

CONSERVATION COMMISSION
AMENDED AGENDA
MAY 17, 2006

7:15 Preliminary Review - Water District - Tom Mahanna

7:30 Request for Determination - 397 - 407 Great Road - Woodvale Condominium Trust
Ellis Neofotistos, Neofotistos, McRae & Associates: Installation of ground water monitoring wells within 100' of a wetland.

7:45 Notice of Intent - 132 Prospect Street - Daniel & Rocio Protasowicki
Installation of a swimming pool within 100' of a wetland; presented preliminary to Concom 3/1/06.

8:00 Continuation - ANRAD -Yin Peet

Extension Permits - 93 Taylor Road & 26 Grasshopper Lane - *Opinion of Counsel*
Commissioners received forwarded comments from Elizabeth Pyle 5/2/06 and are attached within this agenda's packet information. Written comments from Counsel are private (not public information) until the case is resolved.

8:30 Request for Extension - 26 Grasshopper Lane - Glen Kaufmann

8:40 Request for Extension - 93 Taylor Road

SIGNATURE - MassHighway - Route 2 Vegetation Management Plan

MINUTES

March 15	comments received by	TM, JM, JA, ME	signature
April 19	" " "	CL, JA, TM, ME	"
May 3	" " "	ME	

CONSERVATION COMMISSION
MINUTES
MAY 17, 2006

MEMBERS PRESENT: Terry Maitland, Mike Eder, Julia Miles, Cheryl Lowe, Janet Adachi, Linda Serafini, William Froberg,

CONSERVATION ADMINISTRATOR: Tom Tidman

RECORDING SECRETARY: Andrea Ristine

VISITORS: Tom Mahanna, Steve Marsh, Therese Marsh, Alex Parra, Robert Hendrie, Jim Deming, Steve Nelson, Dan and Rocio Protasowicki, Glen Kaufmann

7:15 Preliminary Review - Water District - Tom Mahanna

Tom Mahanna from StanTech, stated to the Commission that the Water District wishes to replace its existing 70 year old wooden structure (garage) with a new 40 x 60 three bay single story building and new stand-by generator. The existing garage is four feet from the edge of wetlands. The proposed building will be located 14' from the edge of wetlands within the existing footprint and a portion of the existing paved parking lot. The Water District will also remove the small rear shed. It is more economical to remove the building and construct a replacement which will also provide more equipment and vehicle storage. There will be no vehicle maintenance conducted on site; the Water District sends their vehicles out for maintenance. Upon query by the Commission, Water District Manager, James Deming reported that the existing building foundation is block; the proposed building will have a concrete foundation.

Upon query by Ms. Miles, Mr. Deming stated that the existing building to remain has a contained diesel tank; there is no refueling of vehicles in the existing or in the proposed garage. All vehicle maintenance is sent out.

Upon query by Mr. Maitland, Mr. Deming stated that there are no new paved surfaces proposed and all work would be done within the existing pavement area and building footprint.

Upon query by Commissioners, Mr. Mahanna reported that, although it was considered, due to the existing topography it would be too difficult to construct the new building and have access to it if it were to be constructed on the (opposite) east side of the property closer to the street. Mr. Deming stated that the Water District might be able to fit a building in, somewhere, to the left front but would still have to do something about the older existing building in need of repair.

Mr. Maitland noted that the proposal would be allowable under the Bylaw since the replacement building would be a "like structure". The proposal would require a Notice of Intent (NOI) filing.

Ms. Lowe suggested that the NOI include information as to why a different location on the property is not feasible compared to the proposed location.

Mr. Tidman noted that the property also includes flood plain. Mr. Mahanna stated that the existing buildings are above the flood plain elevation 108; the area that Commissioners inquired about as an alternative location for the proposed building is at a lower elevation and is within the flood plain

Mr. Tidman stated that he feels that the proposed location makes sense. Commissioners who wish to familiarize themselves with the site can drive in easily.

