer to your property you can see the discoloration and the dye, and the mulch is getting into that infiltration area that they are supposed maintain.

MS PAPANICKOLAS: So, you are requesting that they basically move the pile away from that?

Discussion ensued that was inaudible as too many people were talking at once.

ATTY HARDING: Just how do we communicate that to them? As operators, even though they are not the owners of the property, they still are subject to regulation. It seems it might make more sense to have them part of this discussion as well. Rather than relying on the owner to communicate.

MR COMAK: Then we ask them to come to the meeting.

ATTY HARDING: I think that would make sense. Do you agree? Then we can have the owner and operator in the same room listening to the concerns.

Discussion ensued. The commission wants someone from JD Raymond present at the next hearing as advised by the owners' legal counsel.

ATTY PANOS: I was going to recommend that I can have Hayes look at maybe preparing some ideas as to what might help the situation from our perspective.

MR RIZZO: I would welcome that.

Discussion ensued. There was a brief discussion about air quality concerns as well. The mulch piles have also caught on fire over the past years. Someone needs to assess the culvert. The culvert needs to be fixed if it is damaged.

MR WELTON: Through the chair, can we request that they formally look into that (the allegedly damaged culvert) before the January sixteenth meeting? We can have report on that and we can have an indication of what is going on with it.

ATTY HARDING: As to the condition. It has been addressed. We will report that.

MR LAZARES: Can you also report that if it is broken when it will be fixed?

ATTY HARDING: Yes. The physically condition as well as clogging.

Motion to continue as made Mr. Welton. Seconded by Mr. Wojcik. Adopted unanimously.

9. Adjournment

Motion to adjourn as made by Mr. Wojcik. Seconded by Ms. Feld. Adopted unanimously.

The meeting adjourned at 10:00 PM

Respectfully submitted-

Chairman Michael Rizzo