

RECEIVED  
OCT 17 2013

ACTON CONSERVATION COMMISSION  
MINUTES  
September 18, 2013

TOWN CLERK, ACTON

7:15 PM  
TOWN HALL - 472 MAIN STREET  
ROOM 204

**COMMISSIONERS PRESENT:** Terry Maitland, Tom Arnold, Andy Magee, Willam Froberg, Amy Green, Jim Colman, Theresa Portante-Lyle

**NATURAL RESOURCES DIRECTOR & RECORDING SECRETARY:** Tom Tidman

**RECORDING SECRETARY FOR HYBID FARM DISCUSSION:** Bettina Abe

**VISITORS:** Ann Marton, John Shea, Rodger Klopf, Joan Klopf, Pamela Cochrane, David Cochrane, Samantha Hurd, Vincent Cuttone, Richard Mattocks, Chris Lucas, Josh Swerling, Deborah Piper, Gray Wexelblat, Paul Wexelblat, Nancy Kingman, William L. Kingman, Wick McConnon, Rita McConnon, Gary Finneault, Graham Knowland

**7:15 Request to amend Order of Conditions:** Lot A-2 School Street, DEP 85-1118 (010)

George Dimakarakos of Stamski & McNary, Inc., representing Pam Steven, presented updated plans reflecting new footprint for the proposed building site, including changes to site grading, addition of pervious paver walk, relocation of a stone wall, and clearing of vegetation near proposed driveway. (Plate: H-3, parcel 58)

Mr. Dimakarakos pointed out that the proposed house is within the buffer zone. In addition, the abutters list for the first hearing was incorrect. The new list is correct and abutters have now all been properly noticed. The lot has been sold. There is a slight change to the garage and the grading. A portion of an existing stonewall must be removed in the right of way. The right of way is also in the historic district. Some Arborvitae along the property line have to be removed for a better site-line.

Mr. Arnold asked if these changes will result in greater impacts to the wetlands. Mr. Dimakarakos responded that there would be no greater impact, and that there would be limited grading and a porous walkway for recharge.

Mr. Finneault of 1 Piper Road asked about screening between lots. Mr. Dimakarakos mentioned that he would discuss this with the owner.

Mr. Honn of 105 School Street commented that the driveway was in a very dangerous location. There have been 6 accidents in 6 months; the driveway is near a blind corner. He had met with Mr. Dimakarakos and the town engineer, Corey York, and this was the best location for the driveway. Mr. Honn also remarked that he was not here representing the HDC, just as an abutter, and asked if the large pine near the driveway could be saved. He also suggested that the engineer verify that the abutters list is accurate.

Hearing closed at 7:35.

**Decision:** Tom Arnold moved to accept the amendments to the Order of Conditions. Mr. Colman seconded, vote unanimous.

**7:35 Request for Determination: 400 Massachusetts Avenue/CVS (020)**

Chris Lucas of Lucas Environmental, LLC, representing TRB Development Group, Inc. presented plans for a redevelopment project that includes the removal of an existing building and constructing a CVS/pharmacy store with drive through and associated appurtenances on the site. (Plate F-3, parcels 118-2, 127-128)

Mr. Lucas testified that the watershed of the nearby stream was 0.38 square miles and the application of the USGS stream statistical analysis to this watershed resulted in an estimated flow rate of 0.0061 cubic foot per second. This is well below the flow rate for a perennial stream as defined by the Wetlands Protection Act. The entire watershed is included in the stream statistics analysis. It was determined that this is an intermittent stream and work is outside the 75 foot setback.

Mr. Magee asked about the drainage area near Kmart and Prospect Street and noted it did not appear to be included in the square mileage Mr. Lucas identified. Mr. Swerling from Bohler Engineering gave a brief explanation of the CVS site. In the future they may plan to redevelop the Acton Children's Day Care site.

400 square feet of impervious surface within the resource area (buffer zone) meets storm-water requirements.

**Meeting closed at 7:55.**

**Decision:** Mr. Magee moved a "negative 3", that the work described in the request is within the Buffer Zone, as defined in the regulations, but will not alter an area subject to protection under the act, with the following finding of fact: 1. While the stream statistics are acceptable, there will be a slight increase in the size of the drainage basin at the western end of the watershed. 2. Only flags 2-07 through 2-14 are being approved for the purpose of this filing. Mr. Colman seconded, vote unanimous.

