

**CONSERVATION COMMISSION
AMENDED AGENDA
DECEMBER 5, 2007**

7:15 NOI – Continuation – 941 – 960 Main Street - Water District (010)

Letter submitted by Caron Environmental dated 11-30-2007

7:30 Notice of Intent – Spring Hill Road – Jeanson Homes, Inc.

Applicant: Jeanson Homes, Inc. Owner: William & Deanne Angell

Engineer: Acton Survey & Engineering

(026, 027, 028, 030, 031, 032, 033, 034, 035, 036)

Pursuant to the Town of Acton Wetland Protection Bylaw - proposed construction of two single family homes within 100' of wetlands and driveway access crossing wetlands and associated activities located west of 8 Spring Hill Road (Town Atlas Plate E-6, Parcel 6-1).

Certificate of Compliance

- Lot 2 Partridge Pond Road - DEP File 85-957 (050)
- 159 Prospect Street – Davis Place - DEP File 85-934 (051)
- 80 Willow Street – DEP File 85-827 - (052)

Bruce Freeman Rail Trail – Support Letter for Acton Enhancement Application (060)

MINUTES

November 7	comments rec'd by	TM, FP, LS, PL, JA
November 21	forthcoming	

SIGNATURE

**CONSERVATION COMMISSION
MINUTES
DECEMBER 5, 2007**

MEMBERS PRESENT: Terry Maitland, Janet Adachi, Frances Portante, Bill Froberg, Linda Serafini, Patty Lee

ADMINISTRATOR: Tom Tidman

RECORDING SECRETARY: Andrea Ristine

VISITORS: Chris Allen, Rich Protasowicki, Rebecca Harvey, John Harvey, Cynthia Harvey, Fred Seward, Sandra Roschelle, Dara Mitchell, Terence O'Sullivan, Joan Gardner, Karen Roop, Bill Roop, Peter Darlow, Bill Sawyer, Jack Appelmans, John DiCristina, Elaine Sisler, Susan Mitchell-Hart, Kim Appelmans, Sue Mushinski, Jill Goldman-Callahan

7:20 NOI – Continuation – 941 – 960 Main Street - Water District (010)

Letter submitted by Caron Environmental dated 11-30-2007.

Rich Protasowicki from Wright-Pierce presented amended plans dated 12/3/2007; amendments to the plan include requirements made by the Natural Heritage Endangered Species Program (NHESP) and proposed roadway work. NHESP is scheduled to visit the site on December 7th to review the site and proposed Blanding's Turtle Nesting Habitat Management Plan; the Water District requests that this hearing be continued pending the site walk with NHESP.

Upon query by Mr. Maitland, Mr. Tidman reported that he is unaware of any Blanding's Turtle sightings in Acton but there have been in Westford.

Upon query by Ms. Adachi, Mr. Protasowicki noted that the proposed habitat area on the amended plan is not the area suggested by NHESP. NHESP has also imposed a schedule restriction requiring that no construction occur between April and October 15. The Applicant will try to have the schedule restriction changed as it will increase construction costs.

Upon query by Ms. Portante, Mr. Protasowicki reported that the gravel access road is to be improved by Kennedy Sand & Gravel.

Upon query by Ms. Adachi, Mr. Protasowicki reported that the roadway will be improved by resurfacing a portion of the road with compacted (reclaimed) asphalt grindings.

Upon query by Mr. Maitland, Mr. Allen reported that the Water District owns the roadway but Kennedy Sand & Gravel is responsible for maintaining it.

Upon query by Mr. Maitland, Mr. Protasowicki reported that the project should take approximately 15 months to complete from start to finish. At this time he is not sure NHESP will allow a change in the construction schedule restriction.

7:27 Upon the request of the Applicant, Mr. Maitland continued the hearing until January 2, 2008 at 7:15 PM.

Bruce Freeman Rail Trail – Support Letter for Acton Enhancement Application (060)

Ms. Portante moved that the Commission support the Bruce Freeman Rail Trail with the letter drafted by Kristen Alexander from the Planning Department; Ms. Lee 2nd; unanimous.

