

**CONSERVATION COMMISSION
AGENDA
MARCH 21, 2001**

MEMBERS PRESENT: Peter Berry, Barbara Epstein, Matthew Liebman, Chris Starr, Terry Maitland, Pam Attardo

CONSERVATION ADMINISTRATOR: Tom Tidman

RECORDING SECRETARY: Andrea MacKenzie

VISITORS: Nan Towle Millett, Michael Eder, Tom Wolf, Kevin Sweeney, John Sweeney, Rand Monteleone, Donna Perkins, Bill Ferguson, Andrew Sheehan, Linda Noone, Paul Cardarelli, Sue Kennedy, Katie Oxnard, A.R. & Irene Musick, Rob Frado, Frank Tricone, Doug Edward, Lynn & Tom Martin, Beth McGoldnick, Mary Ann Rafuse, Tom Coll

7:45 Mr. Liebman called the meeting to order.

Public Forum - Bylaw Revisions

Mr. Liebman gave a presentation on the history of the bylaw and regulations and the proposed bylaw changes. The first public forum was held February 21, 2001. Currently there is only one of the two original proposed Articles for Annual Town Meeting (ATM). The Commission has agreed that they need to do more research on the affect on the town if the setbacks are increased. Mr. Liebman gave an explanation of the proposed changes, what the Commission does and their jurisdiction under the Wetlands Protection Act and the Town Bylaw. The proposed revisions will add Rivers Protection to the Bylaw currently only enforced under the Act. There will be no increased setbacks proposed and no increased jurisdiction.

Julia Miles, 138 Prospect Street, inquired about Land Subject to Flooding (LSF). Mr. Liebman stated this is equivalent to the 100 year floodplain. Setbacks currently only relate to the wetlands themselves not LSF. The 100 year floodplain involves flooding issues, there is no setback from 100 year floodplain necessary as a buffer would have no impact to the land's ability to store water.

Bill Ferguson, Arlington Street, stated that this proposed amendment is a modest improvement to the protection of wetlands. The Commission agreed that this is a modest improvement and it clarifies some issues and ambiguities, the amendments will incorporate the riverfront area. The Commission has already been faced with a situation to approve a project under the Bylaw and deny under Act since Bylaw did not have legal capability to protect the Riverfront Area.

Kevin Sweeney, from Parmley Corporation and Sweeney & Sons, expressed concern that so few people hear about proposed bylaw changes and collectively the town's people do not understand the proposed changes. He personally dislikes the change from 'value' to 'interest'. He inquired if the Commission is going to notify all property owners with wetlands of the proposed Bylaw changes. Last year the Finance Committee had stated that collectively the Town depends on the stream of revenue from additions to existing houses. He also is concerned about the buffer zone and its' interest, he feels that it leaves property owners having to fight in court for their rights to develop their land. He has heard of the setbacks being increased to 50' or better. If a developer files for a comprehensive permit, it is reviewed under the regulations of the Act only. He keeps hearing about protecting human and wildlife habitat; little by little every year a man's property is more limited. He doesn't think enough people were properly notified of the proposed changes to the Bylaw.

Mr. Starr stated that the Commission's goal with the proposed changes is to be in line with the Act as it stands now. The Commission would be open to other suggestions in wording.

Mr. Sweeney asked the Commission to show any provable degradation of Acton's resources due to past actions. He asked if habitats are being destroyed or any species have been degraded due to past actions. He feels consistently what happens is that new bylaws are created by new people in town who leave the long term residents to deal and live with it. The Town needs a balanced growth policy, everyone wants lower taxes which comes by inviting commercial and business tax properties. Massachusetts has the third highest Cost of Living (COL) in the United States. People cannot afford to live in this town. The Town needs a balanced situation with political science versus real science. If the Commission creates new setbacks that are vague or discretionary, it is impossible for one to buy, plan and build on land. He is more than willing to help bring a reasonable approach to any proposed changes to the bylaw.

Mr. Starr thanked Mr. Sweeney for making some good points, but it seems that his issues should really be brought to the State House and not to the Town. The Commission is trying to provide simplified framework that is in compliance with the State's current laws. Mr. Sweeney interjected, stating that it is disingenuous to have a State Act with 351 town bylaws that supercede the State law. There is no affordable housing, the Commission should not take land away that can be protected and developed near by.