7:30 Request for Determination - 397 - 407 Great Road - Woodvale Condominium Trust

Ellis Neofotistos, Neofotistos, McRae & Associates, presented plans for the proposed installation of ground water monitoring wells within 100' of a wetland. The wells will be installed around the sewage treatment plant as required under an Administrative Consent Order from DEP. Two

monitoring wells will be within the 100' buffer zone. The proposed well locations were chosen on site with a hydrologist, representative from both the DEP and Acton Board of Health (BoH) and Tom Tidman during a site meeting on May 25, 2006.

Upon query by Mr. Eder, Mr. Neofotistos reported that the wells would be drilled with an auger approximately 15-20' deep depending on the water table elevation. The screens for the monitoring wells need a depth of 10' within the water table. Once installed, the monitoring wells within the paved surface area will look like water main gate valves and the well that will be within existing grass area will extend approximately two feet above grade.

Upon query by Ms. Miles, Mr. Tidman reported that the wetlands are located within the swale and very defined. Mr. Neofotistos noted that the two closest wells will be 25 and 50' from the edge of wetlands.

Upon query from Ms. Miles, Mr. Neofotistos reported that the condominium complex has its own drinking water supply. One well showed a small concentration of exotic metal on the site so the Applicant is being required to connect to public water and install the monitoring wells. The Administrative Consent Order was mandated for wastewater and will sample for nitrogen. If nitrogen is found to be too high the Applicant may need additional treatment and will be back before the Commission if necessary.

Upon query by Mr. Froberg, Mr. Tidman reported that the wetland is flagged, it is a very defined channel that was historically man-made but the area had wetlands. The top of the swale is the edge of wetland. This wetland is contributed to from Harris Street and enters into Wills Hole Brook on the other side of Great Road.

7:41 Hearing no further comments or questions, Mr. Maitland closed the meeting.

Determination - 397 - 407 Great Road - Woodvale Condominium Trust

Mr. Eder moved to find the proposed work to be within the Commission's jurisdiction but will not impact the wetland (negative 3 under the WPA and negative 2 under the Bylaw. Ms. Lowe second; unanimous.

MINUTES

Ms. Miles moved that the Commission approve the minutes for March 15 and April 19, 2006. Ms. Adachi 2nd; unanimous.

7:45 Notice of Intent - 132 Prospect Street - Daniel & Rocio Protasowicki

* Ms. Miles recused herself from the hearing as she is a direct abutter.

Daniel Protasowicki presented plans for the proposed installation of a swimming pool within 100' of a wetland. A preliminary plan was presented to the Commission on March 1, 2006. The proposed pool decking at its closest point will be 75' from the edge of wetlands. The proposed filter system will not require backwashing; the filter has a removable cartridge that is cleaned once a year.

Upon query Mr. Maitland, Mr. Protasowicki stated that there will be a black chain link fence around the proposed pool approximately three feet out from the pool deck.

Upon query by Mr. Maitland, Mr. Tidman reported that the wetland is an intermittent stream; the watershed associated with this wetland feeds from Prospect Street and Route 111 running south under Spencer Road towards Mallard and eventually towards Flint Road.

Upon query by Mr. Maitland, Mr. Protasowicki stated that he proposes landscaping between the proposed pool deck and fencing.

Upon query by Ms. Adachi, Mr. Tidman reported that the wetland line follows the property boundary.

Upon query by Ms. Lowe, Mr. Protasowicki stated that the proposed pool will be constructed within existing lawn area; the deck shown on the plan is existing.

Upon query by Mr. Froberg, Mr. Protasowicki reported that the representative from Snyder Pools did the measurements from wetlands. Mr. Tidman reported that the wetland flagging was done a few years ago and he refreshed the delineation with a few new flags for this project; he is comfortable with the delineation shown on the plan.

Upon query by abutter Julia Miles, Mr. Protasowicki stated that the proposed pool will have a cartridge filter system that does not require backwashing.

Upon query by Ms. Miles, Mr. Tidman reported that, in the past, the Commission has permitted the installation of fencing within the no-structure setback. Before development in this area it was probably farmed hay fields and drainage was channelized; there is a culvert that runs parallel between the driveway for this site and the abutting residence.

