

**CONSERVATION COMMISSION
MINUTES
March 24, 2021
7:30PM
Virtual Meeting**

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

Absent:

Natural Resources Director and recording secretary: Tom Tidman
Zoom Host: Fran Portante; Co-host: David Martin

Special Business:

A special meeting to discuss the following three topics:

- 1. Concord Water Intake Replacement Project: review of Storm Water Pollution Prevention Plan**
- 2. Informal Project Reviews: continuation of discussion from December 2, 2020**
- 3. Accessory Structures: continuation of discussion from February 17, 2021**

7:30: Chairman Terry Maitland opened the meeting by reading the Virtual Meeting protocol for the attendees.

Item 1: Concord Water Intake Replacement: (Carolyn, as an abutter, recused herself from this discussion.) The Commission was to review the Storm Water Pollution Prevention Plan (SWPPP) for this project, per request from prior meeting.

Amy had submitted some comments and she reviewed those with the Commission. Her comments are reproduced below:

Pg 3. I have no problem with the text below, but I'd say that these are conditions where we have ALREADY specified work can't proceed and that they check with Tom if they can proceed. I'd rather its on them to track the weather than Tom

Note: The Conservation Commission, in consultation with the General Contractor, shall specify weather conditions when work on Nagog Pond may not proceed. Weather conditions that may result in work being stopped include, but are not limited to, prolonged sub-freezing temperatures (frozen pond conditions), excessive snowfall (greater than 6-inches), strong winds which may create dangerous/hazardous conditions for crane operation, and storms producing high intensity rainfall. The Conservation Commission reserves the right to further consult with the General Contractor to address specific weather conditions, as they arise, when work is not to proceed

Pg 5 – make sense to mention the barge area here?

General Description of Project Provide a general description of the nature of your construction activities, including the age dates of past renovations for structures that are undergoing demolition: The work for this project includes replacement of the existing 16" cast iron raw water intake with a new 20" DR11 HDPE raw water intake at Nagog Pond in the Town of Acton, Massachusetts. Construction activities will also include installations of a raw water intake screen

and air burst system, installation of raw water transmission and air burst system piping, and interior and exterior gate house modifications.

Section 4.13 – Dewatering – sounds like they don't expect to dewater, but if they do I don't necessarily find this comforting without, say, a boilerplate spec for hay bale corral or filter bag or the like. At a minimum perhaps let Tom know if it needs to happen?

Section 4.14 – thank you

Section 5.3 – just want to confirm they can live with this relative to the barge, but I guess its ok; both maintenance and refueling.PPP#5 does pretty much cover it.

Section 5.4 PPP#2 – thank you for that specificity

A question was raised by Kim Kastens about the “siltation curtain” that was noted to be 15 feet long and the area it was being used being 30 feet deep. Tom will follow up with Eric Kelly and ask about the curtain tomorrow.

Decision: Jim motioned to accept the SWPPP, incorporating Amy's comments and excluding the reference to the siltation curtain. Amy seconded the motion and the roll call vote was unanimous.

Item 2. Informal Project Reviews: continuation of discussion from December 2, 2020

This discussion was suggested after a prospective applicant was allowed to attend a Conservation Commission meeting to get some input from the Commission before filing formally. However, the applicant apparently was further ahead in his plans and the Commission quickly concluded that it would be inappropriate to entertain any meaningful review of the project without a formal filing which would include abutter notification. Discussion was halted and the applicant informed of the need to file appropriately.

Amy raised the question of the pre-application reviews being allowed by the Commission or not. The Commission discussed the current and historical practice of potential applicants contacting the Conservation Agent, Tom Tidman, about a potential filing. This most often occurred when the applicant was the homeowner and the meeting was typically guidance for navigating the permitting process. In addition Tom would sometimes invite one or two Commissioners, if they were available, so the applicant would understand that any decisions that were made were ultimately at the behest of the Commission, not the Agent.

The most important factor in such “pre-application” meetings was the consideration of the public in general and abutters in particular being left out of the process. Therefore, informal meetings that were informational and helpful to the homeowner would be acceptable. Informal Project Reviews, held at a Commission meeting, were more problematic for the optics such a scenario created, and therefore not appropriate.

