

**ACTON CONSERVATION COMMISSION
MINUTES
October 21, 2015
7:15 PM
TOWN HALL - 472 MAIN STREET
ROOM 204**

COMMISSIONERS PRESENT: Terry Maitland, William Froberg, Tom Arnold, Amy Green, Jim Colman, Paula Goodwin

NATURAL RESOURCES DIRECTOR & RECORDING SECRETARY: Tom Tidman

VISITORS: Tim McKinnon, Mark Arnold, Sean Keenan, Jeffrey Brem, James Bernhard

7:30 Notice of Intent: 296 Nagog Hill Rd.

Timothy McKinnon, for a project at 296 Nagog Hill Road, (town atlas plate D3, parcel 40). Applicant proposes to install a fixed elevated dock on Grassy Pond.

Tim McKinnon, owner of the property, presented plans for an elevated dock at the south end of his lot on Grassy Pond. There are a number of "fixed" docks presently along the shoreline of Grassy Pond. He planned to build a dock similar to the dock on Grassy Pond Conservation Area. The total length of the dock will be 79 feet, bringing it past the edge of the floating peat, and 24 feet of the dock will be over the shoreline. The dock will be set on 2 inch galvanized poles, 8 to 12 inches above the pond surface. The deck surface will most likely be constructed of a composite material (likely "Trex"). He plans to build the dock in winter, when he can work over the ice. Grassy Pond is considered a "Great Pond."

Ms. Green asked if he would be required to obtain a Chapter 91 permit for the dock, and Mr. McKinnon responded that he was unaware a Chapter 91 permit was required but would investigate.

Mr. Arnold asked how he had determined the high water line in order to set the height of the dock. Mr. McKinnon responded that it seemed reasonable to set the height of the dock the same as the Grassy Pond Conservation dock.

The hearing was closed at 7:50 PM.

Decision: Mr. Colman moved to issue a Standard Order of Conditions with one special condition, that the dock be no lower than the Town of Acton dock on Grassy Pond conservation area. Ms. Green seconded and the vote was unanimous.

8:00 Request for Determination of Applicability: 456 Massachusetts Avenue

Sean Keenan of 54 Gristmill Rd, Littleton presented a project for a site at 456 Massachusetts Avenue, Acton (*town atlas plate F2, parcel 117, 126*). A single family home currently exists on the property with a large yard in front and a small yard in back. The rear of the 1.7 acre lot is wooded. Applicant is seeking a determination that no jurisdictional Land Subject to Flooding exists on the site.

Mark Arnold from Goddard Associates represented the owner, Sean Keenan. He noted that the area where flooding occurs falls below the State minimum of ¼ acre-foot of water with an average depth of water not less than 6 inches. A ¼ acre foot of water occupies an area of 10,890 cubic feet, and calculations for the area that seasonally floods on this site is 2,901.5 cubic feet, well below the State minimum for Isolated Land Subject to Flooding (ILSF).

Ms. Green pointed out that the site inspection showed that the ILSF was predominantly comprised of wetlands vegetation, and asked if he had done any data points. Mr. M. Arnold replied that he had reviewed the Town of Acton bylaw and it did not mention isolated wetlands, just refers to the State's Bordering Vegetative Wetlands (BVW) standard. Mr. Colman commented that not all wetlands are bordering and the Town does not define wetlands as bordering. Ms. Green added that the Town Bylaw refers to "ANY" wetlands, not just bordering wetlands.

Mr. M. Arnold, after consulting with the owner, Sean Keenan, asked that the meeting be continued so they could review the Commission's feedback.

Mr. Maitland announced that the meeting would be continued to November 4, at 7:15 PM.

8:20 Notice of Intent: 34 Robbins Street

James Bernhard for a project at 34 Robbins Street (town atlas plate H2, parcel 48). Project includes remediation of wetland resource area in response to an Enforcement Order from the Town of Acton and includes the construction of a garage and relocation of the existing driveway, deck, future in-law addition and associated utilities, grading and landscaping.

