



# TOWN OF NORTHBOROUGH Conservation Commission

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## Conservation Commission Meeting Minutes January 11, 2016

**Members Present:** Greg Young, Maurice Tougas, Diane Guldner, Wayne Baldelli, Justin Dufresne and Todd Helwig

**Others Present:** Kale Kalloch-Getman, Conservation Agent; Jacquie Goring, Board Secretary; Dan Nason, Public Works Director; Fred Litchfield, Town Engineer; Liz Dupre, Clearwater Environmental; Scott Goddard, Goddard Consulting; Frank Birchieri, Bertin Engineering; Marc Bergeron, VHB; Brian Brosnan, VHB; Scott Michalak, member of 73 Washburn Street Trust; Bruce Goldsmith, resident of 63 Washburn Street; Jean Goldsmith, resident of 63 Washburn Street; Leonard Michalak, resident of 73 Washburn Street; Margaret Michalak, resident of 73 Washburn Street; Janice and Rick Ferenchick, parents of resident of 295 Church Street; Julianne Hirsh, resident of 19 Smith Road; Susan Stasaitis, resident of 318 Green Street; Frank Ferenchick, resident of 295 Church Street; Linda Rankin, resident of 77 Washburn Street; and Ernest Wolshin, resident of 69 Washburn Street.

**Approval of Minutes:** Mr. Todd Helwig motioned to approve the minutes of December 14, 2015 as written. Ms. Diane Guldner seconded the motion and the vote was unanimously in favor of approval.

### **Notice of Intent, Church Street Bridge, MassDEP File #247-1107**

- Applicant: Town of Northborough
- Representative: Dan Nason, Northborough Public Works Director
- Request: Repair of Church Street Bridge
- Jurisdiction: Riverfront area, Bank, Land Under Water

Mr. Dan Nason, Public Works Director; Mr. Fred Litchfield, Town Engineer; and Mr. Brian Brosnan and Mr. Marc Bergeron of VHB were present to discuss the Church Street Bridge repair. Mr. Nason informed the Commission that the Church Street Bridge was built in the 1900's and constructed of loose fit dry laid stone masonry abutment walls with granite slabs. The dry laid stone masonry has deteriorated and there is a large crack in the eastern granite slab. Ms. Kalloch-Getman displayed plans for the proposed bridge repairs. Proposed work includes removing the existing culvert and replacing it and widening the roadway 22 feet to three lanes including two inbound lanes and one outbound lane. Ms. Kalloch-Getman displayed photos of the existing bridge. Mr. Young noted that Mr. Dufresne is recusing himself from the hearing because he is an employee of VHB.

Mr. Nason stated that the project has been designed over the past year and bids will be received by January 28, 2016 in order to be reviewed in time for the February warrant for the April Town Meeting. Mr. Young noted that a site visit was conducted on the previous Saturday. Ms. Guldner asked how the bid was structured after challenges with the Otis Street Bridge project and not being able to close Church Street. Mr. Nason noted that they cannot mandate how dewatering is done. Mr. Brosnan added that pre-qualifications are required as part of the bidding process and that the contractor must be Massachusetts Department of Transportation (MassDOT) qualified and references will be contacted as

part of the bid selection process. Mr. Brosnan also noted that the Otis Street Bridge contractor worked mainly with smaller structures and that the Church Street Bridge is a much more significant project.

The work will be completed in three phases to allow traffic to continue to pass. The Northborough Fire and Police Departments have requested that two lanes of traffic be open at all times because there is not a sufficient detour available and alternating traffic is not possible. Mr. Brosnan also added that a qualified contractor will be necessary to control the flow of water and keep the bridge open to traffic, unlike the Otis Street Bridge which was closed during construction. Mr. Bergeron noted that effective best management practices for controlling the water will be followed using cofferdams and detailing methods will be provided to the Town and the engineer prior to approval. Mr. Bergeron also noted that there will be a staff person onsite full time while construction is ongoing and will keep regular communication with the Commission. Mr. Nason added that the project also differs from the Otis Street Bridge project because the abutting dam had water flowing underneath it even when it was closed and that the proposed cofferdams will have designated pipes allowing water to flow during construction. The proposed work is estimated to cost 1.2 million dollars compared to approximately \$400,000 to complete the Otis Street Bridge project.

Ms. Kalloch-Getman noted that she has spent a significant amount of time working with Mr. Nason and VHB reviewing the details of the proposed work including dewatering plans, work within the floodplain and stormwater management and feels very comfortable with the proposed plan. Mr. Young confirmed with Mr. Brosnan that stormwater will divert to an area of rip rap. Mr. Brosnan added that three additional catch basins will be installed and will all discharge to the proposed swale area. Mr. Nason noted that the existing catch basins will discharge directly to the stream. Mr. Young identified that the stormwater report checklist states that not all of the stormwater standards were fully met. Mr. Bergeron reviewed the standards and stated that they were met to the extent practicable for the redevelopment project and that there are space constraints limiting the ability to meet some of the standards. Mr. Brosnan added that impervious area increased due to the widening of the road and that hoods and sumps are being installed to improve the existing conditions.

Mr. Young requested that Ms. Kalloch-Getman be notified of dewatering. Mr. Brosnan noted that Ms. Kalloch-Getman had concerns about the control of water and has requested that she be onsite to observe the condition of the stream bed to be sure it is returned to the existing condition. Mr. Young added that the stream bed conditions should be equal to or better than the existing condition at the end of the project. Ms. Kalloch-Getman noted that there is a small window to see the undisturbed stream bed after the cofferdam is in place and she expects to be contacted to take photos and documentation. Mr. Brosnan stated that the project has gone out to bid and will be on warrant for the April Town meeting and funds would be available as of July 1, 2016 which will allow the contractor to take advantage of the low flow season. Mr. Nason noted he is working on the budget with the Town Manager and will determine once the bids have been received if the funding will be available immediately after Town Meeting or if the project must wait until July 1<sup>st</sup>. Mr. Brosnan added that if the work begins in July the project should be completed by Thanksgiving.

