

METHUEN CONSERVATION COMMISSION
Minutes of Meeting – October 18, 2007

The City of Methuen Conservation Commission held a public meeting on October 18, 2007, at 7:00 p.m. in the William Quinn Public Safety Building, Sanborn Hall. Present for this meeting were Suzanne Lamoureux, Chairperson, John Wilkens, Vice Chairperson, Christopher Parsons, Secretary, George Kazanjian, Financial Secretary and Commissioners Sandra Boulay and Alan Golobski. Also present were Joseph Giarrusso, Conservation Officer and Head Clerk, Dianne A. Dewan.

I. NOTICES OF INTENT:

A. Notices of Intent – DEP File # 219-1040 – MCC File # 07-015 – Lot 16, Old Ferry Road – HB & CS LLC – Apple Associates, Inc. (Con't from 09/06/07)

The Chairperson re-opened the public hearing for the above noted project and read a letter dated October 18, 2007 from Apple Associates requesting a continuance to the meeting of November 15, 2007.

Hearing no public input at this time, a motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to CONTINUE the hearing to November 15, 2007.

B. Notices of Intent – DEP File # 219-1041 – MCC File # 07-016 – 50 Osgood Street – City of Methuen – Ambient Engineering, Inc. (Con't from 10/04/07)

The Chairperson re-opened the public hearing and Bernard Hamel of Ambient Engineering submitted revised plans to the Commission for their review. He explained the changes noting that the original plan was a bad idea. He presented the alternative plan, which will result in no alteration of Bordering Vegetated Wetlands. They are however, disturbing 15,000 square feet of the Buffer Zone and Riparian Zone associated with the Riverfront Area of the Spicket River. They will be regarding and stabilizing an area providing 379 cubic feet more of flood storage.

Mr. Giarrusso noted that the Commission needs time to review this information and needs full size stamped plans.

Mr. Hamel noted that they would provide full size plans that will contain significantly more detail. This plan was for wetland delineation and issues only.

Mr. Wilkens asked what the material would be for the sidewalk and would it be wheelchair accessible.

Mr. Hamel noted that it will be stone dust compacted to a suitable surface. He requested a continuance to the meeting of November 1, 2007.

Hearing no public input at this time, a motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to CONTINUE the hearing to November 1, 2007.

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- C. Amended Notices of Intent – DEP File #219-906 – MCC File # 04-007 – 969 Riverside Drive – 969 Riverside Drive, LLC – Meisner Brem Corporation (Tabled from 09/20/07)

Per request of Martin Finch of Meisner Brem dated October 18, 2007, a motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to TABLE the public hearing to the meeting of November 1, 2007.

- D. Notices of Intent – DEP File # 219-1045 – MCC File # 07-019 – Lot 13, 39 Greenside Way – Toll Brothers Inc. – The Neve-Morin Group, Inc.

The file in order, a motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ACCEPT the Notices of Intent for the above noted project.

The Chairperson opened the public hearing and John Morin of the Neve-Morin Group presented the plans for the rotation of the dwelling that was approved under a previous Order of Conditions that included construction of the roadway. The limit of work line remains the same, being 50' from the wetlands to the closest point of disturbance. The proposed structure is 61' from the edge of the wetland resource area and a small portion of the driveway that is located in the buffer zone as well. He will be asking that the Orders the Commission issues for this filing supersede the original Orders under DEP File # 219-966 and MCC File # 05-021.

Ms. Lamoureux read comments from the Conservation Officer's report.

Hearing no public input at this time and as requested by Mr. Morin, a motion was made by Mr. Wilkens; seconded by Mr. Parsons; so voted, UNANIMOUS to CONTINUE the public hearing to the meeting of November 1, 2007 in order to address Mr. Giarrusso's concerns.

- E. Notices of Intent – DEP File # 219-1044 – MCC File # 07-020 – Northerly side of Pond Street at Hayes Street – City of Methuen – North Shore Methuen Holdings Nominee Trust

The file in order, a motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to ACCEPT the Notices of Intent for the above noted project.