Jeffrey Brem, with Meisner-Brem Corporation, presented for the homeowner, James Bernhard. Mr. Brem assured the Commission that his client is now fully aware of the violations that occurred on his property and plans to make everything right with respect to floodplain and wetlands violations.

He started by outlining the areas where fill had been placed prior to obtaining permits. Fill was placed at the north end of the lot last year and again recently: (a) 50 square feet of Bordering Vegetative Wetlands (BVW); (b) 422 square feet in the floodplain; and (c) approximately 1,100 square feet within the 100 foot wetland buffer zone. Silt fence will be set along the edge of the disturbed area and all fill will be removed. The fill is primarily low quality tailings. All on-site wetlands were located and flagged by Leah Basbanes on August 20, 2015. The report was submitted with the NOI filing, DEP #85-1184. There is another area on the south side of the house where fill was dumped this summer: (a) 3,157 square feet of fill was placed within the 100 year flood plain; and (b) 350 square feet of material was dumped within the 100 foot wetlands buffer zone.

Mr. Brem said that all material (tailings) dumped illegally within the floodplain, wetlands and wetlands buffer areas will be removed. In addition, the owner has received a letter from the Planning Department outlining the existing conditions and the violations on October 16, 2015. He also stated that, in addition to the work necessary to remove illegally dumped fill as shown on Sheet 1, the owners were requesting to make improvements to the house and yard as shown on Sheet 2.

Mr. Brem then outlined proposed improvement projects: (a) grade and install a walkway to the house entrance; (b) move an existing shed to the south side of the house; (c) reconstruct the existing driveway to be a 12 foot wide horseshoe driveway; (d) re-grade and add material to slope off the leaching field; (e) trim back vegetation at the south end of the lot, to improve the sightline; (f) add a 12 x 30 foot addition to the house; (g) add a new deck over the existing patio; and (h) add a 28 x 30 foot garage.

Mr. Colman asked if the Commission thought a penalty should be assessed for the work that was done without permits. Mr. Tidman reviewed and explained the history of the violations and the reasons why an Enforcement Order was issued this past summer. The Commission discussed the most appropriate way to move the filing forward. They concluded that a modification to the Enforcement Order would be the best way to ensure compliance and immediate removal of fill from the floodplain and wetlands.

Mr. Brem stated that the applicant would like to restore the flagstone walkway leading to the front of the house immediately as the area is unsafe in its current condition. The Commission discussed options for allowing the work to occur, concluding that a Request for Determination of Applicability (RDA) would make the most sense at this time. Mr. Brem said he would submit an RDA for the November 4th meeting for the work associated with restoring the steps and retaining wall at the front entrance to the house.

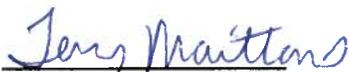
Decision: Mr. Colman moved that the **Enforcement Order** issued on August 5, 2015 be amended to include the following language:

"All fill and tailings dumped in resource areas, as described in the Meisner-Brem Notice of Intent Plan (Sheet 1), dated October 7, 2014, specifically, Area 1: 50 square feet in Bordering Vegetated Wetlands, 422 square feet of fill in 100 year floodplain and 1,100 square feet of fill in the 100 foot wetlands buffer zone, shall be removed from the site and the site stabilized with annual rye grass. All disturbed areas within the 100 year floodplain shall be restored to an elevation of 198, and all wetlands and wetlands buffer zone disturbance restored to pre-violation elevations. All removal of fill and tailings shall be completed no later than November 30, 2015 and verified by an engineer."

Mr. Arnold seconded the motion, and the vote was unanimous.

Mr. Maitland announced that the hearing would be continued to November 4 at 7:40 PM.

The meeting was adjourned at 10:00 PM.


Terry Maitland
Chairperson

ACTON CONSERVATION COMMISSION
Amended AGENDA
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7:15 PM
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ROOM 204

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8:15 Notice of Intent: 12 Summer St./176 Central Street: applicant requested hearing be continued to November 4 meeting.

Minutes: October 7, 2015: Pending

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10-21-2015

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