



**CONSERVATION COMMISSION  
MINUTES  
JULY 19, 2006**

**MEMBERS PRESENT:** Terry Maitland, Janet Adachi, Linda Serafini, William Froberg

**CONSERVATION ADMINISTRATOR:** Tom Tidman

**RECORDING SECRETARY:** Andrea Ristine

**VISITORS:** Louise Gerhart, Walter Teschner, Ann Melia, Therese Marsh, Steve Marsh, Robert Hendrie, Bruce Stamski, Sue Sullivan, Rich Harrington, Mike Carney, Tom Mahanna, Jim Deming, Lee Fuller, Scott Hayes, David Spector

7:00 Citizens' Concerns - 26 Grasshopper Lane

Louise Gerhart, from 22 Grasshopper Lane, submitted a letter to the Commission dated July 19, 2006 and stated her view of the history of the development of 26 Grasshopper Lane. Ms. Gerhart stated that she and the other abutters feel that the Commission is allowing the builder to violate the Bylaw specifically by letting work continue despite the expiration of the Order of Conditions (OOC) under the Bylaw and the failure to meet various Special Conditions. The property is currently being marketed and, the abutters, want to see the construction complete as soon as possible. Once the Commission has had time to review the letter submitted on this date, Ms. Gerhart requested that the Commission respond to the letter.

Mr. Maitland explained that the Commission can only grant one extension permit under the Bylaw but there is no comparable restriction under the Act and the Commission granted an Extension under the Act. Procedurally this may seem to be a problem given the limitation in the Bylaw but the Commission does not feel that the builder is in violation of the OOC.

Ms. Gerhart noted that the builder had requested only an additional six months, but the Commission had granted him a three-year extension.

Ms. Adachi reiterated that the Commission was responsible for enforcing two different laws with different provisions for OOC extensions, and had granted the three-year extension under the Act alone, consistent with the Act and Commission past practice. Mr. Teschner interjected that the builder is lying.

Mr. Maitland stated that the private issues between the abutters and the builder had no bearing on the Commission's consideration of the Extension Permit request. The procedural conflict resulting from of the Commission's being able to grant only one extension permit under the Bylaw is one that the Commission will have to resolve with amendments to the Bylaw. Mr. Maitland reported that he has been on site, with Mr. Tidman, and feels that the project is near completion.

Mr. Teschner, Mrs. Melia and Ms. Gerhart disagreed.

Mr. Tidman stated that most of the work in sensitive areas is close to completion. The buffer zone work around the house is not complete. The remaining work to be done is to loam, seed and add the roof infiltration trench around the house foundation. Based upon his inspections, and in terms of environmental impact, he has found the site to be very clean with no erosion issues, grass is germinating now. Ms. Gerhart interjected that the grass should be growing now.

Mr. Maitland stated that he was on site on July 18, 2006 with Mr. Tidman and agrees that the site is stabilized. He added that the Commission should not be an instrument of warring parties noting the checkered history of the site and abutters regarding the right-of-way, and the involvement of attorneys for the abutters and owner/builder. It is not the Commission's role to be a mediator. The builder reported to the Commission that the builder stopped work on the advice of the builder's attorney in an attempt to settle a dispute with an abutter. Although this may not be the abutters

point of view it is the view of the owner/builder, and the fact is that work did cease. The Commission cannot adjudicate the matter.

Mr. Tidman suggested having the builder come before the Commission for a status report.

Continuation - NOI - Yin Peet - postponed until 8/2 @ 7:15 PM (pending BOH approval)

7:15 Request for Determination - Roadway Paving - Town of Acton

Bruce Stamski, Director of Public Works, presented plans for the resurfacing of roadways within 100' of wetlands: Charter Road, Central Street (from Nashoba Rd. to Boxboro), Piper Road (from Laurel Court to Rt. 2), Barker Road, Forest Road, Prospect Street (from Rt. 27 to the Hennessey Drive), Hammond Street and Willis Holden Drive. Road surfaces will be milled and repaved with a binder coat and final layer of asphalt. The Town does not propose to widen any of the roads. Build up of sand on road shoulders will be removed; silt fence will be installed in locations designated at the discretion of Mr. Tidman. The Town hopes to resurface all roads noted but budget constraints may limit the ability to complete all roads listed this year.