8:00 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision – 132 Prospect Street

Mr. Eder moved that the Commission issue an order of conditions with the special condition that the pool filter system shall be a filter system that does not require backwashing.

Discussion.

Mr. Froberg seconded the motion.

Ms. Lowe stated that the plans note that the filter system will not require backwash discharge and the filter will be cleaned off site (Plan Note No. 6).

Mr. Eder rescinded the original motion and moved that the Commission issue a standard Order of Conditions for the plans as presented. Mr. Froberg 2nd, unanimous.

* Commissioner Julia Miles returned to the table.

8:05 Continuation - ANRAD -Yin Peet

Tom Dipersio, Sr. from Thomas Land Surveyors and Consultants reported that he attended one site walk with Commissioners on April 26th; during the site walk some several wetland flags were disputed. He does not have the amended plan to present for this meeting. He will amend the plan to reflect the flagging changes and contour lines will be added.

Mr. Dipersio noted that the ownership and access to the property is unique. This parcel does not have frontage but has an easement to Quarry Road and rights to two cart roads south of the quarry. The plans and easements of record date back approximately 80 years.

Upon query from Ms. Miles, Mr. Dipersio noted that the 100-foot buffer zones are shown around the quarry and vernal pool areas.

Upon query by Mr. Eder and Mr. Maitland, Mr. Dipersio reported that Desheng Wang delineated the wetlands on this parcel.

Mr. Tidman noted that the purpose of filing an ANRAD is to have the Commission and Applicant agree on the wetland delineation and the Commission votes on the plan showing the agreed-upon delineation. Mr. Dipersio stated that he does not dispute the flagging changes on site and it would be reflected on the NOI plan to be filed in the future. Mr. Tidman again noted the purpose of going through the ANRAD process and having a final wetland delineation plan.

Mr. Tidman noted that the areas that the flagging changed were between Flags 15 - 18, A8 - A15, and 24 - 27. Wetland Flags 42 - 50 were not reviewed during the site walks.

Upon query by Mr. Eder, Mr. Tidman noted that during the NOI process the Commission would condition the OOC to investigate and verify the suspected vernal pool areas.

Upon query by Ms. Miles, Mr. Tidman suggested the possibility of conditioning the ANRAD to require the verification of the vernal pools and note the disputed flag number locations.

Mr. Maitland noted that there are too many exceptions associated with the plans and asked why the Commission would want to approve an ANRAD with so many conditions rather than have the plans reflect the field as noted during the site walk; this is the purpose of having an approved ANRAD plan.

Ms. Miles agreed that the plan is not accurate based on the site walk.

Mr. Tidman noted that Mr. Dipersio was comfortable with the changes made in the field during the site walk and stated that if an amended plan reflected the changed flag locations the Commission would be able to issue a proper Order of Resource Area Delineation (ORAD).

Mr. Tidman noted that the suspected vernal pools should be verified as it will affect the potential use of the property in those areas.

Mr. Maitland suggested that the Applicant agree to continue the hearing to resolve the issues of concern expressed by the Commission.

Yin Peet stated that she will not be proposing any activity near the upper vernal pool. She stressed issues of timing and her need for expediting the project.

Mr. Tidman stated that the southern suspected vernal pool area verified should be investigated by a vernal pool specialist. Ms. Peet requested that Town help pay for the investigation; she feels that it will cost too much money to bring in a specialist. She will not be proposing work within 100' of the vernal pool areas.

Mr. Maitland suggested that the plan have a notation stating that there will be no activity within 100' of the suspected vernal pools.

Upon agreement by the Applicant, Mr. Maitland continued the hearing until June 7, 2006 at 8:00 PM.