7:31 Continuation - Notice of Intent – Spring Hill Road – Jeanson Homes, Inc.

Applicant: Jeanson Homes, Inc. Owner: William & Deanne Angell
Engineer: Acton Survey & Engineering

(026, 027, 028, 030, 031, 032, 033, 034, 035, 036)

Mr. Maitland opened the hearing pursuant to the Town of Acton Wetland Protection Bylaw for the proposed construction of two single family homes within 100' of wetlands and a driveway access crossing wetlands and associated activities located west of 8 Spring Hill Road (Town Atlas Plate E-6, Parcel 6-1).

Mark Donohoe reported that a pre-hearing meeting regarding the abutters' appeal is scheduled for 12/11/07. Mr. Donohoe presented the Notice of Intent Plan dated 6/26/07 noting that the proposed septic systems, driveway and two houses meet the setbacks required under the Bylaw. Mr. Donohoe stated that the Bylaw allows the driveway crossing closer than 50 feet to wetlands as a limited project. Mr. Donohoe submitted a handout dated 12/5/07 regarding limited projects. The proposed location of the wetland replication area is in an area without Japanese Knotweed and is hydraulically connected to the wetland fill area. The Applicant is willing to consider other locations. The project proposed does not increase stormwater runoff nor is it subject to the DEP Stormwater Policy.

Upon query by Mr. Maitland, Mr. Donohoe stated that the NOI Site Plan has not had any changes since the Commission denied it on July 18, 2007; DEP has approved the plan with a Superseding Order of Conditions (SOOC) under 10.53.3.(e).

Ms. Adachi noted that three plans were submitted with the latest NOI under the Bylaw; the NOI Site Plan and the Site Notes and Details are the same plans submitted when it was denied by the Commission, and the third (different) plan shows a common drive with an alternative wetland crossing that was submitted to DEP at the time of the Applicant's appeal.

Mr. Donohoe stated that the alternative driveway submitted to DEP involved a larger amount of wetlands fill with more pervious surface adjacent to wetlands.

Upon query by Ms. Adachi, Mr. Donohoe reported that there are no changes to the project, and confirmed that it is the same as in the earlier application denied by the Commission in July, 2007. Mr. Donohoe said that the eight-page letter dated November 5, 2007 that was provided with the NOI covers the same information submitted in the previous proceeding. He consented to the inclusion in the record for the current proceeding of the record for the previous NOI proceeding.

Ms. Adachi noted that the Bylaw protects the wetland buffer zone as resource area and the proposed driveway encroaches significantly on buffer zone. The analysis under the Act pertained to the wetland resource area but not buffer zone resource area protected under the Bylaw. Ms. Adachi stated that she does not believe that DEP's SOOC addressed the proposal under the limited project provisions (10.53.3(e)).

Mr. Donohoe stated that he filed the NOI as a limited project and DEP decided on the proposal as filed; he addressed impacts to the buffer zone in his letter dated 11/5/2007.

Upon query by Ms. Adachi, Mr. Donohoe referred to information in the NOI plan indicating that Lot 2 will have 14,123 and Lot 3 will have 9,566 s.f. of buffer zone alteration.

Ms. Adachi stated that the heart of the last decision denying the project was the magnitude of the impact to the buffer zone area and adverse impact on the interests of the Bylaw. The Commission did not receive statements from a wetland expert as to the impact on the wetlands and buffer zone under the Bylaw. Mr. Donohoe stated that he could address specific questions, noting that a wetlands expert should not be necessary. He has common knowledge and 40 years experience. If the Commission asks him specific questions, he will get the necessary information with proper references.

Mr. Tidman stated that based on his experience, the area referred to as a potential vernal pool is clearly a vernal pool, and merits specific attention as part of an investigation of the species that exist in this area. Under the Bylaw a wildlife habitat study is required and the NOI submission does not address this issue. Mr. Donohoe stated that he has walked the site and only found it to be a deciduous swamp; if the Commission issues an Order of Conditions approving the project and requiring a full study, and the order is not overturned on appeal, the Applicant is willing pay up to \$5,000 for such studies. The Applicant will not pay for a study if the Commission issues a denial.