Mr. Liebman noted that there is no proposed change of the Commission's jurisdiction or setbacks under proposed bylaw changes. In regards to Mr. Sweeney's statement regarding 'real' versus 'political' science, it is in the interest of the people to protect their financial investment and habitat. Although not proposed at this time, there is evidence to suggest the need of an undisturbed area (buffer) of 50'+; it has been scientifically proven to which he can provide data if desired. There is evidence of degradation of wetlands in Acton due to development being too close to the wetland. K-mart is a good example. There is recognition that plant and animal species populations is declining due to loss of habitat, this is a political and a real scientific fact. Again, there is no proposed change in jurisdiction or setbacks in the Bylaw at this time. The courts support consideration of the 100' buffer zone being a resource area. The Attorney General has to approve the bylaw changes once voted at ATM. All abutters are notified of proposals filed with the Commission. The Regulations detail the interests associated with each resource area with specific performance standards. The Commission will be working on changes to the regulations in the future. The Commission would like to have as many people involved as possible and invited Mr. Sweeney to future meetings.

Mr. Sweeney interjected stating the rights to develop property are being denied and landowners do not understand how they are affected. He understands that legal notices placed in the *Beacon* newspaper are legal notification, but property owners are the most affected. The reference of the degradation behind K-Mart in itself is invalid as it is an old building constructed before the Act and Bylaw. He was asking what degradation has occurred to wetlands since the implementation of the Act and the Bylaw.

Mr. Liebman stated that the Commission will work with the Planning Board to try to figure how many property owners would be affected if new setbacks are proposed in the future.

Michael Eder, from Farmstead Way, stated that the State recognized the role of the Commission to have a say in zoning. The proposed changes seem to clarify some issues and he applauds the Commission for their efforts. If there has been no degradation to wetlands under the current laws then that is good since cumulative impacts do occur.

Mr. Liebman stated that under the current Bylaw, setback requirements are 25 and 40 feet with a clause for existing nonconforming use, like structures is considered also. Ms. Epstein suggested examples to be provided at ATM.

Linda Noone, from 61 Washington Drive, noted that the State census stated that the population in Massachusetts has increased, noting Mr. Sweeney's comment that Massachusetts is too expensive to live in. She also noted that her house and property were not originally impacted by wetlands when she purchased it, and this is a gray area for her. Current development proposals adjacent to her property show that she is now within the 100' buffer zone of a wetland and she wasn't when she

purchased her property. It seems confusing that that there is more standing water in town that wasn't there before. Wetlands are not defined by water but by vegetation. She feels that there is a need to inform people that it is their responsibility to know the law and its effects with outreach and public knowledge.

Ms. Epstein stated that the goal of public outreach is frustrating for the Commission. The Commission has always promoted public outreach but it seems that most are only interested when it affects their property.

Linda Noone stated that it is frustrating to her when projects keep coming before the Commission and are being approved.

Bill Ferguson stated that he feels if one drives around town one can see that wetlands are not being protected by development. New England has had a couple of dry years, average land in Acton is rocky, wet and does not drain well. Today new construction is seeing a lot of above ground septic systems. He feels that the Town is not adequately protecting the wetlands. He is hearing about the economic degradation when in fact the existing 'people' habitat is not being protected when the resources are not protected. Once development is allowed it is forever, there is never green space brought back after development.

Mr. Sweeney stated that 20 to 40 years ago development wasn't really done correctly. Zoning changes have allowed for cluster developments with open space. Different types of construction can promote certain protections.

Andrew Sheehan, from 29 Martin Street and previous Conservation Commissioner (1994), stated that he was involved in the original bylaw changes. He applauds the Commission's efforts and supported the withdrawal of the second article. He suggested expandable setbacks or a series of blanket setbacks that could be reduced due to the significance of the resource area. Mr. Sheehan also submitted written comments and stated that since the withdrawal of the second article and further amendments some his written comments no longer apply. He also stated that he is available to the Commission to help in any way.

9:00 CITIZENS CONCERNS

Michael Eder noted that under the Planning Board approval process for the Robbins Mill Pond Land (RMPL) PCRC the granting authority must seek Conservation Commission input on issues environmental in nature. He feels that the Planning Board should have better informed the Conservation Commission and other town boards, as to the special permit granting process. (See M. Eder's written comments on file with the RMPL file, Carlisle Road.)