8:30 Request for Extension - 26 Grasshopper Lane - Glen Kaufmann

Glenn Kaufmann distributed a letter dated 5/16/06 written by his attorney requesting a second Extension Permit for the OOC until 12/2/06 in order to complete all work activities within the 100' buffer zone and try to resolve his issue with an abutter, K. Melia. Mr. Kaufmann stated that there is a property dispute between him and Mr. Melia. Mr. Kaufmann has a 24' wide access easement for 26 Grasshopper Lane. Prior to the clearing of the access in November 2004 Mr. Melia never stated that there was a dispute. The dispute arose once the driveway and drainage activities had commenced. In January 2005 Mr. Kaufmann's attorney tried to come to an agreement with Mr. Melia; Mr. Kaufmann, in good faith and in the hope of settling the dispute, stopped work for three months. At that time that he suspended work, Mr. Kaufmann was about to start the second wetland/driveway crossing and had the materials on site to do so. In June 2005, Mr. Kaufmann reported that he finally received a communication from Mr. Melia demanding unreasonable conditions. Due to the delays Mr. Kaufmann could not get his contractor to start work again for another three months so the total delay resulting from the unsettled dispute with Mr. Melia was six months.

Mr. Kaufmann also reported that Mr. Melia had his property line surveyed approximately a week and a half ago; they are currently in litigation regarding the property line dispute.

Mr. Kaufmann is before the Commission to request a six-month extension to his OOC to make up for the lost time and to ease the situation with Mr. Melia until the litigation is resolved.

Upon query by Mr. Maitland, Mr. Kauffman stated that he did not feel that Mr. Melia can stop him from working again but a six-month extension permit would ease the situation with Mr. Melia. Mr. Kaufmann believes that Mr. Melia's property line markers are incorrect at this time.

Ms. Adachi stated that the Commission lacks authority to grant a second extension under the restrictive language of the Wetland Protection Bylaw, absent a court order.

Mr. Eder stated that he felt that the courts are the only alternative for receiving a second extension permit under the Bylaw.

Upon query by Ms. Miles, Mr. Tidman reported that the driveway is cleared, wetland replication is complete and the house is under construction and partially complete.

Mr. Maitland stated that he does not feel that the Commission has discretion at this point to extend the OOC a second time; there is not any language in the Bylaw that allows it.

The Commission noted that it has not faced this particular situation in the past; the work won't be 100% complete by the expiration of the OOC Extension. Mr. Eder suggested that the applicant file an RDA for the remaining work to be completed.

The Commissioners and Mr. Kaufmann the possibility of his completing all work activity within the Commission's jurisdiction by June 2, 2006, requesting a Certificate of Compliance and then continuing all other work activity outside of the 100' buffer after the 6/2/06 OOC expiration date. Mr. Kaufmann stated that this would be possible though it would not help to ease the current situation with Mr. Melia.

Mr. Froberg also suggested that Mr. Kaufmann could re-file for the completion of the project already under way.

Ms. Lowe moved that the Commission issue a three year Extension Permit for the OOC under the Wetlands Protection Act only. Mr. Froberg 2nd, unanimous.

9:17 Request for Extension - 93 Taylor Road - Therese Marsh

Attorney Steven Nelson presented a brief overview of the current situation and legal issues associated with 93 Taylor Road between the Applicant and abutter, Robert Hendrie. The Applicant could not exercise her rights under the permits due to the abutter's continual legal challenges, first, in appealing the Board of Health decision (BoH), and then in appealing the Conservation Commission's OOC.. Mr. Nelson read briefly from court documents noting that the court had agreed with Town Counsel's recommendation in the still-pending lawsuit to have the Commission consider granting an extension permit under the Bylaw retroactively to September 2004.

Ms. Adachi noted that if the Commission were to grant an extension, it would expire in 2007, but litigation might continue to delay the project during the extension period. Mr. Nelson noted that the Commission has authority under the Bylaw to grant a waiver from the extension limit where it would be in the public interest. Upon query by Ms. Adachi, Mr. Nelson stated that it is not in public interest to allow abutters to continually file appeals unfairly.

Mr. Eder noted that wetland delineations are valid for three years and the wetlands on this site have not been re-evaluated in six years and asked what would happen if the wetland line changed.

Mr. Froberg noted that the issue before the Commission was limited and that the Commission should focus on the request for extension.

