

**CONSERVATION COMMISSION
AGENDA
May 4, 2005**

- 7:15 Preliminary Review - Senior Units, Butternut Lane
- 7:20 *CANCELLED - Notice of Intent - 70 Newtown Road – Steven Kelley*
Proposed installation of a porous paved surface over an existing gravel driveway within 100' of a wetland.
- 7:30 Notice of Intent - 81 Parker Street - John Oliver
Proposed addition of a deck to an existing single family home within 100' of a wetland.
- 7:45 Notice of Intent - 24 Duggan Road - Barbara Nichols
Proposed renovation and extension of an existing single family home within 100 feet of a wetland.
- 8:00 Notice of Intent - 139 Prospect Street – Westchester Corporation
Chapter 40B project. Construction of 16 single family townhouse units, associated paved access drive, parking, drainage and utilities within 100' of a wetland resource area and vernal pool. See recent email correspondence from Maryann Dipinto at DEP (pages 1-5 of .pdf attachment).
- 8:30 Continuation – NOI – Ellsworth Village

Extension Permit – 45 Martin Street - 85-796 - Hadley Farm – N. Zavolous
Requesting a three year extension to allow time to absorb costs associated with construction of the new on-site septic system and farm fields.

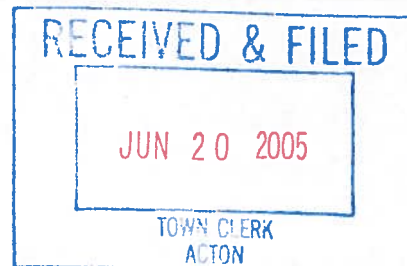
Certificate of Compliance – 342 Massachusetts Avenue – S. Anestis
Andrew Magee & Tom inspected the site on 4/25/05.

Certificate of Compliance - 360 Great Road - 85-817
- 12 Nash Road - 85-856

Storm Water Regulation Seminar - May 18 – information attached (Page 6-8 of the .pdf attachment)

MINUTES

February 16	comments received by	TM
March 2	“ “ “	ME
March 16	“ “ “	JR, TM
March 24	“ “ “	JR
April 6	awaiting comments	
April 13	comments rec'd by	ME



**CONSERVATION COMMISSION
MINUTES
MAY 4, 2005**

MEMBERS PRESENT: Jeffrey Rogers, Cheryl Lowe, Andrew Magee, Mike Eder, Julia Miles, Terry Maitland

ASSOCIATE MEMBER: Janet Adachi

CONSERVATION ADMINISTRATOR: Tom Tidman

RECORDING SECRETARY: Andrea Ristine

VISITORS: Linda Noone, Bob Ferrara, Margot Grallert, Barbara Nichols, Scott Hayes, Scott Goddard, Harold Henry, Andrew Munro, Sean Towey, Erma & Bob Brandon, H. Chip Chapin, John Murphy, Isabella V. Choate, Ed Vrablik, Joe Golletta

7:16 The meeting was called to order.

7:17 Preliminary Review - Senior Units, Butternut Lane

Mark Donahoe and John Barbadaro presented preliminary site plans for a proposed senior housing complex. The site is 8.36 acres with approximately seven acres reserved for open space. Although it will not be a Chapter 40B Comprehensive Permit, there are special provisions for one unit to be given to the housing authority as a benefit to the town. Part of the seven acres of open space are ideal for athletic fields. Upon filing a NOI they will be requesting waivers under the Bylaw, Section F4.6. There also is 12 acres of open space adjacent to this parcel owned by the Acton Water District.

Upon query by Mr. Eder, Mr. Tidman reported that the back field is not currently accessible but it is flat and there is potential entry from Central Street by crossing Fort Pond Brook. This area would be a continuation of the Fort Pond Brook Greenbelt. If deeded to the town the seven acre parcel would be open space now with potential in the future for recreation use once access is gained.

Mr. Rogers stated that it seems that the proposal displays both on and off site benefits applicable for a waiver under the section F4.6 under the Bylaw 4.6.