Mr. Baldelli confirmed with Mr. Nason that the existing drainage on the eastern side of the Church Street Bridge will not change. Sumps and hoods will be installed for the proposed catch basins. Mr. Litchfield added that some of the structures were replaced with deeper sumps and hoods when the road was widened and that the downtown road widening project ended 80 feet from the culvert. Mr. Baldelli confirmed with Mr. Nason that the piping will not be changed and Mr. Litchfield described how the drainage will empty into the proposed swale. Mr. Baldelli confirmed with Mr. Nason that silt sacs will be used at each inlet during construction before the swale is installed. Mr. Nason added that the contractor will be required to notify the Commission from day one and Mr. Young confirmed the communication will be improved.

Mr. Helwig motioned to issue an Order of Conditions for the Church Street bridge repairs. Mr. Tougas seconded the motion and the vote was unanimously in favor of the motion.

Mr. Dufresne returned to the meeting.

**Notice of Intent, 237 Whitney Street, Map 36, Parcel 50, MassDEP File #247-1108**

- Applicant: Craig Gugger
- Representative: Clearwater Environmental
- Request: Replacement of septic system
- Jurisdiction: Buffer Zone to a Bordering Vegetated Wetland

Ms. Liz Dupre of Clearwater Environmental was present to discuss the septic repair for a failed septic system at 237 Whitney Street. Mr. Young noted that a site visit was conducted on the previous Saturday. Ms. Dupre displayed photos of the plan for the proposed work including the Bordering Vegetated Wetland (BVW) and the 50' buffer and noted that the wetland consultant confirmed the stream on the property is intermittent using reports and stream statistics. Ms. Dupre noted that the plan was recalibrated to include horizontal and vertical datum using vertical datum from Google Earth as recommended by their surveyors. The 300 foot elevation was revised on the plans using the Google Earth data.

Ms. Kalloch-Getman added that she has no questions or concerns with the project beyond the stream being defined as intermittent. Ms. Kalloch-Getman noted that if the Commission agrees the stream is intermittent the stream cannot be redefined for several years. Ms. Dupre noted that the report was completed by Ms. MaryAnn DiPinto after detailed research. Ms. Kalloch-Getman added that she is not aware of the accuracy of using Google Earth for vertical datum and Ms. Dupre noted that their surveyor confirmed it is a little less accurate than an actual survey and described how the datum will be used. Mr. Baldelli clarified with Ms. Dupre that regular datum of an assumed 100 foot elevation was being used in the previous plan and Google Earth will be more accurate. The Commission discussed the proposed work and the use of Google Earth for vertical datum and determined that it will not impact the system design. Mr. Young confirmed with Ms. Dupre that the septic system is going in a new location and not in the footprint of the existing septic system. The Commission confirmed the location of the proposed replacement system is the only viable location on the property. Ms. Guldner requested that a tracking pad be used or the street be swept following construction. Ms. Kalloch-Getman will add the request to the Order of Conditions (OOC).

Mr. Helwig motioned to issue an Order of Conditions for replacement of a septic system at 237 Whitney Street. Ms. Guldner seconded the motion and the vote was unanimously in favor of the motion.

**Request for an Amendment to Order of Conditions, 508 Green Street, Map 10, Parcel 17, MassDEP File #247-1097**

- Applicant: Jun Ma
- Representative: Bertin Engineering
- Request: Review of relocation of pool and additional cutting of trees
- Jurisdiction: Bordering Vegetated Wetland

Mr. Frank Birchieri, Bertin Engineering, displayed updated plans for the project. Mr. Birchieri confirmed that silt fence and straw bales have been used for erosion controls and stumping will be completed. Mr. Birchieri noted that Ms. Kalloch-Getman had previously approved the erosion control barriers but they have been increased because the proposed work is will now be conducted up to the 15' buffer. Mr. Baldelli confirmed with Mr. Birchieri that the trees proposed for removal will be marked in the field. Mr.

Birchieri stated that after the Order is recorded and the appeal period is over they would like to begin clearing. Ms. Kalloch-Getman noted that the updated erosion controls must be inspected before the tree removal begins. Trees will be cleared up to the 15' buffer. The Commission discussed the proposed work and requested that one wetland sign should be posted at the 15' buffer and recommended it be posted five to six feet high.

Mr. Tougas motioned to issue an Amended Order of Conditions for of relocation of the pool and additional cutting of trees at 508 Green Street. Ms. Guldner seconded the motion and the vote was unanimously in favor of the motion.

**Abbreviated Notice of Resource Area Delineation Continuation, 172 and 172A Howard Street, Map 37, Parcels 93 and 94 MassDEP File #247-1105**

- Applicant: Craig Callahan
- Representative: Scott Goddard, Goddard Consulting
- Request: Review and confirm delineation of 65 linear feet of Bordering Vegetated Wetland and 475 linear feet of Bank
- Jurisdiction: Bordering Vegetated Wetland and Bank

