

Monday, June 11, 2012

### **Attendance**

David Henry (Chairman), Ron O'Reilly (Vice-Chairman), Julian Kadish, Lisa Carrozza, Michele Simoneaux, Scott Ollerhead and Jennifer Carlino, Conservation Agent

Chris Baker was absent.

### **Minutes**

David Henry called the meeting to order at 7:00 pm.

The members reviewed the Bills Payable Sheet (Verizon). Ron O'Reilly made a motion, seconded by Julian Kadish, to pay the bill. Approved.

The members reviewed the Bills Payable Sheet (TFord). Lisa Carrozza made a motion, seconded by Ron O'Reilly, to pay the bill. Approved.

The members reviewed the Bills Payable Sheet (Chartley Landscape). Ron O'Reilly made a motion, seconded by Julian Kadish, to pay the bill. Approved.

The members reviewed the Bills Payable Sheet (Herb Church). Ron O'Reilly made a motion, seconded by Julian Kadish, to pay the bill. Approved.

The members reviewed the Bills Payable Sheet (Pare Corp.) Lisa Carrozza made a motion, seconded by Julian Kadish, to pay the bill. Approved.

The members reviewed a Request for a Determination of Applicability – **(DET. #983) – George P. Schubert - Parcel 64 (Assessor's Map 16) 23 Robinson Lane** – for construction of a 5'5" x 11' dock in the Norton Reservoir (postfacto).

### **Documentation List**

1. WPA Form 2 – Determination of Applicability.
2. Plan entitled "Sanitary Disposal Repair for John White et ux at 23 Robinson Lane in Norton, MA (sheet 1 of 2) prepared, signed and stamped by John F. Vance, Jr. with a Scale of 1"=20' and dated October 7, 2006 – dock hand drawn on the plan.
3. Pictures of the dock.

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Jennifer Carlino stated the dock was constructed without a permit. George Schubert said he had constructed a dock in the Norton Reservoir and did not realize he needed a permit. Mrs. Schubert stated the dock was 6' x 8'. Jennifer Carlino asked her to draw the dock on the submitted plans. David Henry asked if the footings were made of 4'x4's and Mr. Schubert replied they were. He said they sit on patio blocks. Julian Kadish asked how far apart the decking was spaced and Mr. Schubert replied approximately 3/4". Jennifer Carlino stated that a nameplate with their contact information should be attached to the dock.

Julian Kadish made a motion, seconded by Lisa Carrozza, to close the public hearing. Approved. Julian Kadish made a motion, seconded by Lisa Carrozza, to issue a negative (#3) Determination of Applicability. Approved.

The members reviewed a Notice of Intent – (#250-884) – **Robin McDonald/Attleboro YMCA Camp Finberg – Parcel 292 (Assessor's Map 26) 295 West Main Street – (cont. from the February 13, 2012, March 26, 2012, April 9, 2012, April 23, 2012 & May 21, 2012 mtgs.)** - for the removal of debris from the wetland resource areas, removal and proper disposal of cut branches and vegetation within the wetland resource areas and vegetation maintenance of the view shed area.

Document List

1. WPA Form 3 – Notice of Intent.
2. Plan entitled "Attleboro YMCA, Camp Finberg Property, Norton, Massachusetts, Permitting Plans for the Maintenance of Attleboro YMCA Billboard Area" (sheets C-1, L-1, EX-1 & L-2) prepared by Weston & Sampson, signed and stamped by Laurence F. Keegan, Jr. on June 14, 2012 and dated January 9, 2012.
3. Several pictures of the billboard.

Discussion ensued on whether or not anyone had checked the site. Michele Simoneaux stated she stopped at the site and, in her opinion, does not think they need to clear as much as proposed. Lisa Carrozza asked how far down the vegetation would be cut and Jennifer Carlino replied not lower than 6 feet of the ground. Lisa Carrozza suggested moving the flags a little closer to the bill boards and do less cutting and clearing. She suggested to put details on the plan where they will be cutting and put a few GPS points on the plans with written descriptions with off sets to the road and sign. Jennifer Carlino stated that permanent markers will be in place before work starts. She said this will be written into the Order of Conditions. Lisa Carrozza made a motion, seconded by Michele Simoneaux, to close the public hearing. Approved.

Notice of Intent – **Bay Road Heights/Shawn Kelly – (#250-871) - Parcels 27, 29, 30 & 131 (Assessor's Map 12) & portions of Bay Road, off Bay Road (Phase 2 of Bay Road Heights 40B) – (cont. from the June 13, 2011, June 27, 2011, July 11, 2011, August 8, 2011, September 26, 2011, October 17, 2011, November 14, 2011, December 19, 2011, January 23, 2012, February 27, 2012, March 26, 2012, April 23, 2012 & May 21, 2012 mtgs.)** - for proposed plans to extend a water main, construct a roadway, 11-lot subdivision and storm water management within 100 feet of wetlands.

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David Henry noted that the applicant has requested a continuance of the project until the next regular meeting. Michele Simoneaux made a motion, seconded by Julian Kadish, to continue the public hearing until Monday, June 25, 2012. Approved.

**Notice of Intent – Bay Road Heights/Shawn Kelly – (#250-872) - Parcels 29, 30 & 131 (Assessor's Map 12) off Bay Road (Phase 3 of Bay Road Heights 40B) – (cont. from the June 13, 2011, June 27, 2011, July 11, 2011, August 8, 2011, September 26, 2011, October 17, 2011, November 14, 2011, December 19, 2011, January 23, 2012, February 27, 2012, March 26, 2012, April 23, 2012 & May 21, 2012 mtgs.)** - for proposed plans to install a 23-unit condo complex, road, storm water management and utilities within 100 feet of wetlands.

David Henry noted that the applicant has requested a continuance of the project until the next regular meeting. Michele Simoneaux made a motion, seconded by Julian Kadish, to continue the public hearing until Monday, June 25, 2012. Approved.