**8:00 Notice of Intent: 95 Parker Street to 137 River Street (030)**

Samantha Hurd of TRC Environmental Corporation on behalf of the Mass. Bay Commuter Railroad Company, presented plans for the replacement of an existing substandard culvert beneath the active railroad right-of-way at railroad mile post 24.2, running approximately from 95 Parker Street to 137 River Street. . (Plate I-3, parcel 3 and H-3, parcel 237)

The existing 24 inch culvert has shown evidence of collapsing and blockage. Plans include increasing the diameter of the new culvert to 32 inches and increasing its length to 72 feet from 67 feet. A small Resource area at the outfall of the pipe will be impacted; there are no plans for replication. Work will be completed within one weekend. All work will occur from the rail bed. No equipment will enter the wetlands. They are planning to do the work this fall. No mitigation is proposed.

Mr. Klopf of 97 Parker Street commented that previous work had crushed a culvert under his driveway. Ms. Hurd responded that she would bring his concerns to the BCRC prior to the commencement of work. Mr. Maitland strongly suggested that the BCRC do everything necessary not to impact the abutter.

Hearing closed at 8:20.

**Decision:** Mr. Magee moved to issue a standard order of conditions, Mr. Arnold seconded, vote unanimous.

**8:20 Notice of Intent, Continuance: 12 Summer Street (040) (041)**

A request for continuance was submitted in writing prior to the meeting by Rachal Watsky of Goddard Engineering, and the hearing was rescheduled for October 2, at 7:40. The Commission is still waiting for a site-walk to be scheduled and other requested information to be provided.

**8:25 Consent Order: 41 Esterbrook (060)**

Mr. John Shea Esq. presented the final draft of a Wetland Restoration Plan for 41 Esterbrook. The owner and the owner's contractor were under the mistaken belief that the clearing was allowed under the agriculture exemption. Ann Marton of LEC and he have been working for the past year to develop a restoration plan. Marianne Dipinto of the DEP Wetlands Division and Paul Sneeringer of the Army Corp of Engineers have visited the site. An enforcement order was issued by the Conservation Commission in September, 2012.

Ann Marton of LEC added that the site had been graded and was essentially flat. The site-work violation extent had been approximated by re-establishing Brian Butler's wetlands flag line from 1994-95. Surveyors re-established the original wetlands line. In addition, a paddock near the house and barn will be restored.

Ms. Green pointed out that she could not see the fence line on the west side of the swale; this was not obvious on the aerial photos and was not part of the previous (1996) NOI.

Ann Marton presented the following existing conditions:

- East-side paddock, approved in 1996, was never built, and owner would like to build it now.
- In the restoration, 3 "vernal pool-type" pools will be constructed in the restored wetlands.
- Native soils all appear to have remained on site.
- Restoration will include all on-site wetland and the buffer zone, with the exception of the proposed paddocks on the east side.
- The goal is to do all required grading and planting this fall.

Ms. Marton stated she would be present at all times during the planting restoration workdays. Three suitable native-species seed mixes are available this fall. There is no concern that the site is subject to erosion.

Mr. Maitland asked how long it would take to complete the restoration. Ms. Marton replied that it would take approximately two weeks, with 200 plants to be planted.

Mr. Maitland asked why a consent order was considered and not an NOI.

Mr. Shea responded that DEP frequently uses Administrative Consent Orders (ACO). Army Corp and DEP prefer to have the local Commission handle the enforcement. This allows the project to proceed without appeals and will allow the work to occur this fall.

He also pointed out that the draft ACO allows for special conditions to be added.

Graham Knowland of 29 Esterbrook had a number of questions and comments:

- After the tree removals had begun, he had asked "Kim" (Kim Sleurin, Manager of Esterbrook Farm) if she had an approved plan with the Conservation Commission. Kim told him that they had an approved plan. This natural forested wetland acted as a water retention area. Once the wetlands were cleared, large pits were excavated and stumps were buried on-site.
- The current soils don't represent the original undisturbed soils. Nothing in the plan calls for adding soils to restore the site. Since burial of stumps was done, what action will be taken to remediate? Stumps should be removed.
- Plan calls for planting red maples which are toxic to horses.
- Removal of trees has caused blow-down of many pines on Mr. Knowland's property since the clearing was done.
- The stream (drainage ditch) was dredged and straightened. There's no restoration planned for the stream.
- The entire stream bed has been dropped by approximately one foot. There's no attempt to restore the intermittent stream. This person knowingly went into a wetlands and destroyed it.

Ms. Marton replied that she was not aware of the stump dumping and that they would be found if they are buried where grading will occur. She also said that if encountered, stumps would be removed and disposed of properly.

Mr. Maitland commented that it's probable that the person who buried the stumps will be the person doing the work, and therefore would be expected to know where they're buried.

Mr. Knowland said the trees were removed but the stumps buried.

Ms. Marton again assured him that if stumps were found they would be removed.

Mr. Knowland pointed out that ground penetrating radar could locate the stump dumps very effectively.

Mr. Wexelblat asked why 3 pools were being constructed.

Mr. Magee pointed out that these were shallow pools acting as vernal pools.