Mr. Scott Goddard of Goddard Consulting was present. Ms. Kalloch-Getman displayed photos of the site. Mr. Goddard stated that confirmation of all of the wetland resource areas on the property has been requested. Mr. Goddard noted that two wetland scientists on his staff visited the site on several occasions and described the site including an old ditching system, large mature pine trees on the site and a stream which flows under Washburn Street. Mr. Goddard displayed plans of the site and showed the areas of delineation including bank and bordering vegetation. Mr. Goddard noted that flooding takes place in an area of pine trees where they are perched up and that the soils in the area were marginal and appeared hydric but other features of the area did not indicated the area as BVW. Mr. Goddard identified the intermittent stream and BVW on the plans. Mr. Goddard noted that he and Ms. Kalloch-Getman agreed on the location of the wetland flags in the field prior to the first hearing. Mr. Goddard added that the Commission had requested another site visit following comments from an abutter during the previous hearing and that the site visit focused on the lower area and did not review the rest of the site because of its higher elevation. Mr. Goddard noted that the previous week he and Ms. Kalloch-Getman conducted another site visit and reviewed the rest of the site and confirmed the absence of any other wetland features on the site. Ms. Kalloch-Getman requested DEP soil data sheets be submitted for bank which Mr. Goddard stated would not normally be done and explained that he treated the bank as BVW on the data sheets for the upgradient and downgradient plots. Mr. Goddard noted that completing the data sheets that way had the same effect as BVW delineation and that he had emailed the data sheets to Kale last minute today and provided hard copies for the Commission. Mr. Goddard requested that an Order of Area Resource Delineation (ORAD) be issued to reflect the accuracy of the resource areas including bank, intermittent stream and BVW.

Ms. Kalloch-Getman stated that the site is tough and that the Commission has heard comments from a number of abutters. Ms. Kalloch-Getman stated that flooding has been observed on a regular basis over a number of years and that abutters have taken photos of the site. Ms. Kalloch-Getman noted that she had visited the site three times including two visits after one inch rain storms and did not observe ponding in the area. Ms. Kalloch-Getman expressed concerns about the morphological features including the buttressing on the bottom of the trees, indicating high groundwater, but did not find other indications that the area is a wetland. Ms. Kalloch-Getman discussed the soil conditions in the area and noted that she had collected soil samples and that Mr. Goddard described the soils as transitional and not obviously hydric. Ms. Kalloch-Getman noted that she does not have the time to complete a full

delineation but did not observe anything that indicated the area is wetland. Mr. Goddard noted that the photos displayed by Ms. Kalloch-Getman showing the buttressed trees are of the interior of the delineated area. Ms. Kalloch-Getman added that there are similarly buttressed trees outside of the delineated area along the ditches designated as bank by Mr. Goddard. The Commission noted that the buttressed trees outside of the delineated area could have been from past flooding and that abutters have been noting that the culvert clogs and if that is the source of flooding it could be addressed if a development plan is proposed later.

Mr. Bruce Goldsmith, resident of 63 Washburn Street, noted that the stream runs in front of his house and described the location. Mr. Goldsmith stated that the culvert was once badly blocked and water was across his driveway for days and noted that other abutters do a very good job of keeping the culvert clear. Mr. Goldsmith stated that he could stake the area following a long duration of wet weather. Mr. Goldsmith added that when his driveway flooded one house behind him had 2,000 gallons of water in their basement and another house had significant amount of water coming into their basement from their bulkhead door. Mr. Goldsmith also added that the buttressed trees are beyond the delineated wetland area. Ms. Guldner confirmed with Mr. Goldsmith that the area floods depending on the weather conditions but most years it is wet because water cannot flow through the culvert. Mr. Goldsmith added that the properties on the other side of Washburn Street are also flooded when rainfall is heavy.

Mr. Ernest Wolshin, resident of 69 Washburn Street, stated that flooding occurs after substantial rain events if the culvert is not clogged and that the road has been flooded enough in the past his son has canoed in the area. Mr. Wolshin added that he had submitted photos of flooding in his yard and that most years the water flows nicely in the gully. Mr. Wolshin provided the Commission a letter describing the number of days the sump pump ran in his basement from early June on. Mr. Wolshin added that he cannot mow the grass and the lawnmower sinks because the area is so wet. Mr. Wolshin also stated that the culvert usually flows nicely into the wetland area. Ms. Kalloch-Getman displayed photos of soil samples and gully areas. Mr. Wolshin described on the plan where the flooding he has observed takes place and stated that it doesn't flood every year but has flooded twice in the 18 years he has lived there. The Commission discussed the stream location behind the properties. Mr. Goddard noted that comments confirm there is flooding and buttressing of trees indicating six to twelve inches of flooding in the delineated area. Mr. Goddard also noted that the soils are not obviously hydric and buttressing and wetland vegetation drops off and the soils transition outside of the delineated area.

Mr. Scott Michalak, resident of 12 Ashton Lane in Sterling and member of 73 Washburn Street Trust, noted that the area is not included in the Federal Emergency Management Agency (FEMA) 100 year storm and that it is unlikely FEMA would map the area and recommended that engineering should be done to analyze the storage capacity of the culverts. Mr. Michalak noted that Bordering Land Subject to Flooding (BLSF) is not included in the ANRAD and Mr. Goddard stated that when an ORAD is issued it will include all identified resource areas. Mr. Goddard also stated that the area is not mapped by FEMA and that the flooding that has been observed outside of the delineated area is not BLSF because that area is not flooded by normal action but due to the clogged culvert. Mr. Goddard added that the flooding is all within the flagged area and there are no photos of flooding outside of the delineated area. Mr. Dufresne asked Mr. Goddard if the contours indicate the area may flood and Mr. Goddard stated that the area is fairly flat and rises at the edge of the banks and over the last few weeks there has been periods of heavy rain and there was no flooding observed at the site during that time. Mr. Dufresne noted that elevations can indicate flooding and inquired with the Commission if a peer review could be used to confirm the delineation. Mr. Goddard noted that the flooding described by abutters is mostly off the property and

the ANRAD is only confirming the resource areas on the site. The Commission discussed utilizing an independent review, concerns about the blocked culvert and offsite flooding issues.

