

CONSERVATION COMMISSION  
MINUTES  
December 16, 2020  
**7:15 PM**  
Virtual Meeting

**Present:** Terry Maitland, Amy Green, Tim McKinnon, Carolyn Kiely, Zywia Chadzynska, Jim Colman, Suzanne Flint

**Absent:**

Natural Resources Director and recording secretary: Tom Tidman  
Zoom Host: Fran Portante

**Regular Business**

**7:15** Chair Terry Maitland called the meeting to order and read the virtual meeting guidelines.

**7:20 Notice of Intent: Concord Water Department, continuation**

[Carolyn recused herself as a Commission member as she is an abutter of the Concord Water District property.]

Eric Kelley, with Environmental Partners, ran through each of the points noted in the supplemental information that had been sent to the Commission on December 10<sup>th</sup>, *“Supplemental Information for Notice of Intent Town of Concord, Nagog Pond Intake Replacement Barge Access Plan – MassDEP Transmittal No. X286999, CE 085-1291.”* The supplemental information covered each of the concerns raised by the Commission at the December 2<sup>nd</sup> hearing. Mr. Kelley also noted that Fish & Wildlife at both the State and Federal divisions have been notified of the project and the nesting Bald Eagles on Nagog Pond. A biologist with LEC will be in communication with Fish & Wildlife as the project schedule is established. An actual schedule of work has not been finalized yet. The general contractor would like to begin barge installation as soon as the ice is out in March. The barges are from freshwater applications and will be pressure washed prior to entering Nagog Pond. SWCA Environmental Consultants have been hired by the General Contractor to prepare the project SWPPP.

John Rogers with Concord Water mentioned that he is currently drafting the submittals to MASS DOT and with the Town of Acton for ROW closer permits.

Commissioners noted that the supplemental information provided is a big help answering many of the outstanding concerns. Reviewing the SWPPP will be important and should be made available to the Commission at least a month before the start of work in the spring.

Commissioners continued to express concern about fluids dripping from the crane onto the barge and then into the pond.

John Rogers stated that good housekeeping measures will be in effect at all times and any observed fluids dripping from the crane onto the barge would be cleaned immediately. There will be a boom around the barge installation in the event of a larger spill and there will be spill kits on each of the barges. Protocol for not working or “stand down” procedures will be in place and made available to the Commission for review.

Abutter Carolyn Kiely asked Mr. Kelley about the elevation of the deep water intake pipe (screen) and if the elevation was still 210.7? Mr. Kelley replied “yes”, there is only one intake

screen and the elevation has not changed. Mr. Kelley also noted that there is no lower elevation intake screen (elevation 200.7); this is only an access port.

The Hearing closed at 7:48 pm.

**Decision:** Amy Green moved to issue a standard Order of Conditions, Jim seconded the motion, with an amendment to include the following two “special conditions”: (1) *The Stormwater Pollution Protection Plan (SWPPP) will be submitted to the Conservation Commission at least two weeks prior to the start of any work on the project, to be reviewed and approved by the Commission, and (2) The Conservation Commission in consultation with the General Contractor (D&C Construction), shall specify weather conditions when work on Nagog Pond may not proceed.* The roll call vote was unanimous.

#### **7:50 Discussion: Jones Field, DEP File No. 85-1268, installation of four pickle ball courts next to the newly completed playground.**

Tom Tidman mentioned to the Commission that when the playground had been installed in September the area was over excavated (excavated to the original drawing done by the Engineering Dept). The over-excavated area is sufficient to house four (4) pickleball courts. The question before the Commission is this: would the installation of the courts require a separate wetlands filing, or could it fall under the existing playground OOC?

The Commissioners asked the following questions:

- Would the paved surface be pervious?
- Would the pickleball activity interfere with the nearby playground with balls entering the playground,
- Will there be an additional plan submitted for future activities at the park, i.e. trail system or shade tree plantings.

Tom said he would prepare answers to the Commission’s questions and get on an agenda later in the winter.

#### **7:55 Nashoba Brook Beaver Dam Removal**

Dave Armstrong and Alex Wong, with USGS, discussed beaver control on Nashoba Brook in the area around their gaging station near Wheeler Lane. Dave gave a brief history of the Nashoba Brook gaging station, noting that the station has been transmitting stream flow and elevation data since 1963, and that its one of the few natural stream flow stations within the greater Boston region. Dave also noted that he had been before the Commission in 2016 with a similar request, to remove both beavers and a dam near the Nashoba Brook gaging station. Commissioners supported the valuable information gathered from gaging stations, but asked that a search be done to confirm that there is no deed restriction on this parcel of land that might preclude the trapping of beavers.

**Decision:** Jim moved to permit the trapping of beavers at the Nashoba Brook gaging station site, and that trapping activities be done in accordance with the Acton Board of Health permit and by a licensed trapper. Sue seconded the motion and the roll call vote was unanimous.

#### **New Business**

## **Discussion: Pre-application meetings**

Amy raised a question about the Commission's reluctance to discuss a project at a prior meeting that hadn't yet filed the Notice of Intent. It had been her experience that such meetings could be beneficial where the Commission can offer guidance to an applicant about the direction taken in project planning. She didn't expect the Commission to display the level of reluctance that was shown at the meeting and was looking for a consensus: was the Commission supportive of pre-app meetings or not?