The members reviewed an Abbreviated Notice of Resource Area Delineation – **(#250-887) Dakota Partners, LLC – Parcels 4 & 22 (Assessor's Map 2) Newland Street – (cont. from the April 23, 2012 & May 21, 2012 mtgs.)** - for verification of the Wetland Resource Areas.

Document List

1. WPA Form 4A – Abbreviated Notice of Resource Area Delineation
2. Plans entitled “Turtle Crossing, Comprehensive Permit-Local Initiative Program-Notice of Resource Area Delineation, Assessor's Map 2/Parcels 4 & 22, Newland Street, Norton, MA. (Sheets C-1.0, C-1.1, C-1.2, C.1.1a) – Signed and stamped by Daniel R. Campbell.

Dan Campbell of Level Design Group addressed the board. He stated he had modified the plans since the previous meeting by correcting the file number and adding the 200 ft. riparian area for the Riverfront. He said that Brian Madden of LEC submitted a report on the vernal pools on the site. Michele Simoneaux asked Mr. Madden why the pictures of the vernal pools were current and the data six years old. He replied that the information was taken over the past six years whereas the pictures were from this past February. He noted that a formal report of the vernal pools was never done. Julian Kadish stated he did not think certifying the vernal pools at this time was relevant to this application. Michele Simoneaux and Lisa Carrozza stated the resource areas are relevant to the wildlife habitat. Jennifer Carlino stated that a couple of the vernal pools contained species at this time that could be used to certify the vernal pools at this time. She said she would submit that information to add to the Notice of Intent filing. Dan Campbell stated that the PVPs (possible vernal pools) will be shown on the site plans for the Notice of Intent filing even though the project is outside of the vernal pool areas. Jennifer Carlino stated that, since some of the vernal pools are totally dry at this time, a condition will be added to the Order of Resource Area Delineation.

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Michele Simoneaux stated that she and Scott Ollerhead had inspected the site over the weekend and she had a question regarding the detention swale to the left side of the property. She suggested to draw a line a WF D11 for one section of the bordering vegetated wetland. She noted there is no hydrologic connectivity between WF D28 and WF D29 and the pond. She stated that the original swale had been torn up by four-wheelers. Dan Campbell replied that this was one of the original access roads and that the rip rap in this area was deliberately torn down to help drainage. Lisa Carrozza noted that the scale on the plan was too small to read at the area that the rip rap is connected to the pond. Mr. Madden pointed out an area of the bordering vegetated wetland that had been entirely dug out in 2007. Dan Campbell suggested that a man-made channel cannot be considered bordering vegetated wetlands. Jennifer Carlino noted that the swale was not shown on any earlier plans when the filling of the site was taking place.

Michele Simoneaux stated that the Commission has to review the site as it appears today and not as it appeared years ago. Mr. Campbell stated that drainage is not considered protected under the "Act" and therefore the drainage swale should not be looked at as bordering vegetated wetland. Jennifer Carlino noted that the digging of the swale was not on any submitted plans to be used as a "drainage" area, therefore it cannot be considered a "drainage" area. Julian Kadish stated that he cannot support the idea that the swale will be jurisdictional. Jennifer Carlino asked the Commission if they wanted to require soil tests at the rip rap area and Michele Simoneaux stated she would like to require the soil testing. Lisa Carrozza stated that the area will be deemed bordering vegetated wetland and it is up to the applicant to do the soil testing to prove otherwise.

Earl Wilcott, 145 Newland Street, stated that the wetlands on this site were four times as large before any filling had begun. Discussion ensued on the original permit to fill in the area and what was allowed and not allowed under the permit. Julian Kadish stated that the area being filled was deemed Isolated Land Subject to Flooding at that time.

Michele Simoneaux asked Mr. Madden for his opinion for labeling the areas on this site forgetting any knowledge of the past activities on the site and he replied that he could not do that because of his involvement with this project at this time. He said he spent a lot of time investigating this area past and present. She asked him specifically about the drainage swale and he said, in his opinion, he would not consider this a protected area.

Michele Simoneaux made a motion, seconded by Julian Kadish, to continue the public hearing until later this evening. Approved.

The public hearing resumed for this project. Dan Campbell stated that a letter from the Army Corp. of Engineers stating that no man-made structure was under the jurisdiction of the Conservation Commission was included with this application. He stated that the rip rap along the pond was a man-made drainage structure. He stated that he did not have any other information to add to this public hearing. Lisa Carrozza made a motion, seconded by Julian Kadish, to close the public hearing. Approved.

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The members reviewed a Notice of Intent – **(#250-888) – Turtle Crossing, LLC – Parcels 4 & 22 (Assessor's Map 2) – Newland Street – (cont. from the May 21, 2012 mtg.)** - for proposed plans to construct 7 buildings, 8 garages, driveways, parking, utilities and associated grading within 100 feet of wetlands.

Document List

1. WPA Form 3 – Notice of Intent
2. Stormwater Report
3. Plans entitled “Turtle Crossing Comprehensive Permit Application Local Initiative Program, Newland Street, Norton, MA, prepared by Level Design Group and signed and stamped by Nicola Facendola dated April 12, 2012.
4. Turtle Crossing Comprehensive Permit-Local Initiative Program, AM2/Parcels 4 & 22, Newland Street, Norton, Massachusetts, Off-Site LP Sewer Line dated March 5, 2012. (Scale 1”=40’)

Dan Campbell asked the board if they could accept the drainage report that was written by Jeff Walsh of Graves Engineering that was approved by the Zoning Board of Appeals. He asked if the Conservation Commission could use that report and revise it with their comments and suggestions. He assured the Commission that Graves Engineering has the staff to review the project under the Wetland Protection Act. Michele Simoneaux asked if they could do a Storm Water as well and Mr. Campbell replied that they could. Michele Simoneaux made a motion, seconded by Lisa Carrozza, to require a peer review by a Consulting Engineer under Chapter 44, Section 53G. Approved. David Henry asked Mr. Campbell when he would like to continue the public hearing and he replied, July 23<sup>rd</sup>. Julian Kadish made a motion, seconded by Ron O'Reilly, to continue the public hearing until the regular meeting of Monday, July 23, 2012. Approved.

