CONSERVATION COMMISSION
AGENDA
NOVEMBER 21, 2007

MEMBERS PRESENT: Terrence Maitland, Patty Lee, Janet Adachi, Frances Portante, Bill Froberg

ADMINISTRATOR & RECORDING SECRETARY: Tom Tidman

VISITORS: Scott Hayes, Steve & Rachel Kelly, Mark Donohoe, Tim Ayers, T. O'Sullivan, Fred Seward, Dara Mitchell, Kim & Jack Appelmans, William Sawyer, Joan Gardner, Belle Choate

7:15 NOTICE OF INTENT - 70 Newtown Rd – Steve & Rachel Kelley *(010, 011)*

Site Walk: 11/15/07

Scott Hayes from Foresite Engineering presented plans after the fact for the already completed paving of the formerly gravel driveway within 100'of a wetland. The driveway and drainage function properly with no erosion. Two six-foot light posts and the mailbox have been added to the plan since the site walk.

Ms. Adachi inquired as to the location and condition of the wildlife habitat enhancement area that was required under the original Order of Conditions (OOC) for the construction of the house and was supposed to be a permanent condition. Mr. Hayes reported that the wildlife area was supposed to be located over the leaching field.

Ms. Portante expressed concern that the wildlife habitat area had not been maintained as such and that this area has not been free of herbicides and pesticides.

Ms. Adachi noted that the habitat area was required to remain chemical-free under the original OOC.

Upon query by Mr. Maitland, Mr. Kelley stated that he was not familiar with the original OOC.

Mr. Maitland summarized the situation regarding violations under the original OOC on this property, noting the paving of the driveway, conversion of the wildlife habitat area into lawn and use of prohibited pesticides and herbicides on the lawn over the leaching field and behind the house. During the site walk Commissioners agreed that it was reasonable to maintain the paved driveway and the lawn could remain as it currently exists.

Upon query by Mr. Froberg, Mr. Maitland stated that a new OOC would have to expressly supersede the previous, permanent conditions requiring a gravel driveway and wildlife habitat area. Ms. Adachi noted that the Commission had included the conditions in the OOC for a reason, and expressed concern about the precedent that the Commission might be setting with the new OOC.

In addition to installing driveway lamp posts and replacing the mailbox, the Kelleys would like to plant shrubs along the side of the driveway.

Mr. Maitland addressed the issue of the "mitigation payment" that the Kelleys should make to the Town to be used for conservation land trail maintenance in the amount of $ 1,000. Steven Kelley consented to the payment, and agreed to make the payment prior to December 12; the deadline for the Commission's issuing the Order of Conditions.

Upon query by Rachel Kelley, Mr. Maitland stated that the payment would be a "donation" to the Town for conservation trail maintenance purposes.

7:40 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision – 70 Newtown Road

Ms. Adachi moved that the Commission issue and OOC with the following special conditions:

1. In accordance with the revised Notice of Intent Plan, dated November 7, 2007, Rev. 11/21/2007 (NOI Plan), the Applicants may install two lamp posts along the edge of the driveway and replace the existing mailbox located at the foot of the driveway.
2. The Applicants may plant native shrubs on the northerly side of the driveway.
3. *Bylaw Only* -This Order of Conditions (OOC) supplants the following Special Conditions of the Order of Conditions dated August 1, 2001 (DEP File No. 85-723), requiring as permanent deed restrictions that a portion of the driveway remain gravel and requiring the maintenance of a wildlife habitat in accordance with a Wildlife Habitat Enhancement Plan dated June 27, 2001. This OOC does not address, affect or supplant the special condition in the August 1, 2001 OOC requiring as a permanent deed restriction that the land lying between the wetlands and the 2001 limit-of-work, as partially delineated by stone walls shown in the NOI Plan to the north and south of the house, be a permanently restricted area and remain undisturbed.

Findings of Fact, addressing the mitigation payment and other matters, to accompany the decision.

Mr. Froberg 2nd; unanimous.

7:45 REQUEST FOR DETERMINATION - 142 Pope Road - Don & Jesse Busiek *(020)*

Tim Ayres presented plans for the proposed replacement of the existing deck within 100' of a wetland. The applicant proposes to remove the existing deck and replace it with a three-season porch 76 feet from the edge of wetlands.

Mr. Tidman noted that he flagged the wetland which consists of a red maple swamp.

Upon query by query by Ms. Lee, Mr. Ayers stated that the porch would be elevated.

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

Determination - 142 Pope Road

Mr. Froberg moved that the Commission find the work as proposed to be within its jurisdiction but will not impact the wetland as proposed (negative three); Ms. Portante 2nd, unanimous.

7:55 NOTICE OF INTENT – Spring Hill Road – Jeanson Homes, Inc. *(030 – 036)*

Mr. Maitland opened the hearing under the Acton Wetland Protection Bylaw and continued the hearing until December 5, 2007 at 7:30 PM with the agreement of the applicant's representative.

Mark Donohoe, Acton Survey & Engineering, noted that the Applicant previously had requested that the Commission provide the Applicant with any comments or questions in advance of the hearing. Mr. Maitland said that the Commission would not be able to respond prior to the 12/5 hearing date.

Upon query by Mr. Appelmans, an abutter, Mr. Maitland stated that this hearing is for a Notice of Intent filed only under the Bylaw since the applicant has received a superseding order from DEP.

William Sawyer stated that this is a new filing and the Commission should open and hear all information under the Wetlands Protection Act as well as the Bylaw.

8:35 Meeting adjourned.

Terrence Maitland

Terrence Maitland, Chair

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ahr.concom.minutes.2007.112107