Alex Parra approached the Commission representing the abutter Robert Hendrie noting that none of the delays during the litigation was caused by Mr. Hendrie. It was the court that failed the parties and caused delays by not taking action. After the court decision in the BoH lawsuit, the court resumed consideration of the Conservation Commission lawsuit. The OOC had expired. The Court eventually issued the Order that the Commission could consider Applicant's request for extension as if it had been timely filed. Mr. Parra noted that the Commission is not obligated to grant an

extension. Mr. Parra noted that the parcel only has 800 s.f. of upland and the first NOI was issued a denial. Currently both OOC's (under the WPA and Bylaw) have expired. Mr. Parra asked the Commission what would happen if the Applicant filed a new NOI under the Act and , resulting in a new wetland delineation that differed from the delineation in the original OOC that is being considered for an extension under the Bylaw. Mr. Parra noted that DEP will not grant an extension permit for a superseding OOC that has expired.

Ms. Miles expressed concern about the precedent of accepting the Applicant's request for extension although the Commission has the right to do so under the Court Order.

Ms. Miles noted that a new NOI filing would require a new wetland delineation.

Mr. Parra suggested that Applicant could submit a new NOI filing under the WPA and the Commission then revisit the Bylaw OOC as an amendment.

Ms. Miles noted that the Applicant cannot start work without an OOC under the Act.

Ms. Serafini noted that the issue before the Commission at this time is an extension under the Bylaw. Ms. Serafini stated that she feels that the Commission should grant the extension and deal with other issues beyond that when they arise.

Mr. Froberg stated that he feels that the extension should be granted as the court has allowed and the Commission can make further decisions as they come before the Commission.

Robert Hendrie stated that no further delay to Applicant would result if the Commission did not issue the extension until an NOI was filed and decided upon under the Act.

Mr. Nelson stated that the burden of proof is on Mr. Hendrie to provide any new information and there has been none.

Commissioners expressed concern regarding the possibility of a change in the wetland delineation under a new NOI filing under the Act.

Mr. Maitland entertained a motion regarding Applicant's extension request *nunc pro tunc* to 9/04.

Mr. Froberg moved that the Commission issue a three-[hyphen] year Extension Permit under the Wetland Protection Bylaw for 93 Taylor Road retroactively as of October 2004, to be valid until October 17, 2007. Ms. Adachi 2nd; the motion passed with four ayes (CL, LS, JA, BF) and three nays (JM, ME, TM).

10:35 Meeting adjourned.

Terrence Maitland

Terrence Maitland,

Chair

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MAY 4 2006

TOWN CLERK
ACTON

NOTIFICATION TO ABUTTERS
UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT
AND THE TOWN OF ACTON WETLANDS BYLAW

In accordance with the second paragraph of Massachusetts General Laws Chapter 131, Section 40 and the Town of Acton Bylaws, you are hereby notified of the following:

The Applicant: Daniel & Rocio Protasowicki
Address 132 Prospect St Phone: 978 635-8002

has filed a Notice of Intent with the Acton Conservation Commission seeking permission to remove, fill, dredge or alter an Area Subject to Protection under the Wetlands Protection Act.

Applicant's Representative: N/A
Address _____ Phone: _____

The address of the property where the activity is proposed 132 Prospect St,
Acton, Ma.

Town Atlas Plate/Map F - 2 Parcel/Lot 127 - 1

Project Description put a pool in back yard

Copies of the Notice of Intent may be examined at the Conservation Office, Acton Town Hall, 472 Main Street, Acton. Between the hours of 9:00 A.M. and 4:30 P.M. Monday through Friday. For more information please call the Conservation Office at 978-264-9631.

A Public Hearing will be held at the Acton Town Hall, 472 Main Street, on Wednesday, May 17th, 2006 at 7:45 P.M.
(date)

The notice of the public hearing, will be published at least five (5) days in advance in the Acton edition of the *Beacon* newspaper or *Metrowest Daily News*.

NOTE: You may also contact your local conservation commission or the nearest Department of Environmental Protection Regional Office for the information about this application or, the Wetlands Protection Act. Acton is in the Central Region. To contact DEP, call:

*Central Region: 978-792-7650
Southeast Region: 508-946-2800

Northeast Region: 978-661-7600
Western Region: 413-784-1100