The Chairperson opened the public hearing and Thomas Neve, project manager for the reconstruction of Merrimack Valley Golf Course and the developer of the reserve and Phases I and II of the housing development. He noted that as part of their permit from the City, they accepted the responsibility to construct a sidewalk along Pond Street from its intersection of Howe Street to the intersection of Phase I of the project, which is very close to the Salem/Methuen Town line. It is about 3,000 feet of sidewalk and they gave it as a gift to the community and as a gift to the neighborhood as well. This is a small portion of the linkage, which is necessary to make the entire sidewalk connect as they pledged to the City. The first Phase, about 2,000 feet of sidewalk was constructed about a year ago. That is installed and in and no portion of it is within the Commission's jurisdiction. This small portion, which is near an intermittent stream that crosses underneath Pond Street between Phases I and II requires a Notice of Intent to this Commission and an Order from them. They have planned to bridge a sidewalk over the existing culvert where that brook flows today making no disturbance of the

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physical resource area, but working within the Buffer Zone of it. We suggest that we do it by putting a small retaining wall made of concrete block, large concrete block, on the existing headwall of the culvert, which will provide them with enough vertical and horizontal distance in order to build a five foot wide sidewalk within the roadway dedication as promised to the City. The sidewalk is proposed to be five feet wide and it will be paved. There is an existing bituminous concrete berm, which is on the side of Pond Street where the water currently flows. They are not going to disturb the berm at all. They will do this operation; remove the loam and subsoil and root systems of any vegetation that exists within that five- foot wide strip. They will come in with gravel up to a grade where they can then pitch a five- foot wide paved sidewalk from the edge of the turf area right to the top of the berm of the street. So all the drainage from this new sidewalk will go into the drainage system and will not go into the adjacent land. He has given the Commission a plan that shows those details and he hope is that he will be able to get an Order from the Commission and the weather continues to be nice and they can get this built before the end of the year. If not, then it will be a spring project. In any case, it is bonded by the City on their original subdivision bond and needs to be built unless the Commission feels that it shouldn't be built. He hopes the Commission received some letters of support from other departments that are involved in this process. At this point he has done his job and would be happy to answer any questions.

Ms. Lamoureux read a memo dated October 3, 2007 from Stephen J. Gagnon, Assistant Civil Engineer for the City of Methuen, a memo dated September 25, 2007 from Kathleen Colwell, Assistant Director of Planning for the City of Methuen and comments from the Conservation Officer's report of October 18, 2007.

Ms. Lamoureux asked what the ramification of this City saying that this is not a city project.

Mr. Giarrusso noted that filing fees that have not been paid would be necessary. For the most part that is the main issue. Realistically, he is requesting to do work in the City Right-of-Way, which is not uncommon because of offsite improvements for subdivisions like Phase I and II. He can see that as the only real difference. Realistically, even in a situation where it is a private road, it's eventually given to the city to become public Right-of-Way. They still have to meet the same standards.

Ms. Lamoureux noted that apparently the Commission needs to have some filing fees, as this is not a City Project.

Mr. Neve stated that it doesn't matter if the Commission doesn't want him to do it; he is fine with not building it.

Ms. Lamoureux noted that it is not a matter of not doing it; the City is saying that they are not the applicant.

Mr. Giarrusso added that he thinks that they are saying that he is misrepresenting the project.

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Mr. Neve stated that he does not believe he is and he really did not mean for this to take up any time this evening, but he has no right whatsoever, to propose any work within the City's Right-of-Way. He has been doing this

Ms. Lamoureux interrupted that he has a condition of his approval that says you have to construct this.

Mr. Neve continued stating that the Planning Board, through a condition of approval for an offsite improvement, cannot give him permission to work within the Right-of-Way. The Right-of-Way is owned by the City. He processed an application to the City and sent it to the Engineering Department and the Department of Public Works, who he thought was the responsible authorities to approve this type of work. He would be trespassing and doing damage to City owned property by doing any work within the Right-of-Way. He does not own it, so he asked them to be gracious enough to accept the filing. He does it all the time in other communities and does not understand why it is a problem, particularly in doing a \$100,000 gift to the City and being told, no. They don't want anything to do with it; it is a private enterprise. It is a private project. They are going to be doing it with private funds and using private people to do the work. He understands that. That's fine, but he has no right to come before this Commission without the approval of the owner. He can be the representative of the applicant, who he is happy to be, but he can't be the applicant because he has no permission from the owner to be the applicant.

Mr. Giarrusso asked Mr. Neve if he had a copy of the Notice of Intent application with him.

Mr. Neve stated that he did.

Mr. Giarrusso asked him to get it out and look at the signature page and read off the three signatures that are there.

Mr. Neve stated that he signed all three of them.