Mr. Froberg noted that such a study could come back with negative recommendations. Mr. Donahoe stated that the Commission can name a wetland expert in an approving OOC and the Applicant will comply with the special condition requiring an expert study; if the expert reports back that the site should not be developed, then so be it.

Mr. Tidman stated that the NOI filing is incomplete under the Bylaw respecting the replication area and wildlife diversity plan. Mr. Donohoe stated that if the Commission has a specific question, he will address it.

Luke Legere from Macgregor & Associates referred to his letter dated 11/28/2007 to the Commission and noted to the Commission that the project has not changed since its denial in July, 2007 nor has the Bylaw changed. The Commission properly denied the previous NOI filing and should do so again. Mr. Legere agreed with the previous comment that DEP did not refer to the proposal as a limited project in its SOOC. The abutters' appeal to DEP is pending and Mr. Legere suggests that the Commission wait until DEP has made final determination in the appeal. The Bylaw is more stringent than the Act; if a denial spells out specific reasons it will be upheld by the courts. The proposal does not protect the setbacks under the Bylaw. Mr. Legere agreed with the Commission's concern regarding the lack of a wildlife and habitat study and believes that a decision cannot be made until such a study has been done.

William Sawyer from 15 Spring Hill Road noted that the new NOI filing has no new facts, which tells him that the Applicant has no standing; there is no reason that the Commission should change its previous decision. He is also unimpressed that there is nothing that prohibits unlimited repetitive filing of the same project and feels that it is an abuse of the system by the Applicant to do so. He feels that the standards under the Bylaw have not been satisfied; it is not the Commission's responsibility to tell the Applicant what should be produced. Mr. Sawyer asked the Commission to hold its ground on the standards that the town of Acton lives by.

Cynthia Harvey from 7 Duston Lane noted that she is a direct abutter and stated that at the time of the 1999 denial of this proposal she had a biologist, Brian Butler, evaluate her property. Mr. Butler found the area to be appropriate habitat for Blue Spot Salamanders, 4-toed Salamanders and Spotted Turtles; she also had a second biologist, Dan Wells, who stated the same. Ms. Harvey also noted that both salamanders have been observed less than a mile from the proposed development.

Jack Appelmans referred to statements in a letter dated 12-5-07 by Dan Wells of Hyla Ecological Services who had inspected the Harvey's property; due to the time of year Mr. Wells could only assess the habitat within the wetland and adjacent uplands. He found the site to be suitable habitat for the noted salamanders and states the wetland has the potential to contain a vernal pool habitat and recommended that the site be surveyed during the spring of 2008. Mr. Appelmans referred to DEP Wetland Policy 90-2, Division of Fisheries & Wildlife (DFW) Vernal Pool Fact Sheet, and the NHESP Four-toed Salamander Forestry Comprehensive Maintenance Plan draft from March 2006. Mr. Appelmans also feels that the proposed conservation (easement) restriction offered by the Applicant is not in the public's interest and encouraged the Commission to review the proposal independently from DEP.

Mr. Donohoe stated that the Applicant does not propose alterations within the suspected vernal pool area or to the wetlands with the exception of the crossing. The Applicant has offered the Commission the option of choosing a consultant in an approving OOC; the proposed conservation

restriction on portions of the two lots would provide a layer of protection for the wetlands resource area.

Bill Roop from 376 Pope Road reiterated for the record that the Applicant is not the owner of the property, and the owner subdivided and sold the buildable portion of the original parcel. He supports the Commission's previous decision; the re-filing under the Bylaw just gives the Applicant the ability to appeal the decision to the court since the prior decision was not appealed within the given appeal period.

Dara Mitchell from 8 Spring Hill Road referred to the November 15, 2007 letter that she and other abutters submitted to the Board of Selectmen in support of the Commission's position, noting that the abutters obtained 60 signatures in two days supporting the Commission's original and recent decisions denying the NOI filing.

John Harvey from 7 Duston Lane stated that his property encompasses a swamp that is a sponge for a tremendous amount of runoff along with wildlife and habitat; he feels that the proposed development of the two lots will affect his property.