The members reviewed a Notice of Intent – **Robert Welch, Airport Manager, Mansfield Municipal Airport – (#250-878) – Parcel 141 (Assessor's Map 4) North Washington Street – (cont. from the March 26, 2012 & May 21, 2012 mtgs.)** - for proposed plans for cutting trees within 100 feet of wetlands.

Document List

1. WPA Form 3 – Notice of Intent
2. Locus Plan
3. Proposed Clearing Plan
4. Canopy Analysis Plan

Present at the public hearing were Armand Dufresne of Gale Associates, Inc., Steve Riberty of GZA GeoEnvironmental, Inc., Carl Lambert of the Mansfield Municipal Airport and Katie Servis of Mass DOT. Michele Simoneaux and Scott Ollerhead recused themselves from the public hearing.

Mr. Dufresne updated the Commission on the project. He said that he submitted the added information requested at the last hearing. He noted the only exception is a signed certification letter for the Vegetation Management Plan (VMP) from Mass DOT which he is still waiting for. Ms. Servis

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submitted a draft of what will be eventually submitted. Mr. Dufresne stated that the VMP has been updated. He noted that there is another area owned by Mass Highway that will have to be cut not included in the application stretching approximately 30 to 70 feet. He said that any trees within the vernal pool area are out of the buffer zone. Julian Kadish asked Mr. Dufresne if the trees within the vernal pool area were going to be cropped or cut down and he replied they were going to be cut down. He said the trees to be cut down are marked with paint.

Jennifer Carlino reminded Mr. Dufresne that she needed something in writing from Mass Highway, as the owner's, if trees are to be cut on their property. Mr. Dufresne stated he is waiting for a signed access permit from Mass Highway and will submit it as soon as he gets it. He gave Jennifer Carlino a copy of the draft letter. Lisa Carrozza suggested all work be monitored by an environmental consultant during the time the work is being done. David Henry said this would be one of the conditions. Mr. Dufresne noted that in compliance with the Mass Highway permit, a certified arborist will be on site during the cutting of the trees.

Mr. Riberty stated that the trees to be removed from the vernal pool are minimal, approximately six, and are located on the northern side and on the edge of the buffer zone. Jennifer Carlino suggested that the six trees in the vernal pool be cut at height leaving the snag. Mr. Riberty agreed this could be done. Lisa Carrozza asked if sequencing could be added to the plan and Mr. Dufresne stated he would add it. She also suggested labeling the certified vernal pool on the plan. Jennifer Carlino noted a letter of notification to the Mass Historical Society had been received. She asked Mr. Dufresne if they were notified of the Mass Highway property and he stated he was not sure. Lisa Carrozza made a motion, seconded by Julian Kadish, to close the public hearing. Approved.

(The members re-opened the public hearing for File **#250-887 - Dakota Partners, LLC – Parcels 4 & 22 (Assessor's Map 2) Newland Street.**)

The members reviewed a Notice of Intent – **(#250-889) – Bing He/MBCP REO II, LLC – Parcel 240 (Assessor's Map 9) Mansfield Avenue** – for proposed plans to construct a building with parking and utilities within 100 feet of Norton Reservoir.

Document List

1. WPA Form 3 – Notice of Intent
2. Plan entitled "Plan of Proposed Dental Office, Mansfield Avenue & Smith Street, Norton, MA, Prepared for: BMS Properties, LLC" Scale: 1"=20', prepared by Yarworth Engineering Company, Inc. and signed and stamped by Christopher D. Yarworth dated March 4, 2012.

Chris Yarworth and Bing He were present at the public hearing. Mr. Yarworth submitted revised plans and had a response letter to Jennifer Carlino's comment letter. He stated that the applicant's wife is a dentist located across the street in the Roche Brother's Plaza and would like to move her practice to this

location. He said the access to the office will be from Mansfield Avenue. Julian Kadish asked Mr. Yarworth if any erosion control would be used as there are no wetlands on the site. Mr. Yarworth replied that, because of the depression on the site, and unless there is a 10,000-year storm, there will not be any wetland issues on the site or near the site.

Lisa Carrozza asked if there were any catch basins on the site and Mr. Yarworth replied there were not. He stated there were catch basins and dry wells on Route 140, Mansfield Avenue. He said all water will be dispersed on the property. Lisa Carrozza asked Mr. Yarworth if he prepared a SWPPP and he replied the site is less than one acre and he did not have to prepare one. Lisa asked Mr. Yarworth if he considered the "LID" technique. He replied that he did not because he would have to pre-treat the area 44 % before installing an infiltration basin and after doing a few other things, there would be no room for the basin. He said he looked at porous pavement but that is too expensive to maintain. Lisa Carrozza suggested using a different treatment on two different areas of the property as an alternative. She said that DEP is trying to defer the use of catch basins and infiltration basins when there are alternatives. She suggested looking at alternatives for the water runoff even if two different methods on the site will be used.

Chris Yarworth proceeded to go through the comment letter written by Jennifer Carlino and his response comments for each one as follows:

**1. The letter dated May 10, 2012 describes existing drainage overflow area that is to remain. If this is a part of the drainage system it should be clearly labeled that its intended purpose is for drainage. It further describes buried construction debris but the location is not shown on the plans. Describe the nature and extent of buried debris and the removal methods. Provide grading and landscaping proposed for this area. This area is located in the buffer zone as well as the 100-year floodplain. The alteration must be quantified and added to the NOI application.**

Chris Yarworth stated he has already discussed this. He said some hand cutting in the buffer zone was being done without a permit but Jennifer Carlino had concerns with the cutting area not being clearly described and it was decided to not do any further cutting. Jennifer Carlino stated she requested an accurate description of what was being done but Mr. Yarworth chose to remove the clearing and cutting from the application.