Mr. Giarrusso noted that Mr. Neve said he did not have the right, but he then in turn, signed as owner, applicant and representative.

Mr. Neve stated that he did. He had to.

Mr. Giarrusso noted that, obviously, unlike the previous project that was here that either have the Mayor's or other appropriate signatures of city officials, he has not demonstrated that connection by getting

Mr. Neve interrupted requesting to withdraw their application at this time.

Mr. Giarrusso then added that if he can get their signature, then obviously he could go on.

Again, Mr. Neve requested to withdraw his application without prejudice at this time.

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The Chairperson, Ms. Lamoureux, accepted that request and made it know for the record that the applicant has withdrawn their applications in the middle of the public hearing process.

Mr. Neve stated that he appreciates the Commission's time and he is sorry for all the confusion.

F. Amended Notices of Intent – DEP File # 219-888 – MCC File # 03-042 – 7 Dale Street – David & Nancy Theroux – Stowers Associates Inc.

The file in order, a motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ACCEPT the Amended Notices of Intent.

The Chairperson opened the public hearing and Hugh Dunkley of Stowers Associates presented the revised plan noting that the applicant had constructed a foundation under the original Orders of Conditions and now wants to raze the existing dwelling as it is not in very good shape. He has applied for a Zoning Variance as it is slightly different from the original house and the driveway will be enlarged.

Ms. Lamoureux read comments from the Conservation Officer's report and a memo dated October 11, 2007 from the City Engineering Department.

Hearing no public input at this time, a motion was made by Mr. Kazanjian; seconded by Mr. Wilkens; so voted, UNANIMOUS to CLOSE the public hearing for this project. The Commission now has 21 days in which to make their decision. It will not be made this evening.

II. CALL TO ORDER: The Chairperson called the regular meeting to order at 7:43 p.m.

III. ACCEPTANCE OF AGENDA / AMENDMENTS (IF ANY): A motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ACCEPT the Agenda as posted.

IV. ACCEPTANCE OF MINUTES: A motion was made by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ACCEPT the minutes of 09/06/2007, 09/20/2007 and 10/04/2007 as written.

V. NEW BUSINESS:

A. Request for Determination of Applicability – MCC File # 07-022 – 39 Westwind Drive - Stephen Zubricki – Stowers Associates Inc.

Hugh Dunkley of Stowers Associates presented the plan for the removal of an existing deck and construction of a new deck, addition, retaining wall and expansion of driveway within the 100' Buffer Zone of Bordering Vegetated Wetlands. The stockpile area is outside of the 100' Buffer Zone.

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A motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to ISSUE a Negative 3 Determination with standard boilerplate, conditions # 2 and 7 waived under the state and # 7 under the local to require a letter upon completion and the following special conditions:

- **Before building permit may be signed off**, erosion control consisting of double-staked hay bales shall be installed at the limit of work as shown on the approved plan. Installation shall be inspected and approved by the Conservation Commission or its agent.
- A dumpster will be used for the construction debris to prevent materials from blowing into the resource area and it shall be covered at the end of each workday.
- All materials shall be stockpiled in the front of the property.
- Existing grades shall not be altered as a result of the proposed work.

B. Request for Determination of Applicability – MCC File # 07-023 – 57 Chase Street –
57 Chase Street LLC

William Gallant submitted a copy of the legal notice and presented the plan to repave existing driveway and parking areas.

A motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to ISSUE a Negative 3 Determination under the Local and a Negative 2 Determination under the State with standard boilerplate, conditions # 2 and 7 waived under the state and # 7 under the local to require a letter upon completion and the following special conditions:

- **Before building permit may be signed off**, erosion control consisting of double-staked hay bales shall be installed at the limit of work as confirmed by the Conservation Officer in the field. Installation shall be inspected and approved by the Conservation Commission or its agent.
- Any materials stockpiled shall be located over 100' from the river.
- Existing grades shall not be altered as a result of the proposed work.

VI. OLD BUSINESS:

A. Enforcement Issues

1. EO # 04-007 – 146 Pleasant Valley Street - Jabour

Mr. Giarrusso updated the Commission noting that he met with Mr. Jabour and his engineer and they finally understand the issues that need to be addressed with regard to this violation and is working on that as he speaks.

