

**CONSERVATION COMMISSION
AGENDA
JULY 18, 2001**

7:30 Citizens' Concerns

7:35 Request for Determination - Piper Road & Main Street - Keyspan Energy Delivery

Representative: Oxbow Wetland Associates

Installation of a natural gas main within existing paved road surface and within 100' of a wetland from 92 Piper Road north to Massachusetts Avenue and west to Route 27.

7:40 Continuation - ANRAD - 900 Main Street

7:45 Continuance – NOI – 93 Taylor Road CONTINUED to 8/1 @ 8:30

8:15 Request for Determination – Acton Arboretum

Reconstruction of a trail at the Acton Arboretum off Taylor Road (Town Atlas Plate F-3A, parcel 76) to meet ADA Requirements within 100' of a wetland

8:30 Notice of Intent – 20 (Lot 5) Triangle Farm Lane - Stones Throw Trust

Engineer: Goldsmith Prest & Ringwall, Bruce Ringwall

Construction of a single family home and barn, driveway, paddocks, farm pond, restoration of previously disturbed areas, installation of a septic system, utilities, replacement of existing culvert with custom bridge and associated grading within 100' of a wetland.

8:50 Continuation – NOI - 114 River Street CONTINUED to 8/1 @ 8:00

9:00 Request To Reopen Under the Town Bylaw - 64-76 Newtown Road

Engineer: Foresite Engineering, Scott Hayes

Technical Consulting Group for the construction of a single family house, sewage disposal system, driveway, utilities and associated grading within 100' of a bordering vegetated wetland. See enclosed revised plan.

CORRESPONDENCE

- ◆ Invitation to Selectmen's Night Concert @ NARA 7/18/01 6:30 – 7:30 PM
- ◆ Joint Status Report – Autoplex III Realty Trust
- ◆ Order re Rescheduling & Additional Witness – School Street Culvert
- ◆ Summons 64-76 Newtown Road

APPROVAL OF MINUTES

May 2	comments received by	TM
May 16	“ “ “	TM
May 24	“ “ “	TM, BJE
June 6	awaiting comments	
June 20	enclosed with agenda	

Need comments – I would like to have these signed by 8/1 meeting

**CONSERVATION COMMISSION
MINUTES
JULY 18, 2001**

MEMBERS PRESENT: Andrew Magee, Pam Attardo, Terry Maitland, Barbara Epstein, Chris Starr

CONSERVATION ADMINISTRATOR: Tom Tidman

RECORDING SECRETARY: Andrea MacKenzie

VISITORS: Jeff Rogers, Brian Butler, Belle Choate, Steve Marsh, Chris Hart, Jerome Carr, David Barr

7:44 Mr. Magee called the meeting to order.

Citizens' Concerns

7:45 Request for Determination - Piper Road & Main Street - Keyspan Energy Delivery

Representative: Oxbow Wetland Associates

Brian Butler, from Oxbow Wetland Associates, presented plans for the installation of a natural gas main within the existing paved road surface and within 100' of a wetland from 92 Piper Road north to Massachusetts Avenue and west to Route 27. Keyspan will dig a three-foot wide trench, the depth of which will vary. They will install approximately 300 to 400 linear feet per day with in 45' pipe sections within the paved surface of the road. Trenches will be closed each day. Depending on Dig Safe information the installation will be partly on the south side of Route 2.

Mr. Butler noted that during his site work he observed an Elderberry Borer Beetle which is a Species of Special Concern. Therefore, with the Commission's permission, he would like to submit the information to the Natural Heritage and Endangered Species Program (submitted report for the file).

7:55 Ms. Epstein moved that the Commission find the work as proposed to be within their jurisdiction but will not impact the wetlands (-3). Mr. Maitland 2nd. Unanimous.

Continuation - ANRAD - 900 Main Street – no representation present – the hearing was continued until August 15, 2001 at 7:45 PM (meeting will be at the Memorial Library).

7:45 Continuance – NOI – 93 Taylor Road

Upon request by the applicant, Mr. Magee continued the hearing until August 1, 2001 at 8:30 PM.

Discussion – the Commission had general discussions regarding pending projects.

8:25 Request for Determination – Acton Arboretum

Mr. Tidman presented plans for the reconstruction of a trail at the Acton Arboretum off Taylor Road (Town Atlas Plate F-3A, parcel 76) to meet ADA Requirements within 100' of a wetland. This proposal will increase the handicap accessible trail to almost a mile in length meeting ADA requirements. The trail will be made with 'star-pac' (crushed stone). He estimates the project

will take a total of two weeks to complete. This is an improvement to an existing trail system. Since it is an existing trail, the area is stable and he does not propose any siltation prevention.