**2. Add BLSF to the plans per the Commission's policy. Storm water should not be proposed within the 100-year floodplain.**

Chris Yarworth stated that the site is not in a floodplain. He replied that the elevation of 103.65 (NGVD 1929) that the Commission has adopted by policy as the 100 year flood elevation converts to an elevation of 102.86 on the site datum (NAVD 1988) at this location. He said while a portion of the property lies below this elevation, it is not contiguous with Norton Reservoir, therefore does not qualify as BLSF.

3. **The letter also contains a statement concerning the office having a view of the reservoir; however, the plan shows an arborvitae hedge between the office and the parking area that will block the view. Please clarify.**

Chris Yarworth stated that the intent of the plantings was to block the view of the parking lot from Route 140. She noted that the windows in the office will be approximately 8 to 9 feet high and above the plantings.

4. **Revise the NOI application pages 2 and 3 to add the floodplain alteration.**

Chris Yarworth stated that no alteration of flood plain is proposed and the forms are correct as submitted.

5. **Submit the signed and stamped storm water checklist page.**

Chris Yarworth noted that a checklist has been submitted.

6. **Submit a statement regarding the use of LID techniques. Regulatory revisions require the use of LID rather than traditional drainage plans.**

Chris Yarworth stated they just discussed this issue.

7. **TSS removal sheet must be revised to accurately depict the treatment train. The plans show one catch basin to a cultec unit to a basin not two catch basins to a cultec. Also, demonstrate that the catch basins can capture a storm event greater than the 25-year storm.**

Chris Yarworth stated that two catch basins are proposed and shown on the plans prior to discharge to the Cultec units. He said that the details of the Cultec units are shown on the Sheet 4 of the plans and that all the catch basins have deep sumps and hoods. He said that the second basin acts as a splitter to separate water quality flows from peak flows. He noted that Jennifer Carlino had questions regarding the catch basins and that the catch basins are located at a depression in the driveway, and are typically (under Norton subdivision regulations for proposed roadways) designed for 25 year storms. He said if the 100 year storm event exceeds the basin's capacity, water will collect in the gutter depressions, pond, and then infiltrate through the grates as flows permit and that this is typical of how roadways are designed, and in excess of what a normal driveway is required to handle. He noted that in this case double grate catch basins have been proposed for the low points of the driveway on each side at the low point and that a typical single grate at a depression location handles 2.5cfs. He stated that the 100 year flow to the catch basins is 0.4 cfs on the west side and 1.06 cfs on the east side, so the basins should easily handle the proposed maximum flows, even though it is not required. He said the piping is sized for the 100 year event.



**8. Submit specifications for the cultec units, including maintenance measures required and setbacks to wetlands, septic, and building foundations.**

Chris Yarworth noted that the specifications of the Cultec units are on Sheet 4 and that the required setback from the leach field is 25 feet, and is shown on the plans. He said the Cultec units are below the building slab so there is no required setback and that the units handling roof runoff are outside the buffer zone. He noted the distance of the stormwater Cultecs to the wetlands is approximately 68 feet, and can be scaled from the plans. He stated that the Operations/Maintenance Plan previously submitted discusses maintenance provisions.

**9. The storm water report must address all standards. Submit compliance documentation for standards 9 and 10.**

Chris Yarworth stated that Standard 9 was submitted.

**10. Applicant must provide a statement that the funding is readily available to maintain the drainage system.**

Chris Yarworth stated that a letter from the applicant stating that he has sufficient funding to maintain the stormwater system will be submitted and noted that the applicant will be occupying the building, it is not proposed as a rental site.

**11. Plans show alteration within the 15-foot minimum side yard setback. Isn't this area required to remain natural as a landscaped buffer?**

Chris Yarworth stated that the 15 foot setback shown is for building setbacks from the property line as required by zoning. He said the 20 foot setback line shown at the southwesterly side of the site is a landscaping buffer required by zoning. He noted no construction is proposed in this area.

**12. Submit the landscaping plan. Plantings shall not be approved if they are on the Massachusetts Banned Plant List.**

Chris Yarworth stated he originally stated that non-invasive plants were going to be used. He submitted a draft sketch of plantings and said the applicant had given him a list of desired planting which he will add to the list if permitted.

**13. Label the drainage basins with consistent labels from Storm Water Management. Add the elevation of each storm event to the drainage basin detail.**

Chris Yarworth noted that the revised plans show this labeling. Jennifer Carlino stated that he has been calling the basins "drainage basins" and asked Mr. Yarworth what he is labeling them now and he replied he is calling them "infiltration basins". She asked him if they are labeled "infiltration basins" on the detail on the plans and he replied they are.

- 14. Confirm that the lighting proposed shall be fully shielded with light that does not go higher than 70-75 degrees above horizontal and not greater than 1500 lumens in order to direct the light to the desired area, and avoid light pollution of the night sky that may impact the wetlands ability to provide wildlife habitats. (For more information visit <http://www.darksky.org/mc/page.do>.)**

Chris Yarworth noted that a note has been added to the plans stating that all exterior lighting will use incandescent bulbs of 150 watts or less, and will be shielded at the top. He said dark sky compliant lighting is not required by the Norton Zoning Bylaws for this type of lighting. He noted that exterior building lights will be under the roof eaves, and the one 8 foot high pole will have a cover for the bulb at the top to prevent vertical light pollution. He replied that dark sky compliance would probably require multiple poles at higher elevations, and would result in more light impacts than proposed. Chris Yarworth noted that the lighting is outside of jurisdictional area. He said that lighting for the sign will also not be dark sky compliant, but will be focused directly on the proposed wooden sign with minimal external impact. He stated that he would have preferred a wooden sign but the alternative to this would be to have an internally illuminated sign, which, in his opinion, looks lousy.