Mr. Liebman agreed it is critical that the Commission give input to RMPL with Planning and BOH.

Chris Starr will coordinate with the Planning Board and other boards regarding Mr. Eder's issues.

Mr. Liebman reported that he did attend the original series of Planning Board meetings regarding the RMPL. Written comments will be submitted to Planning by 3/28/01. Chris Starr will be the contact person.

9:12 Request for Determination – Douglas School Replace Playground

Mr. Tidman presented plans for the Acton School Department, for the replacement of existing playground structures with new American's with Disabilities Act (ADA) compliant structures within 100' of a wetland. Currently the playground does not meet ADA requirements. The proposal will replace the existing equipment in place. The existing area is five feet above floodplain and approximately 85' from wetlands.

Upon query by the Commission, Bob Cook from the School Department stated that they hope to start work the week of April 16, 2001 if possible. The job should take five days and all other existing site conditions will remain unchanged.

9:16 Hearing no further comments or questions, Mr. Liebman closed the meeting.

Determination of Applicability – 21 Elm Street

Ms. Epstein moved that the Commission find the work as proposed to be within their jurisdiction but will not impact the wetlands (-3). Mr. Berry 2nd. Unanimous.

9:19 Notice of Intent – 64-76 Newtown Road (Lot 1) –Technical Consulting Group

NOI filing under the Wetland Bylaw only for the construction of a single-family house, sewage disposal system, driveway, utilities and associated grading within 100' of a bordering vegetated wetland.

Attorney Steven Nelson stated that he is representing the property owners and the applicant for this proposal for a single family house for a 3.7 acre lot. The Commission denied the project proposed last year which was appealed to DEP who issued a Superceding Order of Conditions on January 21, 2001. They have refiled a new NOI with some changes to the plans that recognizes some of the Commission's concerns stated in its denial. They are asking the Commission to reconsider the denial. In the reasons for denial there is reference of a DEP Policy 99-1 which is a guide to consider buffer projects 50' from wetlands for work that will alter resource areas by work done in buffer zone. He is asking the Commission to use discretion to allow the proposed activity. They have engineered the site to have minimal impact, it meets the 25 and 40 foot setbacks under the Bylaw. The denied plans met requirements under the Bylaw, the owners have owned the property for 50 years and would like to sell it.

Scott Hayes, from Foresite Engineering, presented plans for the construction of a single-family house, sewage disposal system, driveway, utilities and associated grading within 100' of a bordering vegetated wetland. The Commission previously issued a delineation on the site. This NOI plan is for a single family home on 3.7 acres with significant wetlands leaving approximately one acre of uplands. The proposed house is 41' from the edge of wetlands at the closest point. The Commission had raised concern that the plans meet the minimum standards of the Bylaw. He has realigned the driveway to be 41' from the edge of wetlands and is no longer proposed as paved. A polishing basin is still being provided, there is a split rail fence proposed along the 25' setback to demarcate the limit of future disturbance. The proposed septic system is a FAST system 50' from the edge of wetlands and has a Title V permit under the Act. The FAST system will remove more nitrogen and suspended solids than a traditional system.

Upon query by Ms. Epstein, Mr. Hayes stated that the changes made from the original NOI filing are that the house and driveway are slightly realigned one foot farther away to 41' and the driveway is no longer proposed as paved.

Mr. Hayes reviewed some of the concerns raised in the denial. The site has minimized impervious surfaces and maximized groundwater recharge. Noting flood control, there is a 35-40' buffer maintained from the intermittent stream. The design has attempted to limit the amount of impervious area to limit the amount of runoff for storm damage prevention.

Mr. Hayes stated that what he is looking for is a compromise.

Mr. Starr noted that one foot does not seem much like a compromise.

Mr. Hayes stated that he is open to suggestions.

The Commission asked that Mr. Hayes submit his response to the original denial in writing since it was not submitted with the new NOI, and asked for a continuance of the hearing in order to allow for snow melt so that new commissioners can conduct a site walk.

Upon query by Bill Ferguson, from Arlington Street, Mr. Hayes reported that there is no on-site disturbance proposed in the 100 year floodplain and the proposed basement will be 1.5' above groundwater.