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2. EO # 07-002 – Lot 51, Old Ferry Road – Boddy

Mr. Giarrusso updated the Commission noting that the Commission had issued enforcement action regarding the clearing of vegetation. The site has restored itself of vegetation to a suitable level and at this point, the Commission needs to look at some type of quantitative means of issuing penalties. Looking at what is out there and what information is available, the only fine schedule that he sees appropriate is associated with Section 9, which deals with violations of doing work without the Order of Conditions, which levies \$100 citations. As the property owner is going to be required to deal with MESA, it is his opinion that it is a reasonable thing and he did not gain anything from his illegal action.

The Commission agreed in the form of a motion by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ISSUE one citation with a penalty of \$100.

3. NOV #07-011 – 160 Hampstead Street - Dube

Mr. Giarrusso updated the Commission noting that this site has had previous enforcement orders issued. He had issued a Notice of Violation, which required several things. Prior to its issuance, he spoke to Mr. Dube and informed him of the violation and requested that he clean up his mess. He did not comply and the Notice of Violation was issued. Some of the violation is not even on his property. It is all Rare and Endangered Species Habitat as well. He had failed to comply within the required time frame to install the erosion control and has failed to have a biologist report submitted for review and approval. The site was to be mitigated within 30 days of September 26, 2007. Mr. Dube is meeting with Leah Basbanes. He asked the Commission if they want to wait until the next meeting to issue an Enforcement Order with the appropriate penalties. The erosion control is now in. He has until the next meeting to submit the required report and mitigation plan.

The Commission instructed Mr. Giarrusso to prepare an Enforcement Order for the next meeting with a summary of everything that Mr. Dube is delinquent on. He will make sure Mr. Dube knows that he is doing this and he can then be present.

B. Certificates of Compliance – DEP File #219-942 – MCC File # 04-037 – 488/490 Lowell Street – Jason Howell – Christiansen & Sergi

Ms. Lamoureux read comments from the Conservation Officer's report and a memo dated October 3, 2007, from the City Engineering Department.

A motion was made by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ISSUE Certificates of Compliance and RELEASE the bond for the above noted project.

C. Certificate of Compliance on Determination of Applicability – MCC File # 06-007 – 65 Pleasant Valley Street – Target Corporation – Jeffrey M. Brown Associates, Inc.

Ms. Lamoureux read comments from the Conservation Officer's report.

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A motion was made by Mr. Wilkens; seconded by Mrs. Boulay; so voted, UNANIMOUS to ISSUE a Certificates of Compliance for the above noted project.

D. Extensions to Orders of Conditions – DEP File #219-888 – MCC File # 03-042 – 7 Dale Street – Nancy & David Theroux

As recommend by the Conservation Officer, a motion was made by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ISSUE TWO (2) year Extension Permits for the above noted project.

E. Certificates of Compliance/Bond Release – DEP File # 219-922 – MCC File # 04-020 – Lot 1, Tedesco Road – Tiffany LLC – LandTech Consultants

Ms. Lamoureux read comments from the Conservation Officer's report and a memo dated October 12, 2007, from the City Engineering Department.

A motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to ISSUE Certificates of Compliance and RELEASE the bond for the above noted project.

F. Certificates of Compliance/Bond Release – DEP File # 219-1017 – MCC File # 06-025 – 175 Tyler Street – Gregory Bowden

Ms. Lamoureux read comments from the Conservation Officer's report and a memo dated October 11, 2007, from the City Engineering Department.

A motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to ISSUE Certificates of Compliance and RELEASE the bond for the above noted project.

G. Bond Reduction – MCC File #04-026 – Whisper Meadow – DC Development Group, LLC – MHF Design Consultants, Inc.

As recommend by the City Engineering Department, a motion was made by Mr. Kazanjian; seconded by Mr. Wilkens; so voted, UNANIMOUS to REDUCE the bond to the amount of \$20,400.

H. Orders of Conditions/Bond – DEP File # 219-1031 – MCC File # 07-006 – 137 Pelham Street – Heavenly Donuts LLC

A motion was made by Mr. Wilkens; seconded by Mr. Parsons; so voted, UNANIMOUS to ISSUE Orders of Conditions PROHIBITING the project with the following findings:

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The Notice of Intent filed by Dimetrios Saragas and plan by RAM Engineering dated April 4, 2007 is for the proposed renovation of an existing structure with a 14' by 8' addition, associated grading and utilities, which will result in the alterations to the buffer zones associated with the following resource areas: Land Subject to Flooding and Bordering Vegetated Wetlands. Erosion control is proposed to prevent impacts to resource areas beyond the limit of work.