Jim noted that he wanted the discussion shut down out of concern that the public, not being notified of the discussion, which involved a sensitive site, could conclude that the Commission had predetermined their position before the NOI filing was submitted.

The Commission was open to providing guidance to applicants who were unfamiliar with the process but were less open to giving professionals this opportunity. On the other hand, Tom pointed out that, prior to this extended period of Covid restrictions when face-to-face meetings are no longer an option, such pre-app meetings were common. The meetings served as a means to reinforce guidelines. Also, while one or two Commissioners could be present at such meetings, there was no quorum, and no decisions were made at these meetings.

Some discussion occurred around the Commission providing guidance for Acton projects, particularly projects on conservation land, being in the best interest of the Town. As a town committee, this was appropriate, and the Commission was expected to provide honest feedback, positive or negative.

Tom reiterated his position that the pre-application meetings, common before the pandemic restrictions, would return again once the restrictions were relaxed and operations could return to normal. While Amy was looking for a definitive position from the Commission, no such conclusion was reached.

Amy offered to contact the Mass. Association of Conservation Commissioners (MACC), to get input from them regarding pre-application meetings.

**Hybid Farm:** Terry reported to the Commission on the Hybid license agreement. Per the Commission's directive, he reviewed the License Agreement with the prospective new owner, Abigail Vargus, and ensured the Commission that it would not permit profiteering from the use of the Town property. He pointed out that the Business and Real Estate (the three plus acres of house and barns) were totally separate entities. No discussion occurred.

## **Discussion: Like Structures**

Jim expressed concern that the position the Commission took on recent requests from citizens regarding pool installations was too rigid and would benefit from rethinking. Tom also agreed that the Commission was, perhaps, becoming too inflexible in consideration of residents who wanted to make their own yards more usable. The discussion that followed raised a number of points and questions:

1. The Bylaw and Regulations clearly identifies structures as being 75 feet from wetlands.

2. New structures, in grandfathered, non-conforming conditions, must be “like structures” in order to be permitted for installation at the same distance from wetlands as an existing structure.
3. Maintaining uniformity in the interpretation and application of this rule has been a major factor in the Commission’s treatment of requests for pool, deck and patio installations.
4. In the past, the Commission was able to find ways to accommodate such requests, such as decreasing lawn area, allowing a portion to naturalize to offset the impact of the installation of a structure. The benefit of less lawn area would off-set the impact a pool, for instance, and could, therefore, be considered a benefit for the common good.
5. The potential for creating a precedent that would hamper future decisions is an ongoing concern.
6. Passage of the WPA Bylaw, Chapter F, was accompanied by the promise that the Commission would not take a “punitive” approach to such waiver requests.
7. Changing the definition of pools and patios from “structures” to “accessories” could be a way to classify such projects to work around the “structure” restrictions.
8. Another possibility is to consider such structures to be “landscape features”.
9. Do pools have a negative impact on wetland resources and, if so, is that impact greater than that of lawn areas?
10. The Regulations provide for a waiver of setback restrictions if “such Activity or structure will not affect the interests provided for in the Bylaw more adversely than the existing Activity or Structure.” (Section 3.3: Rules and Regulations)

In drawing the discussion to a close, Terry noted that no definitive solution had been reached and the discussion should be continued. Tom pointed out that he had several citizens asking about pool installations who were waiting for some direction from the Commission. He would convey to them the outcome of the discussion and advise them to hold off on any filings for the time being. The Commission will continue this discussion at a subsequent meeting.

**Community Preservation Committee:** Amy announced that she would be stepping down from her position as Conservation Commission representative on the CPC. She asked if any Commissioner would be interesting in taking on this role. Jim volunteered to attend an upcoming meeting to see if this was a possibility him. Amy said there was a meeting scheduled for the following Tuesday and she would send him the link to the Zoom Virtual Meeting.

**Consent Items:**

**Certificate of Compliance: Quail Ridge 85-0986**

**Decision:** Amy moved to issue the Certificate of Compliance, Jim seconded the motion. The roll call vote was 6 in favor, and one abstention (Carolyn).

**Certificate of Compliance: Quarry Road: ToA 75-282**

**Decision:** Amy moved to issue the Certificate of Compliance, Carolyn seconded the motion and the roll call vote was unanimous.

**Minutes: December 2, 2020: Reviewed by TM, CK, TMK,**

**Decision:** Amy moved to approve the minutes of December 2, Zywia seconded the motion and the roll call vote was unanimous.

*At 9:15 p.m., it was moved and seconded to adjourn the meeting.*

*The motion was approved unanimously.*

**Documents and Exhibits Used During this Meeting**

**Notice of Intent for Nagog Pond, Concord Water Department 85-1291 and supporting documents**

**Letter to Acton Board of Health regarding Beaver Trapping**

**Jones Field GIS Image (86-1268)**

**Request for Certificate of Compliance: Quail Ridge 85-986**

**Request for Certificate of Compliance: 32-38 Quarry Road 75-282**

These documents may be found here: <http://doc.acton-ma.gov/dsweb/View/Collection-11858>



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*Terrance Maitland, Chair*