8:29 Hearing no further comments or questions, Mr. Magee closed the hearing.

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

8:30 Notice of Intent – 20 (Lot 5) Triangle Farm Lane - Stones Throw Trust

Engineer: Goldsmith Prest & Ringwall, Bruce Ringwall

Bruce Ringwall presented plans for the construction of a single family home and barn, driveway, paddocks, farm pond, restoration of previously disturbed areas, installation of a septic system, utilities, replacement of existing culvert with custom bridge and associated grading within 100' of a wetland. The parcel is 29.25 acres in size. In 1995 an NOI was filed for a wetland crossing with a culvert and replication on the southern portion of the site. The culvert was installed and approximately one-third of the lot was cleared; the top and sub soils were stripped and removed from the property. The present applicant owner filed a Request for Determination in May of 1998. The wetland line on the plans before the Commission on this date are based on the delineation filed with the RDA. The owners now want to develop this as a single family house lot with a barn and associated paddocks. The proposal is to access the property with a driveway through the area that has been previously disturbed. The proposed driveway will access the proposed barn with property manager quarters and the proposed single family house. The proposed plans also will reclaim the buffer zone with the planting native species. They will bring in loam to the disturbed areas and trees. They will create a vegetative buffer of meadow grasses and native shrubs. There are two proposed ponds on the site, one of which will be a shallow natural pond to be planted with native vegetation. They also propose to excavate a pond in the low area of the proposed a paddock area. He is not certain of the hydrology, but the ponding areas may have vernal pool characteristics. Driveway drainage will drain towards this natural depressed area to be excavated. There is also a proposed swimming pool partially within the buffer zone. The house foundation will be planted with Mountain Laurel and Rhododendrons. Part of proposed barn is within the 100' buffer. The proposed septic will service house and barn and is approved by BOH. The primary and secondary leaching fields are outside of the 100' buffer, with some grading within the 100' buffer. The existing driveway culvert will be removed and replaced with a bridge with a 16 to 25' span. They will reclaim the wetlands in the area and allow the natural flow of the stream. There are no design details for the bridge available at this time. The culvert will be enhanced to ensure safety during the construction of the house and barn. He plans to come back to the Commission with a request to amend later to build the proposed bridge. The proposed driveway will be impervious and 16' wide in its entirety. The general contractor is John Holland with Juniper Hill Construction.

Upon query by Mr. Magee, Mr. Ringwall reported that the culvert/bridge crossing is the only infringement on the wetlands on site.

Upon query by Mr. Magee, Mr. Ringwall stated that a large number of the original wetland flags are still in the field. The numbered flags on the plans are the original existing flags found on site from the previous RDA filing.

Mr. Magee requested a continuance of the hearing so the Commission can walk the site. He also requested that proposed structures within the buffer zone be staked out in the field. Mr. Ringwall stated that the proposed house and barn are outside of the 100' buffer zone. Mr. Magee requested that the four corners of these structures still be staked out so the Commission can get a bearing on orientation out in the field. Mr. Ringwall agreed.

Upon query by Ms. Epstein, Mr. Ringwall reported that the previous RDA was filed after the site was stripped.

Mr. Tidman noted that the characteristics of this site have changed since it was stripped.

Upon query by Ms. Epstein, Mr. Magee noted that the Commission should re-check the flags and note if there are any other wetlands that haven't appeared or weren't delineated originally. Mr. Ringwall stated that the aerial photos were submitted in the old application and supporting data deals with soils and depressions created from the stripping. The Commission will review the old file.

Mr. Magee expressed concern about nutrient loading from manure generated by livestock in the proposed ponds.

Upon query by Mr. Magee, Mr. Ringwall reported that the Rivers Protection Act had been implemented at the time of the previous filing, and the stream on site was determined to be intermittent.

Upon query by Mr. Maitland, Mr. Ringwall reported that there is no point established as a future access to the proposed Robbins Mill Pond Land: it is a possible consideration that has not been discussed at this time.

Upon query by Mr. Tidman, Mr. Ringwall stated that a single family house lot is exempt from stormwater management regulations.

Upon query by Mr. Maitland, Mr. Ringwall stated that the proposed ponds will be built on an agricultural standpoint.

Mr. Tidman suggested that the applicant's botanist be on the site walk with the Commission due to the condition of the lot.