- 15. It is likely that the Commission will require a consulting engineer review of the proposed storm water system under MGL Chapter 44, Section 53G.**

Chris Yarworth stated that the applicant requests that the Commission not proceed with a 53G review. He replied that this is a minor project with minimal impact on the wetlands, which do not even exist on-site. He said no runoff is proposed to off-site or to a wetland resource and any excess stormwater runoff will flow from the designed basin to other land of the applicant, and still not reach a wetland area. He noted that the drainage system has been designed to blend into the existing natural depressions of the site, the existing large trees abutting Route 140 have been preserved and every attempt has been made to create an environmentally low impact project.

Mr. Yarworth stated that the applicant is willing to make whatever reasonable changes are requested in order to obtain the Commission 's approval, but would prefer not to submit to the never ending delays and expenses that are incurred during the 53G review process. He said that, unless it is the Commission 's intent to deny the application in its entirety, there does not seem much, other than minor adjustments to the design, that will be accomplished by a 53G review, and the time and expense that will be utilized for these changes does not seem worthwhile. He noted that the applicant would like to begin construction this year, if possible.

Michele Simoneaux asked Mr. Yarworth if this project is required to be reviewed by any other board or Commission and he replied it is not.

Lisa Carrozza asked what the ground water elevation is and Mr. Yarworth replied it was high, stating that the basins are two feet over the water table.

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Lisa Carrozza asked if the only catch basins on the site are the ones at the entrance and Mr. Yarworth replied that was correct. She suggested flaring out the construction entrance out at both sides. She said the inlets should be protected during construction. She suggested using silt sacs for protection and adding the detail notes to the plans. She requested that a concrete washout detail be added to the plans.

An abutter, Peter Hunt of 9 Smith Street addressed the Commission. He stated that he would, obviously, like to see the property stay in its natural state. He noted that he did realize that the property would eventually be developed at some point. He wanted the Commission to know that, in his opinion, this project seems to be the best scenario and does not anticipate any issues or problems with the construction of the site.

Jennifer Carlino stated she has received new information which has to be reviewed. She suggested to Chris Yarworth that he should look into splitting the treatment for the property and investigate LID techniques. Julian Kadish made a motion, seconded by Ron O'Reilly, to continue the public hearing until the next regular meeting of Monday, June 25, 2012. Approved.

Michele Simoneaux made a motion, seconded by Ron O'Reilly, to adjourn the public meeting to the Norton Public Library at 9:20 pm. Approved.

The Conservation Commission meeting reconvened at the Norton Public Library at 9:30 pm.

The members reviewed a Notice of Intent – (**#250-882**) – **Kenneth Leavitt – Parcel 720 (Assessor's map 3) Pheeny's Island, Norton Reservoir – (cont. from the February 13, 2012, April 9, 2012, April 23, 2012 & May 21, 2012 mtgs.)** – for proposed construction of ropes based adventure course to include construction of a building, shed, dock, wood chip walkways and picnic areas within 100 feet of Norton Reservoir.

Document List

1. WPA Form 3 – Notice of Intent.
2. Stormwater Management Form.
3. Several color photographs of the proposed camp.
4. Several color photographs of the Island.
5. Response letter from Yarworth Engineering Company, Inc. dated March 27, 2012.
6. Plan entitled "Plan of Proposed Recreational Day Camp On "Pheeny's Island" In Norton Reservoir Prepared For Kenneth Leavitt, Prepared by Yarworth Engineering Company, Inc. and signed and stamped by Christopher D. Yarworth, scale of 1"= 40' and dated January 5, 2012 with **revisions** on March 27, 2012 and May 24, 2012.

Present at the public hearing were Chris Yarworth, of Yarworth Engineering Company, Inc., Kenneth Leavitt, applicant; Scott Goddard, Wetland Scientist and Attorney, Matt Watsky.

Chris Yarworth stated he had received a letter from Jennifer Carlino dated April 26, 2012 noting comments that have been resolved and comments that have not be resolved. He stated he submitted a response letter to the unresolved comments as follows: Jennifer Carlino stated that the members have a copy of his response letter which was sent with their agendas.

**6. Legend will be revised so that the silver course is depicted in same color as in plan sheet. It is preferable to illustrate courses in legend in order of difficulty to ease in following the course design. Identify location of start of black course and red course. Identify any new trails necessary to access start trees for each course. Identify maximum height of clearing for each course.**

Chris Yarworth noted that the plans show revised coloring and sequencing information. The start and end of the courses are listed. No new trails are proposed - trails start and end near existing trails. The height of clearing is clarified in #7 below.

**7. A more detailed description of work performed to install ropes and zip lines will be submitted, including work performed on the trees (i. e. pruning etc).**

Chris Yarworth noted that the typical platform height ranges from 8'-35' and the typical pruning height ranges from 40'-56'. He stated that the installers use ropes to climb the trees, not spikes, and cut the dead branches leaving the healthy trees. Jennifer Carlino asked Mr. Yarworth to describe the changes to the Red course and he pointed out the changes on the submitted plans to the members. He noted that the Red course is the only revised course with trees to be cut. Lisa Carrozza reminded Mr. Yarworth that the Commission had asked him to minimize impact to the wetlands and his revised plans show increased impact to the wetlands. Mr. Yarworth explained that the work is not in the wetlands, just directly adjacent to the wetlands.

Lisa Carrozza asked Chris Yarworth if this information is included on the plans for the contractors to see and Mr. Yarworth explained that the information was received from the contractors and included with the revised documents.

**8. Trail signs may be needed to keep people on designated paths and prevent understory clearing in resource areas (including wetland and floodplain).**

Chris Yarworth stated signs will be installed as needed to keep people on trails and this can be a special condition.