Mr. Goldsmith noted that he has lived at 63 Washburn Street for 45 years and has seen the area flood numerous times. Mr. Goldsmith added that the water flows from north to south and that the area delineated as wetland is flat and when it rains the whole area fills up and that a significantly larger flat area on the property also floods. Mr. Goddard stated that a BVW area can flood and that it is difficult to compare observations to the plan and if there were photos of flooding they could be matched to other features on the site to identify their location. Mr. Goldsmith added that the area of Mr. Wolshin's backyard that floods is twice as large as the delineated area shown on the site. Mr. Goddard noted that there is a construction culvert between the delineated area and Mr. Wolshin's property which is causing flooding. Mr. Goldsmith expressed concerns about disturbing the property and potential for increased flooding issues and the Commission noted that the purpose of the ANRAD is to confirm the delineation and future development plans will be submitted under a Notice of Intent (NOI).

Mr. Michalak stated that he believes the area of flooding extends beyond the delineated area and that if the flooding is sporadic, soil samples would not appear hydric and that the area is BLSF and not a BVW. Mr. Goddard noted that it would be helpful for him if there were photos. The Commission discussed additional review of the delineation. Mr. Michalak stated that he remembers the Northborough Fire Department pumping water downstream to stop flooding on Washburn Street. Mr. Wolshin stated that his photos showed the flooding clearly. Mr. Young noted that the Commission's scope is to identify and delineate the wetlands and that there is no additional information to identify additional wetland areas on the site, and if a plan for development is submitted the Commission can review the area to identify what steps can be made to address the drainage issues. The Commission discussed the flooding and the potential for BLSF. Ms. Kalloch-Getman did not have Mr. Wolshin's photos available and noted that she could not identify the area shown in the photos. Mr. Goddard stated that Mr. Wolshin's photos were taken on his property north of the site. Mr. Wolshin stated that the photos were taken up and downstream from his deck which is high up and shows water going over the road. Mr. Goddard stated that you cannot see the dense forested area of the site in the photos; the photos would be a good indicator to determine the elevation of the weir which is higher than the BVW indicating that the area is Isolated Land Subject to Flooding (ILSF).

Mr. Goddard noted that he does believe the area floods but is fairly contained within the ditches which are well defined and added that the spoil piles are still visible from when the ditches were excavated. Mr. Goddard added that water from the top of the hill could sheet flow to the culvert and over the driveway but there is no evidence to show it. Mr. Michalak stated that the boundary to BLSF is required to be defined by the applicant by engineering calculations and that the whole neighborhood is confirming there is flooding beyond the identified BVW. Mr. Goddard stated that the public comments are verbal statements but if photos were provided he would agree. Mr. Michalak inquired if Mr. Goddard was stating that the public comments are not true and recommended that hydric analysis be run. Mr. Goddard clarified that he is not stating that the public comments are untrue but that it is difficult to compare observations to the plan without photos.

Mr. Young added that if there were photos they could be matched to landmarks for identification. Mr. Goddard noted that the peak flow rate for a 100 year storm through the culvert could be calculated but is a large expense and would be worth completing if there was evidence of flooding. Mr. Michalak stated that there is a 1% annual chance an event could happen now or in the future. Mr. Wolshin displayed his photos electronically for the Commission and described the area and noted that most of the flooding taking place is because of the bottleneck of the culvert. Mr. Michalak noted that there is a

granite top on the old Washburn Street culvert which has been there for a long time. Mr. Young added that the Commission would like to protect the abutter's properties to the best of their ability within their jurisdiction as well as support the applicant which at this time is requesting that resource areas be delineated on the site. Mr. Goddard also reviewed the photos and noted that the flooding is all to one side of the driveway and is working as a dam. Mr. Wolshin added that his yard is lower than the driveway and Mr. Goddard identified that there is no water beyond the channel.

Mr. Helwig motioned to issue an Order of Resource Area Delineation for 172 and 172A Howard Street. Ms. Guldner seconded the motion and the vote was in favor of the motion with Mr. Baldelli abstaining.

The Commission requested that Mr. Wolshin's photos and abutter's flooding history be added to the file for reference. Ms. Kalloch-Getman added that if the public would like to add anything to the file to send it to her. Mr. Michalak confirmed with Ms. Kalloch-Getman the appeal period for the ORAD is 10 days.

**Abbreviated Notice of Resource Area Delineation, 5 Bearfoot Road, Map 30, Parcel 33, MassDEP File #247-1106**

- Applicant: Berlin Landing Realty Trust, Scott Goddard
- Representative: Scott Goddard, Goddard Consulting
- Request: Review and confirm delineation of 775 linear feet of Bordering Vegetated Wetland
- Jurisdiction: Bordering Vegetated Wetland

Mr. Goddard reviewed the project and provided a copy of the letter regarding the site from the previous hearing for members that were not present. Mr. Goddard acknowledged that the discussion of the project had escalated during the last hearing. Mr. Goddard noted that he is requesting confirmation of all of the wetland resource areas on the property and displayed plans of the wetland delineation. Mr. Goddard stated that the two acre site includes a large well defined BVW which follows the topography line around the perimeter of the site. Mr. Goddard noted that he completed the delineation himself and conducted a site visit with Ms. Kalloch-Getman two to three weeks prior. During the site visit Ms. Kalloch-Getman requested a change to wetland flag 10 and Mr. Goddard hung wetland flag 10R and moved wetland flag 10. Mr. Goddard noted that USGS maps show a perennial stream discharge from Solomon Pond. Mr. Goddard stated that the pond area is a cattail detention pond located in front of pond view estates and functions as a BVW. Mr. Goddard added that he did not observe water coming out of the pipe which is shown on the USGS map as a perennial stream and has photo documentation that the area was dry. Mr. Goddard requested that River Front Area not be designated on the site because the perennial stream is not present.