Fred Seward, an abutter from 369 Pope Road, stated that he feels that a bridge crossing seems like a good idea. However this site is adjacent to Camp Acton and would not like to see any lighting directed towards this parcel.

Upon query by Ms. Epstein, Mr. Ringwall reported that he is not sure of the proposed horse population, but the proposed barn will have six stalls.

Mr. Ringwall stated that there are wetlands on the site that were created and not protected because of what happened on the site and he proposes to enhance some of the areas.

Upon agreement by Mr. Ringwall, Mr. Magee continued that hearing until August 15, 2001 at 8:00.

Mr. Maitland noted for the record that he had previous involvement with the previous ownership of this property but has no vested interest on the development of this lot.

Continuation - ANRAD – 900 Main Street

No representative present – Mr. Magee continued the hearing until August 15, 2001 at 7:45 PM.

Continuation – NOI - 114 River Street Continued to 8/1/01 @ 8:00

9:22 Request To Reopen Under the Town Bylaw - 64-76 Newtown Road

Engineer: Foresite Engineering, Scott Hayes

Technical Consulting Group for the construction of a single-family house, sewage disposal system, driveway, utilities and associated grading within 100' of a bordering vegetated wetland. See revised plan.

Upon query by the Commission, Attorney Steven Nelson stated that procedurally he found nothing that prohibits the Commission from reopening a hearing to hear new information. The applicant would like an opportunity to ask the Commission to reopen the hearing for additional information and to address the points of the denial in hopes that the Commission can issue an amended decision.

The Commission was uncomfortable with reopening a hearing with a pending lawsuit on file with the courts, but would like to hear the presentation.

Mr. Nelson stated that in the Commission's denial wildlife habitat, pollution prevention and groundwater protection were three of the major concerns stated. The applicant is challenging the legality of the bylaw regulations as they feel that it has discretionary setbacks and they consider the decision to deny the NOI to be a taking of property. The suit has to remain pending, if the Commission reopens the hearing they can hear changes and decide.

Scott Hayes, of Foresite Engineering, presented amended plans addressing concerns of the Commission based on the denial. Since the denial he has amended the plans by tightening up the proposed grading around the proposed house in an attempt to constrain the limits of disturbance. They have removed the proposed development restriction on the land as it wasn't developable anyway. Based on Scott Goddard's report, from Carr Research Labs, he removed the proposed berm as he thought it impede wildlife migration and the banks of the stream are within the bordering vegetated wetland and the berm is not needed for flooding. The limits of disturbance have been restricted to areas outside of the 40' buffer except for three small areas. The area along the driveway entrance will be reclaimed with the proposed wildlife enhancement planting. This is a 3.7 acre lot with 1.4 acres of upland. The proposed construction disturbance is 10% of the lot, 29% of the lot is uplands. Over half of the disturbance is reclaimed with the proposed wetland enhancement plan. Total final disturbance of the lot is .23 acres, 16% of total site. A portion of the proposed driveway is to be paved and part will be crushed stone. They also propose a permanent wall demarcating the limits of the yard for the future. Amendments were also made to show the vernal pool buffer zone. Scott Goddard examined the suspected vernal area which he felt exhibits vernal pool characteristics but he could not be definitive at this time. The suspected vernal pool is within the BVW, therefore he used the BVW delineation as the line (conservative). The proposed septic system (FAST system) has BOH approval with a variance; this lot is within Groundwater Protection Zone 4, which has minimal restrictions and is not a critical zone. The leaching field is less than 75 feet from the edge of wetlands but greater than 50'. A quantitative analysis has been submitted. The BOH granted a variance because it exceeds the required treatment levels.

Dr. Jerome Carr, from Carr Research, described the site noting this site is not a pristine site. There is an existing cart path through the site. Although it is not evident, there is an existing previous area of excavation where he feels there may have been an old foundation. This is based on some vegetation found on site that is not natural area. Along Newtown Road invasive species are into this site. Scott Goddard noted that the northern site wetlands may be a vernal pool, as he found fingernail clams and presence of caddis fly larvae and indicated signs of flooding to a depth of 1.5 feet. These signs suggest that wood frogs, American toads, spring peepers or mole salamanders may breed here. It must be observed in the spring time to determine the vernal pool status. Water quality tests of the suspected vernal area shows that it is receiving runoff from the road and is not very clean based on testing done in July. In his opinion, plant size in the wetlands determine that it is not a prime wetland. Mr. Carr felt that the Commission's main issue seemed to be the proposed septic system; the contours indicate that the water level is around 197 feet in elevation found at the eastern edge of wetlands. The major wetland to the south is

approximately at 194 feet in elevation, which is a three-foot grade difference between the two therefore, groundwater flow would be from the northern to southern wetland.