Upon query by Mr. Maitland, Mr. Stamski reported that the town is only proposing to resurface a portion of Prospect Street because the other section was done 6-7 years ago.

Upon query by Mr. Froberg, Mr. Tidman reported that the wetlands identified in the town atlas are based on aerial photos; it is a good guide but he flags wetlands in the field for projects such as new sidewalk construction. Repaving of existing roads is a confined activity; the grinding machine removes material as it is milled cleanly.

8:29 Hearing no further comments or questions, Mr. Maitland closed the meeting.

Determination - Roadway Paving - Town of Acton

Mr. Froberg moved that the Commission find the work as proposed to be within its jurisdiction but will not impact the wetlands (negative determination No. 3 under the Bylaw and a negative determination No. 2 under the Act. Ms. Serafini 2<sup>nd</sup>; unanimous.

7:20 Notice of Intent - Lot 13-23 School Street - Town of Acton

Bruce Stamski, Director of Public Works, presented plans for the proposed redevelopment and drainage improvements to the existing parking area within 100' of wetlands and riverfront area located at 13-23 School Street. The area was acquired by the Town through a Sheriff's sale in the mid 1980s or 1990s. The property was historically used as a railroad depot; currently it is being used as an alternate commuter parking area, but the parking is not orderly and commuter cars often block in other cars parked in the lot. At Annual Town Meeting the Town voted to allow (w/ special legislation) this space to be rented to Exchange Hall to facilitate renovations and continued use of the building. The Town may have a future lease situation with Exchange Hall for the proposed parking lot; in the interim it will be used for South Acton and commuter parking. The site is within the Fort Pond Brook riparian zone, with the MBTA railroad located between the proposed parking lot and Fort Pond Brook. The site is over 100' from Fort Pond Brook. Historically, 80% of the site was paved. The Town proposes green areas within the parking lot and will be increasing groundwater recharge. The installation of a catchbasin is proposed which will have a 1000-gallon tank that is three times the normal volume. Peak runoff will be controlled with stormwater detention basins proposed under the parking lot. The design meets the 2, 10 and 100 year storm and provides silt/sedimentation control. The Historical Commission does have some jurisdiction over the site pertaining to screening.

Upon query by Mr. Maitland, Mr. Stamski reported that stormwater runoff flows from the catchbasin into the leaching chambers associated with the underground detention basins.

Upon query by Ms. Adachi, Mr. Stamski reported that the Town will not need to excavate the site for the design. Due to existing grades the Town will construct from the surface up with no excavation involved.

Upon query by Mr. Maitland, Mr. Stamski reported that the site will be raised in various locations by four to five feet to give the site a more level area. The design also provides a rain garden collection system in the proposed green area along the street.

Upon query by Ms. Adachi, Mr. Stamski reported that there will be proposed plantings at the rear of the lot that will need to withstand snow plowing.

Upon query by Mr. Froberg, Mr. Stamski reported that he has seen 30 to 50 parked cars on this site as it exists now. There will be 25 marked parking spaces. Final use of the lot will be determined in the best interest of the Town by the Board of Selectmen. The parking area behind the South Acton Fire Station on School Street is also being used entirely by commuters.

7:53 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision – Lot 13-23 School Street - Town of Acton

Mr. Froberg moved that the Commission issue a standard Order of Conditions for the plans as presented. Ms. Serafini 2<sup>nd</sup>; unanimous.

7:30 Notice of Intent - Hearing under the Bylaw - Lot 4 Woodlands at Laurel Hill

Recreational Realty Trust, LLC

Sue Sullivan from Places Site Consultants presented plans for the proposed construction of 64 townhouses, to be known as Woodlands at Laurel Hill, associated roadways drainage and utilities within 100' of wetlands located off Westford Lane and Nagog Park Drive; Town Atlas Plate B-5, parcels 7, 9 and 42. The project originally was before the Commission as a Chapter 40B development and received an Order of Conditions (OOC) under the Wetlands Protection Act; the development proposal's status has since changed, necessitating a NOI filing under the Bylaw. The plans before the Commission are largely the same but have been reformatted to meet the special permit requirements of the Planning Board for a senior residence special permit with 10% affordable units. All structures meet the 75' no-structure setback and the limit of work meets the 50' no-disturb setback required under the Bylaw. The only differences on the plans from the WPA filing is that the inner roadway will have speed bumps and there is a proposed small community garden outside of the buffer zone.