The Commission suggested that the NOI filing provide a list of all benefits and proposed issues pertaining to the waiver requests.

7:20 *CANCELLED - Notice of Intent - 70 Newtown Road – Steven Kelley*

Proposed installation of a porous paved surface over an existing gravel driveway within 100' of a wetland.

7:37 Notice of Intent - 81 Parker Street - John Oliver

Jack Oliver presented plans for the proposed addition of a deck to his existing single family home within 100' of a wetland. Under the Bylaw his site is a pre-existing nonconforming property. He will be adding a back door to the house with the construction of the deck. Their existing deck is 24' from the edge of wetlands and the proposed addition to the deck will be 30'.

The Commission noted that the proposal is allowable under the Bylaw. They noted that Mr. Oliver should allow more of a vegetative buffer between the yard and Fort Pond Brook. The

Commission also noted that the yard is a sensitive area and reminded the owner of the pesticide and herbicide use setbacks under the Bylaw.

Upon query by Ms. Lowe, Mr. Oliver stated that he plans on using an artificial compound for the deck surface and pressure treated wood for the posts. Footings will be concrete.

7:50 Hearing no further comments or questions Mr. Rogers closed the meeting.

Decision – 81 Parker Street

Mr. Magee moved that the Commission issue a standard OOC for the plans as presented. Mr. Eder 2nd. Discussion: the Commission agreed that erosion control is not required for this project. The motion passed unanimously.

7:52 Notice of Intent - 24 Duggan Road - Barbara Nichols

Barbara Nichols presented plans for the proposed renovation and extension of her existing single family home within 100 feet of a wetland. There is an intermittent stream on site. Mr. Tidman flagged the wetlands. The proposed addition will be a two-foot expansion of the house foundation with a cantilevered outer house wall farther out past foundation. The existing house is 35.8' from wetlands and the addition would be 37'.

The Commission noted that the proposal meets the setbacks under the Bylaw since it meets the pre-existing nonconforming conditions.

Upon query by Mr. Lowe, Ms. Nichols reported that the expansion of the foundation will meet building code and will be constructed of cement four feet deep.

8:01 Hearing no further comments or questions, Mr. Rogers closed the hearing.

Decision – 24 Duggan Road

Mr. Maitland moved that the Commission issue a standard OOC for the plans as presented. Mr. Magee 2nd; unanimous.

8:04 Notice of Intent - 139 Prospect Street (Blanchard Place)
Westchester Corp. – Comprehensive Permit – Chapter 40B

Mr. Rogers recused himself from the hearing; although not directly involved in the project, his employer has been contracted by the applicant for this development.

Ms. Miles recused herself from the hearing as she is a direct abutter and rescinded to audience.

Mr. Maitland opened the hearing.

Scott Hayes from Foresite Engineering presented plans for the construction of 16 single family townhouse units (three buildings), associated paved access drive, parking, drainage and utilities within 100' of a wetland resource area and vernal pool. The existing dwelling and garage will be demolished. The Commission issued an Order of Resource Area Delineation (ORAD) on April 10, 2002 where the existing vernal pool and wetlands were identified. The site will be served by town water and sewer. Stormwater runoff will be managed on site from specified collection points. Proposed rooftop runoff will be recharged into the ground. Proposed pavement will have hooded catchbasins with stormwater treatment that will meet or exceed stormwater management practices. There is also a pedestrian access way proposed that will provide a connection to nearby schools and shopping. Based on the site walk with Commissioners on April 26, 2005 the wetland flags have been refreshed on site as of this date.

Mr. Eder stated that he would like to see the wet areas to the north of this site indicated on the plan. Mr. Hayes stated that the depression to the north was found to be non-jurisdictional under

the Act during the ANRAD process. The other large ponding area is not shown as it is an isolated wetland subject flooding.

Scott Goddard from Carr Research Labs stated that there is no buffer zone for this resource since it is not protected under the Wetlands Protection Act (WPA).

Mr. Eder noted that there was a lot of standing water in this area, Mr. Hayes stated that the isolated area was evaluated and discussed during the ANRAD hearing process.