**14. Quantify Bank alteration to include temporary access from boat to upland with plywood, include erosion/sedimentation prevention measures and, final stabilization. Revise appropriate NOI sheet. Revise description of compliance with performance standards.**

**Quantify BVW alteration in square feet. Refer to definition of alter. Revise appropriate NOI sheet. Revise description of compliance with performance standards.**

**Identify BLSF boundary (to be completed by Conservation Commission consultant). Once 100-year floodplain boundary is determined, quantify area of trees being removed in BLSF in square feet. Refer to definition of alter. Quantify widening of existing 1%-foot paths to 4-foot paths within floodplain. Quantify alteration in floodplain for temporary access from boat. Revise appropriate NOI sheet. Revise description of compliance with performance standards. Habitat evaluation may be required depending on alteration amounts and thresholds reached.**

**Quantify temporary access from the boat for LUWW. Quantify effects of shading by dock in square feet. Revise appropriate NOI sheet. Revise description of compliance with performance standards.**

Scott Goddard addressed the board to respond to these comments as follows:

He proceeded by stating the first issue is LUW which consists of;

The area of the seven posts is 0.47 square feet, the shaded area of the main dock is 455 square feet and the ramp area, from the top of bank to the main dock, is 33 square feet.

Mr. Goddard stated that the total of these items is under the 10% requirement for a Wildlife Habitat Study. He read what was submitted and included with the member's agenda as follows:

- The dock or its posts will not impair the water carrying capacity of the Reservoir.
- The dock or its posts will not impact ground and surface water quality.
- The dock or its posts will not impact the capacity of the area to provide breeding habitat, escape cover, and food for fisheries. Based on vendor claims, the main dock sections, made of 3/8" thick polyethylene, will allow some ultra violet light penetration. While the vendor also claims some light diffuses through the surface, an inspection by the applicant at the sales site could not confirm this. Thus while some light may penetrate the surface, for the purposes of permitting the Commission should assume no light penetration under the main dock area. The ramp surface material is made of "Flow Thru", which allows 60% light penetration according to the vendor. Samples of the docking were too large to bring to the Commission meeting, but the applicant will be glad to offer transportation to the sales office in New Hampshire should any of the Commissioners wish to examine the proposed materials. Please note that the revised dock layout has the decking at a 6.5 foot maximum width, which is far narrower than the original dock layout, and should allow much more light to enter under the dock from the sides. The ramp is raised well over the water level for most of its length, which will also allow greater light penetration under its 4 foot width. Also, in many cases, docks can provide cover for fish breeding areas, and actually enhance the habitat value of the area.

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- The threshold for performing a wildlife habitat study is 10% of the LUW or 5000 square feet. The poles driven into the ground for the dock will take up only about one square foot in total of LUW. Even if shading impacts are included, this is far less than the required threshold for performing a wildlife habitat study. There is a presumption in 310CMR10.56(4)(a)4 that this minor project scope is not presumed to impair the capacity of LUW to provide important wildlife habitat functions. Thus a wildlife habitat study shall not be performed for the proposed de minimus impact to LUW.

- No improvements to boat channels are proposed at this time.
- No state listed rare species are presumed to be present at this site.

Jennifer Carlino asked Mr. Goddard what the final number was for Land Under Water and he replied it was 49 as stated on the revised submitted Notice of Intent Form.

Mr. Goddard noted that for the Bank he was asked to quantify the both impacts to the access bank, including the temporary impact. He proceeded to read what he has submitted for the response for this issue as follows:

Bank: The outer perimeter of the exposed island qualifies as a bank resource area and is depicted on the site plan. One, four-foot wide elevated walkway is proposed to span from the dock to the upland area, bypassing the bank. Additionally, between flags SGG #92 and SGG #92A, pieces of plywood will be laid down temporarily for a width of 8 feet on top of the sandy beach/Bank. It is anticipated that 4 sheets of plywood will be needed, for a total area of 128 square feet. The purpose is to prevent erosion and tire ruts during equipment and material on and off-loading. This area serves little to no functions of Bank, as it is the most heavily travelled way along the shore of the island. It is largely barren of vegetation. No additional measures need be taken beyond the plywood for erosion/sedimentation control. No direct permanent impact to Bank is proposed, therefore no performance standards are required to be met. The revised plans show the location of this access area.

Jennifer Carlino asked if the dock was going to be used for de-mobilization after the project is finished and Mr. Goddard replied it would be.

Mr. Goddard addressed the issue regarding the Bordering Vegetated Wetland (BVW). He noted that the only work within the BVW is the single zip line shown as the Red course. He said that the work would be taking place approximately 30 feet above the wetlands and that the cutting of trees will be very minimal. He replied that some of the trees marked to be cut down many only be pruned. He stated that pruning a few trees would not constitute a "loss" to the BVW, but it would be an "alteration" of a wetland. David Henry asked Mr. Goddard what he meant by "Vista" pruning and Mr. Goddard replied by saying "vista" means to open a window to make visible. Lisa Carrozza disagreed and stated "vista" means visual only and does not apply to pruning that is done to add a zip line or any other structure. She agreed the

word “**alteration**” does apply because there is damage to the area. Scott Goddard stated he did not think mitigation is necessary. Lisa Carrozza stated that, in her opinion, he did not meet the Performance Standards for avoiding light.

Scott Goddard continued with the comments under Bordering Land Subject to Flooding (BLSF):

He noted that after receiving the elevation of 103.65 ft. from the Peer Review, he has applied that figure to his calculations. He stated that he still believes that the Commission has no right to any flowage rights above elevation 101.76 (NGVD 1929).

Scott Goddard noted that no structure or grading will be placed in the floodplain. He acknowledged that there would be floodplain storage gain by the removal of trees. He submitted a chart depicting the possible amounts. He noted that Jennifer Carlino had asked him to evaluate whether or not he might have triggered the Wildlife Habitat Threshold for a Wildlife Habitat Study of the floodplain area.