No decisions were made.

Item 3. Accessory Structures: continuation of discussion from February 17, 2021

Terry asked Jim to provide background of the topic and bring the discussion up to date. Jim explained that 3 years ago, the Commission put together a guidance or policy document for handling instances of non-conforming properties, grandfathered after the Town adopted the Wetlands Protection Act Bylaw, when they submitted requests to construct some type of outdoor accessory structure, such as a deck, patio, barbecue pit or pool. The policy, for “Like Activity and Like Structures,” would serve as a framework for the Commission to deal with such requests. The policy was not a law or requirement, and did allow discretion by the Commission to determine if there would be undo harm to the wetlands if a project were to proceed, or if there were some mitigation strategy available that could off-set the impact on wetlands. This is the version of the guidelines currently posted on the town website.

Last fall, an applicant, owner of a non-conforming home, filed a Request for Determination asking for a variance to install a swimming pool within the 75 foot buffer zone. The Commission refused the applicant and the filing was ultimately withdrawn. However, in reflecting on the circumstances, Jim realized that, should the applicant have been looking to expand their home, the request would likely have been granted under the current “Like Structure” guidance. Jim then looked at the current policy and proposed some changes in order to expand the ability of the Commission to consider “Accessory Structures,” particularly leaning to Recreational Structures. In addition, he wanted to incorporate more flexibility in applying the policy.

A lengthy discussion followed. Some commissioners were not in support of a pool being installed on non-conforming lots, others were more lenient. A number of perspectives were shared: could a consideration of “minor” versus “major” disruption to the wetlands be a consideration; could mitigation strategies be offered to lessen or neutralize the impact on the resource areas; should pools as a specific recreational use be singled out or even used as an example; should specific reference to “pools” be removed entirely.

Several members of the public were present and they also offered perspectives and asked for clarification:

Melissa Clayton asked for more definition of how Like Structures and Like Activity was interpreted and was looking for a clarifying explanation of the terms as written in the Bylaw.

Kim Kastens pointed out that, for laypersons not familiar with the progression of this topic, having a redlined version available tracing the changes being proposed would be very helpful.

Alissa Nichol was supportive of increasing flexibility for approving pools. She also raised a concern that, if this was an issue because of the pandemic, with folks staying at home and wanting to expand the use their yards, was this a solution to a problem that would eventually disappear or diminish of its own accord?.

Terra Friedricks supported the effort of the Commission but pointed out the fallibility of the use of the terms “minor” and “major” when using such terms as a metric.

Jim reiterated that the “guidance” document was just that: not a law, not a restriction, but a tool to provide consistency in the Commission’s dealing with non-conforming permit requests for projects that would allow the homeowner more use of their property.

Tom noted that mitigation strategies could be valuable in reducing the amount of lawn or invasives in an area, since lawns were not benign areas when considering resource area impact.

Carolyn stressed that the Bylaw provided discretionary waivers to be used “sparingly.”

Zywia considered pools to have an irreversible impact on the wetlands and wildlife, especially when considering the decking and fence.

Tim agreed the document was helpful especially to Tom when reviewing prospective projects with homeowners so he could explain limitations and provide a realistic expectation of outcomes when they filed and came before the Commission.

As the conversation came to a close, Terry asked for a sense of the Committee. Positions had shifted to a consensus around the following:

- Remove all reference to the word “Pool” in the guidance document.
- Include the use of mitigation strategies to offset wetland impact by reducing lawns, improving drainage, removing and controlling invasive species.
- Terms “minor” or “major” in evaluating a project would not be used in the document.
- The term “recreational accessory use” would be specified.

Jim agreed to modify the document, redlining the changes.

The next meeting date was set for the following week, Wed., March 31 at 7:30 PM.

The meeting was adjourned at 9:30PM,

Documents and Exhibits Used During this Meeting:

- Proposed changes to Like Structures Guidance Document
- Carolyn’s Like Structures comments
- Amy’s Like Structure comments
- Amy’s Nagog SWPPP comments

These documents may be found here: <http://doc.acton-ma.gov/dsweb/View/Collection-13467>



Terrence Maitland, Chair