Luke Legere noted that vernal pools are protected under the Bylaw whether or not they are certified with NHESP.

Terry O'Sullivan from 8 Spring Hill Road noted that a comment within the eight-page letter submitted by Mr. Donohoe asserts that the stream that bisects the two proposed lots is "too straight" and was historically altered; a 1950 USGS map of this wetland resource area shows that the natural lie of land slopes to create the straightness. Mr. O'Sullivan also noted that the DEP Replication Guidelines for Inland Wetland Replication, page 21 ss 3.1 states that before work activity begins wetland replication specifications should be set and the replication area constructed prior to development construction (the replication has to be built prior to anything else). This NOI proposal specifies that the wetlands need to be crossed to get to the proposed replication area.

Mr. Donohoe disagreed with the guidelines presented by Mr. O'Sullivan and stated that guidelines are not enforceable.

Mr. Appelmans stated that there is a need for an independent party to review the proposed project relating to stormwater runoff, recharge and historic flooding. The existing fire pond was designed when there were fewer houses in the area than currently exist; the independent study should also evaluate whether the fire pond is big enough for the existing and proposed number of homes. Mr. Appelmans reported that he has requested an adjudicatory hearing with DEP regarding the SOOC and is waiting to see whether the issue of untimeliness will be held against him; he does not feel that the timeframes for appeals are realistic and he does not feel that his rights as an aggrieved party have been properly served.

Cynthia Harvey also noted that the biologists she has spoken with question whether replication areas really work; wildlife may not "shift" with the habitat relocation that is convenient for development. Mr. Maitland agreed that there is question as to whether replication areas are succeeding.

Jill Callahan from 7 Spring Hill Road noted that the stream that runs past her home swells in the spring and is (seasonally) five feet from her home; she feels that it is the Town's responsibility to protect its current residents from extra runoff before more homes area developed. She feels that an engineer should be consulted to study the stormwater issues.

Mr. Donohoe reiterated that the Applicant has offered \$5,000 that the Commission could apply toward an engineering study.

Upon query by Mr. Tidman, Mr. Donohoe stated that additional studies can be done but request that it be a special condition within an Order of Conditions.

Ms. Portante stated that an impact study would address all concerns raised. This NOI filing is requiring the Commission to review the same information and same plan as previously denied. Mr. Donohoe stated that DEP's SOOC and his eight-page letter address the concerns. If the Commission specifically requires a study as part of an OOC under the Bylaw the Applicant will address the issue; it is unfair for the Applicant to spend the time and money and not be allowed to build.

Mr. Maitland stated that he understands that the Applicant will not allow a continuation of the hearing for such a study but will conduct a study if conditioned to do so. Mr. Maitland asked Mr. Donohoe if he would continue the hearing; Mr. Donohoe refused.

8:39 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision - Spring Hill Road – Jeanson Homes, Inc.

Ms. Adachi moved that the Commission deny the project as filed under the Town of Acton Wetland Protection Bylaw; Ms. Portante 2nd, the motion passed unanimously.

MINUTES

Ms. Adachi moved that the Commission accept the minutes for November 7, 2007; Ms. Serafini 2nd, unanimous.

Certificates of Compliance

- Lot 2 Partridge Pond Road - DEP File 85-957 (050) – Ms. Adachi moved that the Commission issue a Certificate of Compliance as recommended by Mr. Tidman; Ms. Serafini 2nd, unanimous.
- 159 Prospect Street – Davis Place - DEP File 85-934 (051) - Ms. Lee moved that the Commission issue a Certificate of Compliance as recommended by Mr. Tidman; Ms. Serafini 2nd, unanimous.
- 80 Willow Street – DEP File 85-827 - (052) - Ms. Adachi moved that the Commission issue a Certificate of Compliance as recommended by Mr. Tidman; Mr. Froberg 2nd, unanimous.

Discussion – 70 Newtown Road – the Commission noted that the decision is due next Wednesday, December 12th.

9:20 Meeting adjourned.



Terry Maitland, Chair