Scott Goddard stated that canopy loss in the floodplain was calculated by using the chart submitted. He stated that for the total canopy area being disturbed, there would be 50% light penetration. He noted that of the 50%, 30% of the canopy was overlapping other canopies. He replied that after walking the site, he figured that after the removal of trees in the floodplain, there would be about 3524 square feet of canopy loss in the floodplain. He explained that the entire site consists of 68,000 square feet of floodplain and the 3524 square feet of canopy loss is less than 10% loss, therefore meeting the Wildlife Habitat Performance Standards. David Henry asked Mr. Goddard what method he used for calculating and he replied that he was on site with the surveyors and he used the chart going by the diameter of each tree to be removed to figure the canopy loss.

**15. What is the shaded surface area of the dock? Provide a sample of dock material from manufacturer if available, otherwise dock decking must provide spaces for adequate sunlight to reach bottom of Reservoir.**

Chris Yarworth noted that this was discussed in comment #14. Jennifer Carlino asked Mr. Yarworth to specify. He noted that a sample of the dock could not be submitted. He asked the Commission to accept the dock as submitted. He stated that he spoke with the manufacturer who stated that standing on the dock, you cannot see down through it, but standing under the dock, you can look up and see light.

**16. No related qualifications, course work or training submitted to Conservation Commission. May/June is appropriate time for evaluation, if requested. Evaluation to be done after parameters or evaluation and qualifications are discussed and agreed upon with Conservation Commission.**

Scott Goddard replied that the only resource area that Wildlife Habitat was triggered for was Bordering Vegetation Wetlands which he did himself. He noted that "The Wetland Regulations (310 CMR 10.60 (1)(b)) require that all wildlife habitat evaluations "be performed by an individual with at least a masters degree in wildlife biology or ecological sciences from an accredited college or university, or other competent professional with at least two years experience in wildlife habitat evaluation." He then noted that he has had at least 15 years of experience. Scott Goddard stated that he has already submitted a resume'.

**18. Small gas tank to be stored in maintenance shed. Spill prevention plan may be required in OOC to address accidental spills related to filling boats or transporting gas tanks to and from island. Boat maintenance plan should include regular inspection and cleaning boats of invasive plants so they aren't spread.**

Chris Yarworth stated he submitted a revised Operations & Management Plan for Pheeny's Island dated June 2, 2012. Jennifer Carlino asked if there were any booms in case of an accident and Mr. Yarworth replied there are not. Chris Yarworth stated that, in addition to Jon boats alternative methods like canoeing are being considered.

**19. Describe how will accidental "propeller dredge " and turbidity be prevented?**

Chris Yarworth noted that shallow boats designed for marshes are going to be used and run at low speeds. He said trained guides will be used for the driving of the boats. Lisa Carrozza asked who would be training the guides. She asked if Operation Manuals will be provided to the guides. Chris Yarworth replied that Ken Leavitt will train the guides to the paths that the boats will use to transport the people. Ken Leavitt stated an Operations Manual will be provided.

**21. New wetland flag to be reviewed. New temporary alteration must be quantified Show and label location of temporary construction access on the plans. If providing electric service to the island is proposed, submit all information describing the location and method of installation and clearly illustrate it on the plans.**

Scott Goddard stated that he had installed a new flag, WF92A, but Jennifer Carlino stated that she has not had a chance to review that yet. He said he did quantify the temporary impact to and labeled the 8 linear feet of bank on the revised plan. He noted that the possible electrical service tie-in is not part of this project.

**22. No related qualifications, course work or training submitted to Conservation Commission. Discussion at hearing indicates there may not be a complete understanding of habitat characteristics by evaluator. To be revisited when BLSF is identified and all alteration is quantified.**



Scott Goddard noted that his qualifications have already been discussed. He stated that no BLSF thresholds have been triggered for wildlife habitat evaluation of BLSF habitat.

**27. Discuss after floodplain boundary is identified, impacts are quantified and wildlife evaluation is done, if required. Conservation Commission will conduct a site inspection.**

Scott Goddard replied that no BLSF thresholds are triggered for wildlife habitat evaluation as outlined in prior discussion of performance standards this evening.

**30. Forms completed but spill prevention plan should be submitted and may be required in OOC.**

Scott Goddard stated that the spill prevention plan is included in the revised Operations & Management Plan for Pheeny's Island dated 6/2/12.

Scott Goddard stated that, as discussed earlier, minor changes have been made to the layouts of the re and black courses, and the perimeter zip line.

Chris Yarworth submitted a letter from Kenneth Leavitt to Jennifer Carlino dated June 2, 2012 in response to her letter regarding alternatives to crossing the wetlands at the westerly side of the site and asked that the members read the letter. He stated that in her letter, Jennifer Carlino had suggested a man-made tower in an upland area instead of using the existing trees which would involve reconfiguring the course and adding two ladders and a new pathway around the wetland finger to avoid the crossing. Mr. Leavitt responded that the installation of a man-made tower in this area would not only be financially unfeasible, but would also conflict with the natural aspects of the course as he is trying to blend in to the site. Mr. Leavitt also responded that the addition of two new points where clients would have to ascend/descend from the trees, especially at the end of the day when they will be tired, would negatively affect the course utilization. He said the creation of a new trail immediately adjacent to the wetlands would be more detrimental than the minimal tree trimming that is proposed.

Julian Kadish asked Mr. Yarworth how much traffic is on the ground walking right next to the wetlands currently according to the submitted plans versus the alternative of re-designing the course. Mr. Yarworth replied there would be more traffic along the wetland line. Lisa Carrozza disagreed and pointed out an area on an existing path that the zip line could be placed out of the wetlands. Chris Yarworth replied that the course has already been designed and it would be very costly to redesign it again. He said that they have already moved the course further upland and have avoided using the trees in the wetlands as much as possible.