Mr. Goddard stated that there is a 1,500 square foot depression on the site which appears to puddle in the spring and contains hydric soils and wetland vegetation. Mr. Goddard noted that he placed flagging based on the annual flooding conditions and was consistent with survey data. Mr. Goddard discussed the ILSF resource area and the bylaw definition requiring greater than 1/8 acre foot of volume of water. Mr. Goddard also noted that the majority of the time ILSF are also isolated wetlands and develop hydric soils and wetland vegetation. Mr. Goddard stated that he has experience with a hundred other bylaws with broad language similar to Northborough. Mr. Goddard discussed the bylaw including the applicability, jurisdiction statement and resource areas. Mr. Goddard noted he was not clear on terms used in the bylaw including land subject to storm flowage which Mr. Baldelli stated is a drainage swale. Mr. Goddard identified that the term was not defined in the bylaw. Mr. Goddard stated that land subject to flooding is defined as either bordering or isolated and more than 1/8 of an acre foot. Mr. Goddard also noted that another town's bylaw included a term "flowage" which was applied to every street in the town which Mr. Goddard stated did not hold up in court.

Mr. Goddard noted that the Northborough bylaw states if a definition is not included in the bylaw to reference the WPA definitions. Mr. Goddard added that the WPA regulations have had many revisions since 1983 and ILSF was not further defined and does not give the Commission authority in the bylaw to further define ILSF. Mr. Goddard reviewed the bylaw definitions and the reference to the WPA regulations. Mr. Goddard noted that the bylaw for ILSF is more stringent than the WPA regulation. Mr. Goddard noted that there has been cases where the bylaw is the same as the WPA regulations and the bylaw is thrown out. Mr. Goddard reviewed the WPA regulations and noted that freshwater wetlands must border on a resource area. Mr. Goddard cited the definition and clarified that DEP does not regulate isolated wetlands and stated that Towns that do regulate them define them in the bylaw. Mr. Goddard added that ILSF is regulated in the WPA regulations if they hold 1/4 of an acre of water and that most ILSF are isolated wetlands and are only protected if they are able to hold 1/4 acre of water or more. Mr. Goddard noted again that the Northborough bylaw and WPA regulations do not define an isolated wetland or have performance standards and stated that with his experience reviewing bylaws he believes the intent to protect them is not in the Northborough bylaw.

Mr. Goddard stated that the Northborough bylaw requires an ILSF to hold 1/8 of an acre foot of water, half of the required 1/4 of an acre foot in the WPA regulations and that anything smaller is not regulated. Mr. Goddard noted that the area on the property was measured to hold 1/10 of an acre of water and that the area is a non-jurisdictional ILSF. Mr. Goddard noted that he believes he has done what is correct and that he does not care about the bylaw but is bound to them and does his best to follow them. Mr. Helwig noted that if the bylaw is more stringent than State law they do not have to follow the state law and that freshwater wetlands are defined in the bylaw. Mr. Goddard noted that the area must be bordering according to the WPA regulations. Mr. Helwig stated that bordering is not included in the bylaw which Mr. Goddard stated because it is not defined the WPA regulations should be referenced. Mr. Goddard clarified the definition of a freshwater wetland in the WPA regulations. Mr. Helwig recommended that the Commission discuss with Mr. Goddard wetland alteration and replication. Mr. Goddard stated that it was not necessary and if the project was brought to Town Council the language would not be found in the bylaw. Ms. Guldner confirmed with Mr. Goddard that the ILSF is too small and cannot be regulated and that the area has wetland vegetation, hydric soils and holds water at some times of the year.

Mr. Dufresne confirmed with Mr. Goddard that the ¼ acre foot is calculated using a policy which clarifies how they are calculated. Mr. Goddard stated that DEP issued policy 88-1 to calculate ILSF using annual storm events and high groundwater and described the policy. Mr. Goddard noted that the ILSF on the property is 1/3 of the size of what's required to be regulated. The Commission inquired if the area is a vernal pool and Mr. Goddard stated that there is no definition of a vernal pool in the bylaw. The Commission discussed the ILSF on the property and their jurisdiction. Ms. Kalloch-Getman stated that her interpretation of the bylaw is that vegetated wetlands that are not bordering are included under the bylaw and inquired with the Commission if they would want the ILSF included on the plan regardless of the jurisdiction. The Commission discussed the ILSF and the bylaw and WPA regulation definitions. Mr. Goddard noted that the issue is fairly technical and he is trying to dissect it and has testified in court. Mr. Goddard added that he cares about the Northborough bylaw and the intent of the writer and that there are ways to change the bylaw at Town Meeting but we must work with it as it is for the time being. Mr. Baldelli noted that he was on the Commission at the time of the last bylaw changes and that the Commission wanted the regulations for ILSF stricter and they were made twice as stringent as the WPA regulations. The Commission discussed the size requirement for ILSF in the bylaw. Mr. Tougas motioned to issue an Order of Resource Area Delineation for 5 Bearfoot Road. Mr. Goddard asked that the ORAD include that the BVW is accurate, the ILSF is not subject to the Commission's



jurisdiction and there is no River Front Areas on the site. Ms. Guldner seconded the motion and the vote was in favor of the motion.