Reasons for Denial:

The applicant has failed to provide information sufficient to describe the proposed construction of the addition and associated work or the effect this work may have on the interests identified in the Act and Local Ordinance. As allowed in 310 CMR 10.05 (6)(c) the Commission hereby issues an Order prohibiting the work.

The reasons for Denial are as follows:

- The applicant has failed to provide the information necessary for proper review and protection of the resource areas.
- The submitted plan and Notice of Intent fail to include a construction sequence and timetable which is necessary for proper review and to insure protection of the Resource Areas.
- The submitted plan fails to provide locations of material and loam stockpiling areas as required and is necessary to insure protection of the Resource Areas.
- The applicant has failed to address design issues outlined in the attached memo dated May 1, 2007, from the City Engineering Division. Failure to address these issues would result in impacts to jurisdictional areas protected by the Act and Local Ordinance.

I. Amended Orders of Conditions – DEP File #219-906 – MCC File # 04-007 – 969 Riverside Drive – 969 Riverside Drive, LLC

A motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to TABLE this item to the next meeting of November 1, 2007.

J. Certificates of Compliance/Bond Release – DEP File #219-906 – MCC File # 04-007 – 969 Riverside Drive – 969 Riverside Drive, LLC – Meisner Brem Corporation

A motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to TABLE this item to the next meeting of November 1, 2007.

VII. INSPECTOR'S REPORT: In addition to his written report, Mr. Giarrusso noted the following:

1. Lot 7, Shannon Estates

Mr. Giarrusso explained the proposed changes to the approved plan for the above noted project. The dwelling was originally proposed 86.3' away from the wetlands. He compared the approved and revised plan to the Commission explaining that it is still within the limit of work area but would now be approximately 70' from the wetlands as it is being shifted to the North. He asked how the Commission would like to handle this. The usual allowance was a 5' difference with a smaller house. This is a situation where it has gotten closer by more than 5' and it has gotten bigger. He feels it is reasonable, but asks how to entertain the change.

Mr. Russell was present and noted that the prospective buyers have requested the one story home with 3 bedrooms and that is the reason for it being larger. He is willing to follow whatever directions the Commission desires.

Mr. Kazanjian made a motion to approve the Change finding it Insignificant. The motion was seconded by Mr. Parsons for discussion.

After a brief discussion, Mr. Russell stated that he did not have a problem doing this as an amendment. He asked if there were any possibility that the foundation permit could be issued and make the occupancy permit subject to it.

Mr. Giarrusso noted that he felt that was reasonable.

Mr. Kazanjian then rescinded his motion and Mr. Parsons his second and a new motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to require an Amendment to the Orders of Conditions prior to the issuance of an Occupancy Permit.

Mr. Kazanjian left the meeting at this point in the meeting.

III. OTHER BUSINESS:

1. Discussion of Determination of Applicability – Interstate Route 93 – Mass Highway

Mr. Giarrusso explained that MASS Highway submitted a letter stating that the above noted determination has expired, but they have one more coat of asphalt to put down on Rte. 93. There will not be any more grinding or excavation; it is just putting down the final coat. He has discussed this with the Chairperson and they came to the conclusion that it would make sense to allow them to put the down the final coat and state that if they have to do any type of intrusive work then they would need to refile.

The Commission did not have any issues with that decision.

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2. Mr. Giarrusso updated the Commission on work being done under the Emergency Certification for Rte 213 at 495 (Frye Road area). Some of the work has been done. They cleaned out the culvert underneath 495. Then they complained that there is some beaver activity there and he walked the culvert and there was so much silt, he had to crouch down. There was about 4' of silt in the culvert and no beaver activity.
3. Mr. Giarrusso noted that he is doing the water draw down at Forest Lake. With all the recent rain, there is a need to breach the beaver dams along Harris Street.

A motion was made by Mr. Parsons; seconded by Mrs. Boulay; so voted, UNANIMOUS to ISSUE an Emergency Certification for a 4' by 4' breach at the Harris Street dam.

- IX. ADJOURN:** A motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to ADJOURN the meeting at 8:42 p.m.

Respectfully submitted by:

Reviewed by:

Approved on:

Dianne A. Dewan
Head Clerk

Suzanne M. Lamoureux,
Chairperson

11/01/2007
Date Approved