One McKinley Drive resident stated that the presentation tonight does not sound too different from last filing a year ago, which was denied and he also is not impressed by the changes.

Steve Nelson stated that the original NOI was denied under Town and State with the misconception of a 50' setback noted in the 99-1 DEP Policy.

Mr. Starr stated that the setbacks under Section F8.3 of the Bylaw are a minimum setback and may be increased at the discretion of the Commission.

Steve Nelson agreed that the proposal meets the minimum setbacks in the Bylaw.

Mr. Starr noted that the setbacks may be increased at the Commission's discretion. Mr. Nelson interjected to say that the Commission cannot have a moving target for a setback.

Mr. Liebman interjected to move the meeting forward.

Tom Coll, from 6 McKinley Drive, inquired about the standards of deciding the intermittent status of a stream. During the last six months he has not seen the streambed run dry.

Mr. Liebman noted that the past six calendar months typically an intermittent stream would be wet. The Bylaw currently does not have rivers protection and this site is exempt under the Act since this lot has a superceding order of conditions from DEP.

Upon agreement by the applicant, Mr. Liebman continued the hearing to April 18, 2001 at 7:35 PM. The Commission stated that the applicant should address the concerns in the denial for the original NOI filing in writing as stated during this hearing process. A site walk will be scheduled in the near future when the snow cover declines.

9:55 Mr. Liebman opened all three hearings for 26 Jackson Drive (Glen Brooke Run)

Request for Determination (26 Jackson) - Lot 4 Glen Brook Run

Engineer: Acton Survey & Engineering Hearing Officer: T. Maitland

Grading associated with the installation of a septic system within 100' of a wetland.

Mark Donohoe, from Acton Survey & Engineering, presented plans for the proposed subdivision off of the future Jackson Drive Extension. This lot, Lot 4 is Glen Nichols' existing house (owner/applicant). Lot 4's existing septic system and garage will be moved. This will involve only a small amount of work within the 100' buffer zone. The proposed slope will be 3:1 with no intention of maintaining lawn on this slope.

Upon query by Mr. Tidman, Mr. Donohoe reported that the 3:1 slope should not have an erosion problem.

Upon query by Mr. Maitland, Mr. Donohoe reported that the proposed chambered leaching field is allowed under Title V but the plans do not have Board of Health approval at this time.

Upon query by the Commission, Mr. Donohoe reported that a delineation has been approved by the Commission through a Request for Determination.

Upon query by Mr. Starr, Mr. Donohoe stated that the limit of work will be within the line of haybales with no activity on the opposing side.

Upon query by Ms. Epstein, Mr. Donohoe reported that there are two other proposed lots outside of the Commission's 100' jurisdiction. Glen Brooke Run will be a dead end off of the new Jackson Drive Extension and five lots is the total amount of lots for this property's development.

Linda Noone, from 61 Washington Drive, stated that it is difficult as an abutter to come before the Commission. This access (Glen Brooke Run) is directly related to the development of the new Jackson Drive Extension. At previous hearings she has heard the reference to the intermittent stream near this site and has heard several times from observations of other abutters that it is

perennial not intermittent. The Applicant was denied on a different proposal for access to this proposed subdivision.

Glen Nichols, owner/applicant, stated that the Planning Board denied the previous proposal for access which was never presented to the Conservation Commission. The Planning Board mandated the connection to the Jackson Drive Extension.

Upon query by the Commission, Mr. Donohoe stated that the new Title V allows septic systems in these areas with certain provisions.

Linda Noone, expressed concern stating that this RDA has little impact and looking at one little lot at a time does not show an impact to the wetlands. Since she bought her house the wetland line has grown and now the 100' buffer zone on Mr. Nichols' property affects her property that originally did not when she purchased her land. She also had a very expensive replacement septic system installed. She agreed that this Lot 4 has very little technical impact but the overall new development in this area will.

Upon query by Tom Martin, from 57 Washington Drive, Mr. Donohoe stated that the Applicant has the right to appeal the Commission's decision to DEP if it is not approved. He can also redesign the proposed septic system another way and still meet Title V requirements.

Upon further query by Ms. Noone, Mr. Donohoe reported that the wetland map that Ms. Noone is basing her statements on is based on aerial photos done for the sewer project. The wetlands were delineated over the years based on criteria at that time. This wetland was delineated on site in 1998 and approved by the Commission.