Mr. Kingman pointed out that the entire property was farmed as recently as the 1920's.

Mr. Coleman asked about the ditch that no longer meanders and is deeper.

Ms. Marton pointed out that, while they could add meandering, how it exists today is pretty similar in shape to 1996.

Mr. Maitland indicated he would favor the Administrative Consent Order.

Mr. Arnold expressed concern for setting precedence by allowing the ACO.

Mr. Coleman added that if it is to be an ACO, then there should also be a penalty.

Ms. Green asked if they wished to impose conditions, where would they go?

Mr. Shea stated that they would go into the ACO.

Ms. Green indicated a number of concerns:

- It is not clear that the eastern edge of the western paddock is a new or old condition.

- The plan should say where the delineation came from and who prepared it.
- 400 linear feet of bank that was altered and the proposed center line of the intermittent stream need to be shown on the plan.
- Would like to see fences 50 feet away from wetlands, no closer.
- Erosion control is needed along eastern paddock fence line.
- The monitoring period should be longer than 2 years.
- A plan for manure removal for the paddocks needs to be added.
- Conservation Restrictions for the property have been brought up in the past (will be discussed at the continued hearing).

Mr. Maitland expressed the need to know more about the ACO and suggested staff contact Town Counsel.

Mr. Coleman pointed out that this ACO draft was a good start and stipulated penalties could be written in.

Mr. Maitland agreed that Amy Green and Tom Tidman would meet with Ann Marton of LEC prior to October 16 to review the concerns raised by the Commission and abutters.

At 9:55, discussion was halted and scheduled to resume on October 16<sup>th</sup> at 7:15PM.

#### **10:00 Update and discussion: Hybrid Farm (050) (051)**

Items under discussion: 1. 7-1-13 Census; 2. 6-5-13 Letter to McConnon's from Tom Tidman (re: horses using the "chute"); 3. 6-12-13 Reply letter from Wick McConnon; 4. 8-20-13 Email from Rita McConnon to Bettina Abe; 5. 8-27-13 Response letter from Tom Tidman/ConsCom; 6. Retention Pond photos; 7. Red/Blue colored draft for wording on kiosk; 8. Gate wording for Conservation Land and Hybrid Farm Land

Mr. Colman spoke to #2 and 3 above, and referred to map area D, "the chute." Mr. Colman felt the Commission had asked that no horses go through that chute. Mr. McConnon had understood that the chute area closer to the blue line was acceptable for bringing a horse through now and then. Mr. Colman asked the Commission, "What do we want it to mean now?" referring to Section 9.25 *Abandonment of existing crossing*.

Ms. Green asserted that the Commission thought the entire wetlands crossing would be abandoned. The McConnon's would like to use a passage from D to C over B. They would not walk through the chute, but to the north of it. Horses are only hand-led. Using Nagog Road would be a hardship for them. High intensity traffic has ended. Just leading a horse or two is no different than ordinary conservation land activity. Mr. Arnold asked exactly how many horses per day will cross, and to please specify what was being proposed. Mr. Maitland commented on the need to watch out for creeping gradualism. Ms. Green stated that if a number cannot be put on it, then apply a performance standard based on the current condition of the land.

Mr. Colman stated that it was just a grassy passage now. The question before the Commission is how to interpret Section 9.5 of the License Agreement; and does the Commission want to change it. Mr. Colman and Mr. Arnold thought it meant *no horses*. What does the Commission think? Agree or disagree? Ms. Green took it to mean no horses in the wetland and asserted that horses hooves are pretty sharp. Mr. Froberg agreed that it should be a performance standard, not counting horses. Mr. Maitland stipulated to the McConnons, "use it lightly. If it starts to chew things up by the vernal pool, we will enforce to stop repeated use." Mr. McConnon said the same standard could be applied in asking them to cease and desist if it is getting chewed up.

Mr. Maitland said the McConnons should feel responsible and opt to not use the passage if they observe degradation. Mr. Froberg added it was up to the licensees to control the traffic. It's the general maintenance and care of the property, a certain level of trust, in making sure the land is cared for. Mr. Colman said a light use of this is permissible, as long as no sign of a horse trail is discernible. Mr. Maitland said the McConnon's can be self-reporting, and the Commission would check quarterly. Mr. Froberg added that the McConnon's should do self-monitoring. In examples of other renter agreements, "wear and tear" is a loose term. Deal with gross exceptions when they come up. Mr. McConnon said the area rapidly repairs itself.

Ms. McConnon asked if visitors could ride from D to C or B. Ms. Green said it was very mucky before, so if people are walking through, Intermittent traffic is not making it worse. Mr. Tidman suggested keeping people out in June when it gets too mucky. Mr. Colman suggested in the future to amend the license for "muck depth."