Upon query by Mr. Froberg, Ms. Sullivan reported that the Applicant has submitted the filing to the Planning Board and the public hearing has been opened and expect a decision in the near future.

8:03 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision – Lot 4 Woodlands at Laurel Hill

Ms. Adachi moved that the Commission issue a standard OOC under the Bylaw for the plans as presented. Ms. Serafini 2<sup>nd</sup>; unanimous.

8:05 ANRAD - 48 & 50 Nashoba Road (atlas plate D-2, parcels 15 & 15-1) - Jim Kotanchick

Rich Harrington from Stamski & McNary presented the delineation plan showing 23 wetland flags. The site slopes to an elevation of 220 at the flag line then drops to 210 at the rear of property. Fort Pond Brook is defined on the plan; the wetland flag line is 246' from the brook so the riverfront is within the wetland resource area.

Upon query by Mr. Maitland, Mr. Tidman reported that he had not yet been on site to verify the delineation and asked if the Applicant would be willing to continue the hearing in order to conduct a site walk.

Mr. Harrington agreed to continue the hearing.

Mr. Maitland continued the hearing until August 2 at 8:30 PM.

8:15 Notice of Intent - 162 School Street - Scott Thorne

Mike Carney from Sudbury Lawn Landscape Design presented plans for the proposed replacement of the existing driveway and water line. Mr. Carney reported that replacing the existing water line will cause destruction of the driveway. The driveway crosses an intermittent stream that is normally dry at this time of year but does have 3" of water at this time due to the recent wet weather situations. He will use sandbags even if conditions are dry during construction activities, along with silt fence for the trench work. Stockpiled materials will be outside of the 100' buffer zone at the rear of the property. Only small trucks can be used on this site.

Upon query by Mr. Tidman, Mr. Carney reported that only the water line will be replaced. The water line trench will be five feet deep. He does anticipate finding large boulders during construction activities. The work will be in the area beneath the existing steel culvert unless boulders are encountered, in which case he will have to replace the culvert.

Upon query by Mr. Maitland, Mr. Carney reported that he proposes silt fence in two areas shown on the plan.

Upon query by Ms. Adachi, Mr. Carney stated that proposed trench work in the area of the existing culvert will take one day and he should be able to install a binder course for entire length of the driveway within seven to ten days.

Upon query by an abutter from 9 MacGregor Way, Mr. Carney reported that the proposal is to replace the existing water line and driveway within its existing footprint.

Staff noted DEP's comments that if the Applicant finds it necessary to replace the existing culvert; activities shall meet the design standards for culvert replacement as outlined in Appendix E of the Massachusetts Wildlife Habitat Protection Guidance for Inland Wetlands.

Upon query by Mr. Froberg, Mr. Carney stated that if the culvert needs to be replaced he is prepared to divert stream flow if there is a storm event. His equipment has the capability of pumping 7000-8000 gallons of water per hour. He plans on doing the work during the month of August.

Mr. Froberg felt that the Commission should include a special condition to ensure that work occurs during low flow of the intermittent stream.

Upon query by Mr. Froberg, Mr. Tidman reported that the Applicant's equipment can pump more than the stream will likely flow during a storm event.

Upon query by Mr. Maitland, Mr. Carney reported that he anticipates being able to run the trench in one day if he does not encounter boulders. He must close the stretch of waterline trench within the same day it is opened; ideally he can do entire length of trench work in two days.

Upon query by Mr. Maitland, Mr. Carney reported that the water line has to be replaced as it is currently leaking.

Upon query by Mr. Tidman, Mr. Carney reported that the owners of the property will have to park by the tennis court near the street during the construction process.

8:40 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision – 162 School Street

Mr. Froberg moved that the Commission issue an OOC with the following special conditions:



- 1) All work associated with this OOC shall be performed during low water conditions. All construction activities are restricted to the time frame of August 1 through September 30.
- 2) If the Applicant finds that it is necessary to replace the existing culvert, activities shall meet the design standards for culvert replacement as outlined in Appendix E of the Massachusetts Wildlife Habitat Protection Guidance for Inland Wetlands.
- 3) The Commission shall be notified in writing 10 days prior to the commencement of any site work. Failure to so notify the Commission shall result in the issuance of an Enforcement Order.

Ms. Adachi 2<sup>nd</sup>; unanimous.