**Notice of Intent Continuation, 0 Church Street, Map 43, Parcel 8 MassDEP File #247-1104**

- Applicant: Joseph Bottieri
- Representative: Scott Goddard, Goddard Consulting
- Request: Installation of new septic system
- Jurisdiction: Bordering Land Subject to Flooding, Buffer Zone to a Bordering Vegetated Wetland

Mr. Goddard described the vacant lot on Church Street and noted that the lot is surrounded by Town owned land which is a flood storage area for Cold Harbor Brook. Mr. Goddard noted there is a well-defined cattail marsh located across Church Street shown on the plan as BVW flags one through three. Mr. Goddard stated that there are no other wetlands identified on the site. Ms. Kalloch-Getman displayed photos of the site and Mr. Goddard described the BLSF and 100' flood plain. Mr. Goddard noted that there is a depressed area which sloped down towards the wetland. Mr. Goddard described the site as barren of vegetation and noted that he had submitted soil sample information in the January 6, 2016 report which included four soil logs and described the location of the soil samples on the plan. Of the four samples, one was collected at the expected spill point into the wetland and another in the proposed compensatory flood stage area. Mr. Goddard stated the site is a barren waste land with sapling trees around the perimeter and spoil piles, old test pits and construction site debris. Mr. Goddard also state that there are no mature trees on the site and he suspects the site was cleared many years ago.

Mr. Goddard noted that BLSF is a resource area and that there are standards in the bylaw which refer to the Wetland Protection Act (WPA) regulations which require a wildlife habitat evaluation to be completed and compensatory flood storage to be provided. Mr. Goddard added that an abutter has observed flooding on the lot. Mr. Goddard stated that the required wildlife habitat evaluation has been completed and flood storage has been designed and recognized the need to be consistent with the State law and Northborough bylaw. Mr. Goddard discussed the bylaw and ILSF and noted that the proposed work will not cause additional flooding or damage habitat. Mr. Goddard stated that a soil log completed at the spill point did not show hydric conditions and that there is no hydric conditions all the way through. The soil log from the compensatory flood area found fill loam material with fine sand from fifteen to 36 inches. Mr. Goddard reminded the Commission of the November 17, 2015 letter from Natural Heritage stating the proposed work would have no adverse effect on the state listed rare species, meets the performance standards and will not alter the rare species habitat.

Mr. Goddard noted that the proposed work includes a single family house and septic system which was designed by Mr. Mike Sullivan of Cornerstone Engineering. Mr. Goddard described the locations of the test pits and stated that the proposed septic system was placed in the only area of gravelly material which passed perc testing. Mr. Goddard added that Title V does not permit a septic system within the 100 year flood plain and stated that is not proposed because the 100 year flood plain will be reoriented by a compensatory flood storage area. Mr. Goddard noted that the Commission requested a larger than 1:1 ratio for the proposed compensatory flood storage area and was increased by 10% which was limited by other Town setback requirements. Mr. Goddard added that the 1:1.1 flood storage area will provide an additional 10% flood storage for the site. The proposed compensatory flood storage area was modified to remove a previously designed lip and the grade will nearly meet the wetland edge. Mr. Goddard reiterated that Natural Heritage stated the proposed work would not impact rare species habitat, the work would not affect wildlife habitat and that flood storage has been provided. Mr. Goddard noted that he and Ms. Kalloch-Getman have had a few meetings and that flooding conditions

observed from the last storm are not surprising because we are out of the growing season. Mr. Goddard added that the proposed work will create a flood storage area and additionally create a high wildlife habitat BVW with conductivity all the way through creating additional wetlands on the site.

Mr. Goddard stated that the proposed work has gone above and beyond the requirements. Ms. Kalloch-Getman displayed plans and Mr. Goddard described the area designed by a landscape architect and his wildlife habitat staff and described the proposed plantings. Mr. Goddard noted that the proposed plantings will provide high wildlife habitat on a site that is currently barren. A spilt rail fence will be installed along the area and Mr. Goddard added that the area will double as a flood storage area and wildlife habitat area. Mr. Young confirmed with Mr. Goddard that the area will not be constructed to meet the wetland however Mr. Goddard noted that the area between the flood storage area and the wetland could be scuffed out to connect them. Mr. Goddard stated the Board of Health met with Mr. Sullivan and issued an opinion letter stating that they would like the Commission to review the project first and if approved the Board will review the technical merits of the septic design at that point. Mr. Goddard stated that the proposed septic system would easily meet Title V and added that the Town does not allow a septic system to be built in a flood plan which is why the area will be filled. Mr. Goddard added that the proposed work will be more protective and more beneficial to wildlife and believes the work is permissible under the WPA and bylaw.

Mr. Helwig confirmed with Mr. Goddard that he is requesting that the Commission state there is not a buffer to BLSF and that the performance standard has been met. Mr. Helwig stated that the Commission must determine if there is a buffer zone and if so, issue a variance to the 15' and 30' buffers to complete the proposed work. Mr. Goddard reviewed the bylaw and noted that it states that work can be allowed in the 15' or 30' wetland if a practical alternative is not available and when wetland damage or encroachment on the resource area does not occur after the completion of the work which Mr. Goddard stated is why a fence is proposed.

Mr. Baldelli stated that he is not convinced the delineation is accurate due to the presence of hydric soils on the site and photographic evidence of flooding on the site and recommended a separate delineation be completed to substantiate the land subject to flooding. Mr. Goddard stated that he reviewed the area carefully and agrees there is flooding on the site currently but it does not connect to the other area and noted he provided a soil sample for the area. The Commission reviewed with Mr. Goddard the location of the soil sample and Mr. Goddard stated that the elevation was documented and hydric soils were not identified. Mr. Goddard added that a stream channel was not identified in the location as well. Mr. Baldelli noted that the proposed work is similar to completing a replication area. Ms. Kalloch-Getman displayed photos and Mr. Goddard stated that the location of the non-hydric soil sample where the spill over would be likely was marked with a pink flag. Mr. Baldelli noted that the area was likely a wetland prior to the construction activities which created high points in the area and disconnected the area from the wetland.