Next, the Commission discussed language on kiosk and gate signs. The language on the drafts was adjusted. Ms. Abe will update and get poster and signs made. Last discussed was the man-made retention pond Mr. McConnon created at Area C corner. The Commission was in agreement with the establishment of the retention pond to capture and filter run-off.

Discussion ended at 10:40 pm.

#### **Certificates of Compliance:**

Mr. Froberg moved to issue a Certificate of Compliance for 12 Algonquin Road DEP #85-1094 (070), Mr. Arnold seconded, vote unanimous.

Mr. Froberg moved to issue a Certificate of Compliance for 81 River Street Lot 2E (aka 77 River Street), DEP #85-995 (080) Mr. Arnold seconded, vote unanimous.

Mr. Froberg moved to issue a Certificate of Compliance for 81 River Street Lot 2F (aka 79 River Street), DEP #85-1040 (081) Mr. Arnold seconded, vote unanimous.

Mr. Froberg moved to issue a Certificate of Compliance for 81 River Street Lot 2G (aka 81 River Street), DEP #85-1041 (082) Mr. Arnold seconded, vote unanimous.

**MINUTES:** September 4, 2014 reviewed by AM, AG, TL, TM

Ms. Green moved to accept, Mr. Coleman seconded, unanimous.

**10:50PM: Meeting Adjourned**

  
Terry Maitland  
Chairperson

**ACTON CONSERVATION COMMISSION  
AGENDA  
SEPTEMBER 18, 2013**

**7:15 PM  
TOWN HALL - 472 MAIN STREET  
ROOM 204**

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- 7:30 Request for Determination: 400 Massachusetts Avenue/CVS (020)

LUCAS ENVIRONMENTAL, LLC, representing TRB Development Group, Inc. presenting plans for redevelopment project including the removal of the existing building and constructing a CVS/pharmacy store with drive through and associated appurtenances. (Plate F-3, parcels 118-2, 127-128)

- 7:40 Notice of Intent: 95 Parker Street to 137 River Street DEP 085-1132 (030)

TRC Environmental Corporation on behalf of the Mass. Bay Commuter Railroad Company, presenting replacement of an existing substandard culvert beneath the active railroad right-of-way at railroad mile post 24.2, which runs approximately from 95 Parker Street through to 137 River Street. . (Plate I-3, parcel 3 and H-3, parcel 237)

- 7:45 Notice of Intent, Continuance: 12 Summer Street (040) (041)

Hearing scheduled for October 2, time ?

- 8:00 Update and discussion: Hybid Farm (050) (051)

Proposed language for kiosk and fence signage, Wick's letter to Commission on June 12, 2013, e-mail and letter of August 20, 2013.

- 8:15 Consent Order: 41 Estabrook (060)

Final Draft of Wetland Restoration Plan

**Certificates of Compliance:**

12 Aigonquin Road DEP #85-1094 (070)

81 River Street Lot 2E (aka 77 River Street), DEP #85-995 (080)

81 River Street Lot 2F (aka 79 River Street), DEP #85-1040 (081)

81 River Street Lot 2G (aka 81 River Street), DEP #85-1041 (082)

**Minutes:** September 4, 2013, reviewed by AM, AG, TL, TM. Signature...

- Tide
- 0001 Agenda09182013.pdf
- 010 Request to Amend OOC Lot A-2 School Street
- 011 Amended Plan Lot A 2 School Street
- 020 400 Mass Ave CVS Request for Determination Sections 1\_2.pdf
- 021A 400 Mass Ave CVS Request for Determination Section 3 Maps A.pdf
- 021B 400 Mass Ave CVS Request for Determination Section 3 MapsB.pdf
- 021C 400 Mass Ave CVS Request for Determination Section 3 MapsC.pdf
- 022 400 Mass Ave CVS Request for Determination Section4and5.pdf
- 023 Request for Determination 400 Mass Ave CVS Site Development Plans
- 030 Notice of Intent 95 Parker Street MBCR Acton Final Combined
- 031 Notice of Intent 95 Parker Street MBCR Acton DEP no 85-1132
- 040 12 Summer Street Cemetary Commission Response access
- 041 12 Summer Street Westchester recuse request - 08192013
- 050 Hybrid Farm 8-20-2013 email from Rita McConnon
- 051 Hybrid Farm 8 27 2013 letter to McConnons
- 060 Consent Order 41 Estabrook FINAL Draft Wetland Restoration Replication Report 9 11 13
- 070 Request for Certificate of Compliance 12 Algonquin Road.pdf
- 080 Request for Certificate of Compliance - 81 River Street Lot 2F - 85 1040
- 081 Request for Certificate of Compliance - 81 River Street Lot 2G - 85-1041
- 082 Request for Certificate of Compliance - 81 River Street Lot 2E - 85-995