10:25 Notice of Intent - (26 Jackson) Lot 5 Glen Brook Run

Engineer: Acton Survey & Engineering Hearing Officer: T. Maitland

Mr. Donohoe presented plans for the construction of a single family home, septic system, driveway and associated grading within 100' of a wetland. Lot 5 extends to the existing Jackson Drive cul-de-sac. The proposed septic system is over 100' away from wetlands. The proposed house is more than 40'. Proposed grading is 25' from wetlands. Erosion control is provided. Stumps will be pulled rather than bull dozed which will have less impact in the buffer zone. The proposed fill for the leaching field will be placed first to help direct runoff towards wetlands as it travels currently.

Mr. Starr asked what the percent of disturbance is proposed within and outside of the 100' buffer zone on this lot. Mr. Donohoe stated that he estimates 7,500 s.f. of disturbance within the 100' buffer zone with a total disturbance of approximately 11,500 s.f.

Mr. Donohoe also noted that they are proposing to install overhead wires from Jackson Drive over the wetland for this lot only, instead of within the driveway due to the estimated costs. Bringing in the utilities overhead will involve work in the wetland to install utility poles.

The Commission noted that proposed utility poles are not located on the plans for this NOI.

Mr. Tidman stated that he feels that the utilities for this lot should be continued from the proposed road (Glen Brooke Run) underground as proposed for the other lots and not allow work within the wetland to locate utility poles for above ground utilities.

10:34 Notice of Intent - (26 Jackson) Lot 3 Glen Brook Run

Engineer: Acton Survey & Engineering Hearing Officer: T. Maitland

Mr. Donohoe presented plans for the construction of a single family home, septic system, driveway and associated grading within 100' of a wetland. The proposal meets the 25 and 40-foot setbacks. The closest point of activity to wetlands is 25'. The plans show proposed building envelopes since the actual foundation footprint has not been set.

Mr. Tidman asked that the wetland flags be refreshed on the site and the house locations for all lots and septic systems be staked out on site. Mr. Donohoe stated that he would be willing to do so if a field survey is not required for this request.

Upon query by Mr. Berry, Mr. Donohoe stated that the driveway for this lot is designed to meet the existing topography as much as possible.

Mr. Starr noted that the Commission has recently denied buffer zone projects. It appears that a majority of this lot's activity is within the 100' buffer zone. He would like to know the percentage of activity within and outside of the 100' buffer zone for each lot.

Ms. Noone noted that there is also an access issue from Washington Drive, she had in her possession BOH plans that show a different configuration than being presented before the Commission tonight. She received these plans from Mr. Tidman. Mr. Donohoe reported that the plans have been amended since they were originally submitted to the BOH. Mr. Tidman reported that he and Ms. Noone received the plans she is referring to by the BOH prior to any submission to the Commission for the wetlands filings.

Upon query by Mr. Tidman, Mr. Donohoe reported that it would be a major job to align the proposed driveway for this lot (Lot 3) to be straight due to ledge outcroppings.

Upon query by Mr. Starr, Mr. Donohoe reported that the proposed house location cannot be changed due to the slopes, lot shape and proposed septic location.

Mr. Tidman asked that Mr. Donohoe confer with the Applicant regarding the feasibility of blasting for the proposed driveway to be aligned more straight.

Lynn Martin, from 57 Washington Drive, expressed serious concerns regarding further blasting in this area as her house is 50' from the strain of ledge being discussed for these lots. She is not interested in further blasting occurring in this area.

Maryann Rafuse, from 24 Jackson Drive, expressed concern regarding the total vegetation removal and the steep slopes. There is no place for water to go but down the slope and onto her property.

Mr. Liebman asked that a plan be provided at the hearings' continuance showing all of the proposed lots together.

10:55 Upon agreement by the Applicant, Mr. Liebman continued the hearings until May 2, 2001 at 8:00 PM for Lots 3, 4 and 5 Glen Brooke Run pending a site visit and more information.

Mr. Liebman noted that he would like to review the Planning Board and BOH correspondence regarding these lots.

Certificate of Compliance - 3 Stacey's Way

Mr. Maitland moved that the Commission issue a Certificate of Compliance for 3 Stacey's Way. Mr. Berry 2nd. Unanimous.

11:05 Meeting adjourned.



Matthew Liebman

Chair