Ms. Janice Ferenchick stated that her daughter owns 295 Church Street and has been there for over a year and she has major water issues which require a sump pump to run 24/7 and that there is a full stream at some points of the season crossing her driveway. Ms. Ferenchick noted that as a child Church Street would flood out and when her daughter purchased the house she told her there is a swamp around the property. Ms. Ferenchick expressed concerns about where the flow of water would go once the site is regraded. Mr. Goddard states that he found the location where her daughter's sump pump dumps out and reviewed the regulation requirements for compensatory flood storage and that proposed area is a 1:1.1 ratio which is a 10% increase from the current conditions. Mr. Frank Ferenchick, father of the resident of 295 Church Street, stated that he has had to clean out his daughters basement

after six to eight inches of water has flooded her basement. Mr. Ferenchick added that he believes the area is a wetland and continuously floods and that his daughter is a single parent with two children and cannot clean out her basement every time it floods. Mr. Goddard noted that he cannot fix the problems on their daughter's lot as part of the proposed work but cannot make the problem worse. Mr. Ferenchick stated that he did not believe that and asked how the Commission could justify allowing his daughter's basement to flood and that her neighbor who shares a driveway also has a flooded basement. Ms. Ferenchick stated that there needs to be a guarantee the flooding won't be worse. Mr. Ferenchick inquired with Mr. Goddard why the lot had not been developed previously if it was buildable and Mr. Goddard recommended Mr. Ferenchick contact the owner.

Mr. Helwig noted that he will vote against the project if he does not think 1:1.1 compensatory flood storage is enough. Mr. Goddard noted that the regulations require a 1:1 flood storage area and that the flood storage area is a balance of volume. Mr. Young noted that he had visited the site and walked the 295 Church Street property and noted that he is not sure the work would affect the property and could slightly improve the flooding situation. Mr. Ferenchick inquired if the flooding on his daughter's property is worsened by the work could he pursue litigation. Mr. Tougas clarified that the regulations require for every yard of fill added to the flood plain a yard of fill must be removed and that Mr. Goddard is proposing to remove the berm between the property and the wetland which may improve the flooding at 295 Church Street. Mr. Ferenchick expressed concerns about additional flooding and damage to his daughter's basement.

Ms. Kalloch-Getman stated that she believes the area is a BVW after reviewing the site and soils at test pit 5 and noted that the test pit held water during the testing. Mr. Goddard stated he was present for the test pit and there was water in the test pit but not at the surface. Ms. Kalloch-Getman stated that there are hydric soils in the area between the two wetlands which Mr. Goddard stated there is not. Mr. Goddard reviewed the soil locations on the plan and disagreed about the nature of the soils found at sample location 3. Ms. Kalloch-Getman noted that she requested that Mr. Goddard provide data for the soils in the area where he had previously stated were gravelly and requested they be identified as hydric or non-hydric. Mr. Goddard stated he was not aware the Ms. Kalloch-Getman felt the area is a BVW and noted that he provided soil samples from the neck area where the two areas would connect and it was discussed on the site visit. Ms. Kalloch-Getman stated she has noted during each hearing that there are hydric soils at that location. Ms. Kalloch-Getman and Mr. Goddard disagreed on when the information was submitted about the soils by Mr. Goddard. The Commission discussed the area and Ms. Kalloch-Getman's opinion that the area is a BVW. Mr. Goddard stated that there is no stream channel there and the soils are clearly not hydric and Ms. Kalloch-Getman stated she believes the soils are hydric in that location.

Mr. Goddard stated that he feels the area is not connected and the proposed area will create a situation where they do connect which he stated is protecting the interest of the resource area. Mr. Dufresne noted that a buffer zone will then exist and that the 100' buffer will extend out to the site and the abutting property which would impact future enhancements to both properties. Mr. Goddard stated that the condition already exists on the other property. Mr. Dufresne added that approving the single family lot on this site will cause issues with this site and abutting sites. Mr. Dufresne acknowledged that calculations were done for the compensatory flood storage but it appears that the proposed work is trying to fit too much on the site. Ms. Ferenchick expressed concerns about the plants proposed for the wetland area and Mr. Goddard confirmed that plants are wetland species.

Mr. Helwig motioned to deny the Order of Conditions due to inadequate flood storage and alterations to the 15 and 30' buffers as identified in the local bylaw.

Mr. Goddard stated that he believes the Town will not get a better project if it goes to court and noted that if it does go into court the additional compensatory storage, plantings and fencing that go beyond the requirements of the law will disappear and that an appeal will be costly for the Town, his client and taxpayers. Mr. Goddard added that he has been through this a hundred times and that the Commission stated on the record the proposed work meets the standards. Mr. Goddard also stated that if the Town is found to be capricious and arbitrary there will be ramifications well beyond a single project and could have implications on the purpose, intent and applicability of the bylaw. Mr. Ferenchick added that the project should stand on its own merit and Mr. Goddard recommended that the Commission think about it more to avoid a timely court process.