8:30 Notice of Intent - 693 Massachusetts Avenue - Acton Water District

Tom Mahanna from Stantec Consulting presented plans for the proposed replacement and expansion of the existing garage building within floodplain and 100' of wetlands. Mr. Mahanna was before the Commission on a preliminary basis regarding this proposal in May 2006. The existing 70 year old garage building is to be razed and a new building will be constructed in approximately the same location. The existing building is five feet from the edge of wetlands. The new building foundation will be 14' from the edge of wetlands. The building construction will include a breezeway connecting the existing operations building and the proposed building. There is also a proposed generator on west side of the existing operations building. The Water District wants to start construction this fall.

Lee Fuller from Stantec Consulting reported that the wetland is predominantly red maple swamp with the existing building within several feet from the edge of wetlands. All proposed work is within 100' of wetlands and within Bordering Land Subject to Flooding (BLSF). This project occurs within the habitat for Wood Turtle (*Glyptemys insculpta*); the Applicant has not yet received comment from the Natural Heritage & Endangered Species Program. This NOI has been filed as a limited project since the entire site is within BLSF and will not be able to meet the compensatory storage requirements; there will be a loss of 3150 cubic feet of BLSF relating to this proposal. The design proposal does meet stormwater management requirements with 80% total suspended solids (TSS) being removed from runoff. All runoff will be directed to a sump catchbasin where it currently sheet flows.

Upon query by Mr. Maitland, Mr. Fuller reported that the Applicant will demolish and remove the existing garage and foundation then loam and seed the new exposed area after construction of the proposed building.

Upon query by Mr. Froberg, Mr. Mahanna reported that the proposed design has not changed much since the preliminary review with the Commission but stormwater design and management has been improved. The Applicant cannot move the proposed building further away from wetlands due to the need to provide access to the last proposed garage bay and to avoid encroaching on the distance between the proposed building and the other existing garage building to the southeast.

Upon query by Mr. Froberg, Mr. Mahanna reported that he did evaluate the idea of adding onto the other existing garage building to the southeast but access became an issue given the existing grades and location of wetlands at that location.

Jim Deming, District Manager for the Acton Water District, stated that even if the garage building were not razed and replaced, the Water District still would have to address the disrepair of the 70-year old building. Mr. Mahanna stated that he feels that the proposed plan is the better solution.

Upon query Mr. Froberg, Mr. Deming reported that the proposed building cannot be constructed closer to Mass. Ave. due to the location of the existing well and utilities.

9:00 Upon the request of the Applicant, Mr. Maitland continued the hearing until August 2, 2006 at 8:45 PM pending comments from the Natural Heritage & Endangered Species Program.

9:02 Notice of Intent - 93 Taylor Road - Hearing under the WPA - Therese Marsh

Scott Hayes from Foresite Engineering presented plans under the Wetlands Protection Act (the Act) for the proposed construction of a single family home and associated activities within 100' of a wetland. Mr. Hayes gave an overview of the site and history. The Commission issued an OOC in October 2001 that was appealed under the Bylaw and the Act by the abutter Robert Hendrie; DEP upheld the Commission's decision under the Act. The appeal under the Bylaw has been in Superior Court for several years. In the course of appeals the OOC expired, and on April 19, 2006, by court order, the Commission extended the OOC under the Bylaw through October 17, 2007. A special condition in the original OOC was that the replication area is to be completed and established for a period of six months prior to the issuance of a Building Permit for the associated house. The Applicant hopes that the Commission will issue an OOC comparable to the one issued and upheld by DEP in 2001.

Upon query by Mr. Maitland, Mr. Hayes reported that the wetland delineation was reviewed extensively in 2001 by B & C Associates, Ecotech and Carr Research. There was an extensive history in the original NOI process regarding the delineation and how it was derived. The plan reflects the most conservative wetland line. The wetland line has been staked-out in the field. Scott Goddard from Carr Research reevaluated the site and issued a letter dated June 6, 2006 noting that the wetlands line essentially has not changed; if it were to be re-delineated today it would be less restrictive to the Applicant. The wetland field data sheets submitted with the current NOI are dated 2001 but Mr. Goddard did his on-site re-evaluation in 2006.

Mr. Maitland expressed concern noting that this project has been one of the more contested filings that has been before the Commission.

Upon query by Mr. Froberg, Mr. Tidman stated that he had questioned Flags 53 through 56 in 2001 and feels that a new delineation is needed or the Commission as a whole needs an on-site meeting with the Applicant's wetland scientist, Scott Goddard.