Mr. Magee interrupted to state that that Mr. Carr and the Applicant need only present enough information so as to give the Commission grounds to reopen the hearing.

Mr. Carr stated that if suspected vernal area is in fact a vernal pool and high wildlife value is determined then they plan to enhance the wildlife habitat. They will add food value by planting flowering dogwood, hazelnut and low -bush blueberry. They also propose a meadow habitat with wildflower meadow mix over the proposed septic leach field. They propose the creation of a barren sandy area with a low pitch adjacent to the wetland to the south to encourage turtle nesting habitat and placing fallen logs in the proposed meadow for salamander habitat.

Steve Nelson noted that the suit has to remain pending; if the Commission reopens the hearing they can hear changes and decide to possibly re-issue a decision allowing an Order of Conditions.

Mr. Maitland and Mr. Magee both are concerned with reopening the hearing if there is a lawsuit pending; they are afraid of 'muddying the water' without council stating a standing. The Commission does have problems with 'squeezed' buffer zone projects. Denials by the Commission have been based on lack of mitigation and data. The Commission should see this level of presentation for this type of proposal from the beginning of the hearing process. The Commission appreciates the owner's patience.

Mr. Magee stated, that he personally, would like to reopen the hearing and examine the changes to the proposal.

Mr. Starr expressed concern, stating that the Commission should be careful in making a decision with multiple tries of reversing the decision.

Ms. Epstein moved that the Commission reopen the public hearing to hear new information. Mr. Maitland 2nd.

Mr. Starr noted that the basic tenet of the Wetlands Protection Act and the Bylaw is that there would be an attempt to have no net loss of wetlands. It is not necessarily a high or low value wetland, it is no net loss. He applauds the creativity of the amendments to the plans, but wonders how enforceable is the placement of logs and the creation of a sand pit. The evidence revolved around a stressed wetland that requires higher protection and the amendments presented seem to be cosmetic with no substantial evidence presented to him that justifies reopening the hearing.

Upon query by the Commission, Mr. Nelson noted that the recovery of legal fees hasn't been stated in the suit. The pending suit does not contain attorney's fees and the applicant would not seek compensation for said fees through these proceedings requesting to reopen and reconsider the decision.

Mr. Tidman noted that if this lot went to court currently meeting the setbacks, all of the enhancements and new mitigation would be lost and DEP's Superceding Order of Conditions would stand.

Upon query by Mr. Starr, Mr. Nelson stated that the applicant would be willing to add the deed restriction back into the proposal limiting future activity on the site if the Commission reopens the hearing.

Mr. Magee stated that he is concerned about reopening the hearing procedurally without legal advice from counsel and suggested withdrawing the vote to get counsel advice and state a date and time certain at this time for the next Commission meeting to make a motion to reopen.

Mr. Maitland agreed to get clarification from town counsel to ascertain that this is procedurally correct.

Motion on the floor: motion passed to reopen the hearing (3:1:0) with three aye and one nay (CS).

Mr. Magee re-opened the hearing and continued it until August 1, 2001 at 8:31.

EXTENSION PERMITS

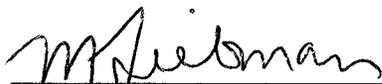
488, 490 & 492 Great Road (Nagog Gardens 85-574) and 488, 492, 494 & 496 Great Road (Nagog Gardens 85-573). Mr. Tidman reported that the applicant/owner is having erosion/stabilization problems with the slopes of the mounded septic systems and needs more time to address this issue.

Ms. Epstein moved that the Commission issue a one-year extension for both Orders of Conditions as stated by the Administrator. Mr. Maitland 2nd. Unanimous.

Stacey's Way 85-613. Mr. Tidman reported that this Extension request is for the road construction. He has met with Kevin Sweeney on site and each of the Commission's outstanding issues with the site. The emergency access gate is now in, most all construction debris has been removed and the old street sweeper will be removed right away. Mr. Sweeney needs another year to tighten up the site. The site is looking good but it is not ready for certificate yet. Mr. Sweeney is finally doing what he said he would.

Ms. Epstein moved that the Commission issue a one-year extension. Mr. Maitland 2nd. Unanimous.

11:22 Meeting adjourned.



Matthew Liebman
Chairman

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