Ms. Guldner recommended that a third party review the delineation prior to the Commission issuing a decision. The Commission discussed continuing the hearing and requesting a third party review. Mr. Goddard inquired if a peer review found a connection and it is not bordering would that change the project and stated that, at best, the area is a marginal wetland. Mr. Baldelli noted that the site has had significant construction and was likely a wetland before disturbance. Mr. Goddard stated that he is proposing to create a much better area and that the interests will still be protected and inquired what would change to the proposed work. The Commission noted that if the area is identified as a BVW there would be a 15 and 30' buffer and that a septic system cannot be built within a BVW. Mr. Goddard inquired if the Commission would be agreeable if the fence was moved 15' from the edge of the buffer and the area was planted. The Commission clarified that their concern is not with the design feature but what the existing resource area is. The Commission continued to discuss a third party review and Mr. Goddard inquired if the decision would change if the area was found to be BVW. The Commission noted that it may and Orders are not typically issued with disturbance within the 15' buffer. Mr. Goddard noted that the bylaw allows wetlands filling. Mr. Baldelli expressed concerns about the proposed house being built and the septic system being built in an area of fill. Ms. Guldner noted that the Commission can only review the project using the bylaw and regulations. Mr. Helwig noted the proposed work would require a variance. The Commission discussed a peer review from an independent party to review the State regulations and bylaw to make an accurate decision on the proposed work. Mr. Goddard inquired if there was something about the data which is making the Commission question that the area is a BVW. The Commission stated that the question would be discussed later. The Commission determined to continue the hearing after a peer review is completed by a party selected by the Commission and paid for by the applicant. Mr. Goddard noted that the applicant has to agree to the peer review as well as the budget noting that there could be conflicts of interest and that the project may extend beyond the winter.

Mr. Helwig motioned to continue the hearing pending a peer review agreeable by the Town and the applicant and paid for by the applicant. Mr. Baldelli seconded the motion and the vote was unanimously in favor of the motion.

Ms. Kalloch-Getman noted she would be in touch with Mr. Goddard. The Commission requested that Ms. Kalloch-Getman communicate with Mr. Goddard in writing and Mr. Young should be carbon copied on all emails. The date of the continuance will be subject to the third party review.

### **Informal Discussion – Davidian's Composting**

Ms. Julianne Hirsh, resident of 19 Smith Road, and Ms. Susan Stasaitis, resident of 318 Green Street, were present to discuss the composting business on the Davidian's property. Ms. Hirsh stated that the composting business is growing fast and is located on the hillside which abuts Mt. Pisgah conservation

area. Ms. Hirsh expressed concerns from the neighborhood about dumping of leaves, grass, food and other items containing pesticides and run off into the Mt. Pisgah area. The Commission discussed the location of the business. Ms. Hirsh inquired if the Commission would be able to answer questions from the neighborhood regarding groundwater and noted that the residents in the area all have private well water. The Commission recommended that they speak to the property owner and the building department to confirm the zoning for the property and noted that the Commission's jurisdiction pertains to wetlands. Ms. Hirsh stated that conversations with the property owner have not been productive. Ms. Stasaitis stated that the composting business is not being done correctly and that farming and composting are fine but she has read about similar complaints in other states about odors. Ms. Stasaitis noted that the neighborhood would like the business to follow the rules and that they are all on wells and about Howard Brook which can flood extremely high. Ms. Stasaitis expressed her concerns and stated that the neighborhood needs help and that there is waste on the side of the road and she cannot walk her dog and feels that no one cares about the issue. Ms. Stasaitis inquired if Howard Brook which is located in the Mt. Pisgah conservation area is within the Commission's jurisdiction. Ms. Hirsh noted that by law grocery stores are able to get rid of 15 tons of food stuffs per day.

The Commission discussed the concerns of the residents. Ms. Hirsh stated that the Health Inspector is setting up an appointment to be sure the business is doing everything correctly as to how much they are permitted to be taking in and expressed concerns that the composting will affect the water or vegetation in the area. Ms. Hirsh added that there are mountains of compost on the property and it is added to everyday. Ms. Stasaitis expressed concerns that the Commission did not care about the issue but cared about the properties discussed earlier during the meeting. Ms. Kalloch-Getman noted that she has discussed their concerns with Mr. Litchfield and confirmed the issue is not within the jurisdiction of the Commission and there are no resource areas on the property. Ms. Kalloch-Getman added that the Department of Agriculture is involved and the Health Department has had concerns and will be doing an inspection. The Commission explained their jurisdiction to Ms. Hirsh and Ms. Stasaitis and confirmed that the residents could test their wells and the brook but advised them not to trespass onto the property. Ms. Kalloch-Getman noted that OARS could take samples of Howard Brook or train residents how to do so. Ms. Hirsh noted that she does not want to wait until the area is contaminated and Ms. Stasaitis thanked the Commission for their time.

#### **Request for Certificate of Compliance, 315 Church Street, Map 43, Parcel 14, MassDEP File #247-1096**

- Applicant: Gary Gazzaniga

Ms. Kalloch-Getman conducted a site visit for the completed septic repair and noted the site looked stable.

Mr. Tougas motioned to issue a Certificate of Compliance for 315 Church Street. Mr. Dufresne seconded the motion and the vote was unanimously in favor of the motion.

#### **Request for Certificate of Compliance, 2 Brewer Street, Map 43, Parcel 34, MassDEP File #247-796**

- Applicant: Ehsan Mohammad and Samar Dogar

Ms. Kalloch-Getman displayed photos from the site visit and noted that an OOC was issued in 2003 to fill in an area of the driveway and to construct a retaining wall. Ms. Kalloch-Getman provided the Commission plans for the proposed work. Ms. Kalloch-Getman stated that there was no retaining wall completed at the property and noted that she has attempted to contact the representative for the property owner to clarify what work has been completed and if the Building Inspector has issued a

permit. Ms. Kalloch-Getman confirmed that the area next to the driveway had been filled but she did not identify conductivity to the wetland area or any erosion issues. The Commission discussed the request for COC.

Mr. Helwig motioned to issue a Certificate of Compliance for 407 Whitney Street. Mr. Baldelli seconded the motion and the vote was unanimously in favor of the motion.

#### **Discussion Items**

**Massachusetts Association of Conservation Commissions (MACC) Annual Meeting:** Ms. Kalloch-Getman noted that the MACC Annual Meeting is March 5, 2016.

The meeting adjourned at 11:00 PM

Respectively submitted,

Jacque Goring