Ken Leavitt noted there would be no impacts to the wetlands and no damage to the wetlands. Scott Goddard confirmed Mr. Leavitt's statement.

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Julian Kadish stated that, in his opinion, there are people and projects every day that cross wetlands to construct a house, etc. when there are no alternatives. He said that, in his opinion, the activities occurring 30 feet above the ground will cause no adverse impacts to the wetlands. He suggested that using the strict standards with this project might set a precedent for future projects. Lisa Carrozza stated that, in her opinion, the zip line could be located totally in the upland area of the island and not have to encroach on the wetlands.

Jennifer Carlino asked Mr. Goddard if the BLSF calculations of 3524 sq. ft. noted on the Notice of Intent Form included the 128 sq. ft. of temporary access bank and he replied that it did not. She asked him to revise the form and note that the 128 sq. ft. is "temporary".

Joyce Guild of 444 Reservoir Street addressed the Commission. She stated that the next day after the last Conservation meeting a letter appeared in a local newspaper written by a guest columnist, Mr. Leavitt with the title "Why Norton Will be Proud of Pheeny's Island". She said she and the other residents are already proud of Pheeny's Island the way it is at the present time. She noted that many articles have been written about health and the effects on your health by unwanted noise. She pointed out that there will be much noise directed toward the residents from Pheeny's Island as a result of the proposed zip line adventure courses. She stated that many residents, in order to avoid the noise, would have to spend money and move. She suggested other sites for the zip line courses. She suggested if 200 residents, including herself, would pitch in \$1,000 each, they could purchase the island. Julian Kadish noted that the Commission is making decisions based on enforcing the Wetland Protection Act.

Linda Clark of 4 Bailey Lane addressed the Commission and stated that she and the concerned residents will be attending all upcoming meetings of all and any departments regarding this project.

Frank Hovey of 42A South Lakeview Road asked why a fence is not proposed to keep people out of the wetlands. Julian Kadish replied that a fence would be more intrusive to the wetlands.

Donna Cote of 29 Island Road asked if the project is allowed and is constructed, will the project be routinely monitored by the Conservation Commission and Julian Kadish replied that the Commission monitors all projects approved by the board.

Brandt Henderson of 25 South Lakeview Road addressed the Commission to voice his opinion to state that, in spite of the Commission's efforts to protect the island and enforce the Wetland Protection Act, he and his neighbors are strongly opposed to this project.

Lee Parham of 27 Island Road addressed the Commission and stated he has been following the review process of this project from the beginning. He stated that there is the possibility that, once the novelty has worn off, the site may be abandoned and trashed. He said he has personally visited Powder Ridge site which is the previously developed zip line site by Ken Leavitt. He stated that the Selectmen allowed him to enter the site and take pictures of the site, now abandoned, which show what a mess the

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site has become. Mr. Parham asked if there would be anyway money could be held in escrow to clean up the site in the event it becomes abandoned. He said he, nor his neighbors, want to look out at a trashed island.

An abutter addressed the Commission and stated that, in her opinion, the reservoir is for boating, fishing, etc. as it is used for at the present time and not meant to be an amusement park which will be abandoned eventually and trashed.

Ms. Guild noted that this island is seen by, and affects many hundreds of residents.

Brandt Henderson stated that, in his opinion, this project would not be allowed in a more prestigious neighborhood and projects as this choose areas like the Norton Grove area to build.

Mr. Hovey asked the Commission if “noise” was an environmental issue and the board stated it is not under the Wetland Protection Act.

Scott Goddard asked the Commission if anyone could specifically describe in any way how the BVW will be damaged or impaired by this project. David Henry stated that altering the BVW could possibly impair or damage it.

Lisa Carrozza made a motion, seconded by Michele Simoneaux, to close the public hearing. Approved.

The members reviewed a request for a partial Certificate of Compliance for **File #250-868 – Horizon Beverage Company/Michael Epstein – Parcels 115 (Map 24) & 1 & 92 (Map 25) 45 Commerce Way** – for an addition and upgrading of parking, drainage and access areas. Jennifer Carlino stated that the area is not stabilized and the applicant does not want to post a bond at this time. Michele Simoneaux made a motion, seconded by Ron O’Reilly, to deny the request for a partial Certificate of Compliance. Approved.

The members reviewed a request for a Certificate of Compliance for **File #250-582 – Mansfield Airport Commission - Parcel 428 (Map 3) Mansfield Airport** – for plans to fill and replicate 3,080 sq. ft. of wetland for improvements to the runway and taxi way. Jennifer Carlino stated she sent a letter requesting more information and has not heard back from them yet. Lisa Carrozza made a motion, seconded by Ron O’Reilly, to deny the request for a Certificate of Compliance. Approved. Michele Simoneaux and Scott Ollerhead recused themselves from the public hearing and vote.

Violations

**81 Freeman Street** – Jennifer Carlino stated she had done a final inspection and most of the materials had been removed.

**241 Mansfield Avenue** – Jennifer Carlino stated that an Engineer, Chris Charette was hired.

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**6 Rumford Road** – Jennifer Carlino stated she is planning to meet with the owner.

**45 Crane Street** – Jennifer Carlino noted that the owners had started planting the restoration area along the steep slope along the river.

**94 & 96 Maple Street** – Jennifer Carlino noted that she checked and the disturbed areas on both of the properties have grown back. Julian Kadish made a motion, seconded by Ron O'Reilly, to release the violation on both properties. Approved.

Michele Simoneaux made a motion, seconded by Scott Ollerhead, to adjourn the meeting at 10:45 pm. Approved.

Minutes Approved by Committee on: \_\_\_\_\_  
(Date)

Respectfully submitted,

*Signature:*

\_\_\_\_\_  
( Name)

Chairman, \_\_\_\_\_