Ms. Adachi stated that backup reference data from Mr. Goddard's recent site evaluation would have been helpful to go with Mr. Goddard's letter. This is a new application and should include updated data sheets.

Mr. Hayes stated that a detailed evaluation was done in 2001 and the Applicant only has a small time frame to construct the replication area and construct the house before the OOC expires under the Bylaw Extension.

Mr. Maitland stated that the Commission has a degree of discomfort with the wetland delineation today and it needs to be revisited.

Mr. Hayes stated that this has been a frustrating process at this point for the Applicant and the appeal has been decided by Superior Court.

Robert Hendrie interjected that the judge has not rendered a decision regarding the appeal under the Bylaw. Mr. Hayes disagreed but stated he is not before the Commission to dispute the legalities.

Mr. Froberg stated that the Commission needs to reach a common agreement with the Applicant on the wetland line since the data submitted is over five years old.

Mr. Tidman suggested that a third independent wetland scientist could help resolve the issue.

Mr. Hayes conferred with the Applicant and reported that Applicant wishes to close the hearing and have the Commission make its decision on the basis of what has been submitted with the NOI.

David Spector from 94 Taylor Road expressed concerned about the general area and the proposed wetland replication area as he does not want to increase wetlands and the local mosquito population.

Mr. Hayes noted that the replication is required for proposed wetland fill but the replication area will not necessarily create standing water, the associated wetland is an intermittent stream.

Mr. Hendrie reported that he has seen standing water in the existing wetland area.

9:22 At the Applicant's request, Mr. Maitland closed the hearing.

Discussion.

Decision – 93 Taylor Road

Mr. Froberg moved that the Commission deny the Notice of Intent filing under the Massachusetts Wetlands Protection Act for lack of sufficient information to confirm the accuracy of the Applicant's wetlands delineation.

Discussion.

Ms. Adachi 2<sup>nd</sup>; unanimous.

Certificate of Compliance - 53 Newtown Road 85-614

Mr. Tidman reported that project is done and in compliance.

Ms. Adachi moved that the Commission issue a Certificate as recommended by the Administrator.

Ms. Serafini 2<sup>nd</sup>; unanimous.

Certificate of Compliance - 12 Elm Street - DEP File No. 85-905

Mr. Tidman reported that project is done and in compliance.

Ms. Adachi moved that the Commission issue a Certificate as recommended by the Administrator.

Ms. Serafini 2<sup>nd</sup>; unanimous.

Certificate of Compliance - 420 Great Road - DEP File No. 85-568

Mr. Tidman reported that project is done and in compliance.

Ms. Adachi moved that the Commission issue a Certificate as recommended by the Administrator.

Ms. Serafini 2<sup>nd</sup>; unanimous.

Certificate of Compliance - 68 River Street - DEP File No. 85-885

Mr. Tidman reported that project is done and in compliance.

Ms. Adachi moved that the Commission issue a Certificate as recommended by the Administrator.

Ms. Serafini 2<sup>nd</sup>; unanimous.

Certificate of Compliance - 3 Maillet Drive – DEP File No. 85-189

Staff reported that the original Certificate was not recorded properly in 1987; the Commission needs to reissue a Certificate of Compliance with the proper recording information.

Ms. Adachi moved to issue a Certificate as noted by staff. Ms. Serafini 2<sup>nd</sup>; unanimous.

Extension Permit Correction - 26 Grasshopper Lane - DEP File No. 85-657

Staff reported that there was a typographical error made in the expiration date on the Extension Permit issued under the Wetland Protection Act on May 17, 2006 and the Commission needs to issue an Extension reflecting the proper date of June 2, 2009 as voted. The Commission agreed.

Discussion – 26 Grasshopper Lane

The Commission discussed aspects of the expired OOC under the Bylaw as the builder is near completion of the project.

The Administrator reported that the only outstanding work within the buffer zone is to loam and seed the front lawn and install the infiltration trench along the front the house.



The Commission requested the Administrator to contact the builder. The Commission felt that filing a Request for Determination under the Bylaw for unfinished work within the buffer zone may be the proper way to proceed or possibly issuing an Enforcement Order is another alternative.

10:11 Meeting adjourned

Terrence Maitland  
Terrence Maitland  
Chair

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