Mr. Magee noted that the ORAD only itemized flag numbers and specific areas; if an area is questionable the ORAD would specifically make reference of an area as not identified as a resource area. The ORAD is not a blanket for the property. If an area is not identified during the ANRAD process it can still be reviewed under the NOI process after the ORAD was issued.

Mr. Hayes reported that he and Mr. Goddard will check the ANRAD filing and the ORAD to see if this area was specifically noted.

Mr. Magee inquired if this project falls under Federal jurisdiction. Mr. Goddard reported that the federal government would not have interest in this site proposal.

Upon query by Mr. Maitland, Mr. Hayes reported that proposed pavement will be 16' from the vernal pool.

Mr. Magee noted that the minimum habitat for a vernal pool is 100'. What habitat is there with pavement less than five feet away?

Upon query by Mr. Magee, Mr. Hayes reported that the proposed pedestrian easement follows the wetland line.

Mr. Magee asked if a boardwalk could be considered instead of a dirt and woodchip pathway adjacent to the wetlands. This would reduce exposure to the wetland. If it is to support pedestrian traffic it should be a more permanent provision for access. Mr. Hayes stated that it could be considered within the design in areas adjacent to wetlands.

Upon query by Mr. Lowe, Mr. Hayes reported that the proposed outdoor community area will have picnic tables and such and are within the 100' buffer to the vernal pool.

Mr. Magee noted that during the site walk the Commission requested that the 50 and 75-foot setbacks be shown on the plans. Mr. Hayes stated that he is reluctant to show the setbacks applicable under the Bylaw for this hearing process since it is only being heard under the WPA. However, he is willing to show this on the plans to be submitted to the Board of Appeals.

Mr. Magee reminded the applicant and representative that the Bylaw does not go away because the project is filed as a Chapter 40B; it is still in full force and would be helpful to have the discussion regardless of the filing procedure. He also does not want the applicant to get the sense that the Bylaw will not be supported through the Board of Appeals. Mr. Hayes stated that he agrees and understands this statement.

Upon query by Mr. Eder, Mr. Goddard reported that isolated land subject to flooding has to hold at least ¼ acre-feet and to an average depth of at least six inches at least once a year as determined in the WPA. Mr. Goddard's notes from the 2002 delineation process shows that this area did not hold water but could hold water after a 100 year storm event. This was calculated on the site walk at the time but not noted in the ORAD.

Upon query by Mr. Eder, Mr. Goddard stated that the flooded area in the front of the property straddled the stone wall but the back one did not. Mr. Eder disagreed. Mr. Tidman stated that he would like to visit the site again regarding this issue.

Mr. Eder stated that he would like to see the drainage calculations of the entire flooding areas including off site.

Upon query by Mr. Magee, Mr. Goddard stated that the flooding areas are separated by a high ridge and are not connected.

Upon query by Ms. Lowe, Mr. Hayes reported that the drainage filter chambers are located under the proposed parking lot.

Ms. Lowe stated that this proposal does not protect the resource or the inhabitants of the vernal pool. How does this proposal protect the viability of the resource area (vernal pool)? Mr. Goddard noted that DEP did issue a comment with the DEP file number notice and more information is required for the submittal. Based on a regulation revisions of 1987 by DEP regarding performance standards for wildlife habitat, he was surprised to see DEP's comment on his notice; (1987; 44.2.8, page 2).

Mr. Tidman expressed concern stating that the WPA is so limited with respect to vernal pools and the one on this site is already compromised in all other directions; it is clear to him that the buffer zone plays a major role. The Commission will support the setbacks required under the Bylaw with Board of Appeals so he feels that the issue needs to be addressed at this level. Mr. Goddard stated that they will maintain whatever buffer zone that can be.

Mr. Tidman appealed to Mr. Goddard as a biologist and asked him how this development will protect the vernal pool. Mr. Goddard stated that he would only address the provisions under the WPA.

Mr. Magee expressed concern noting the WPA does not protect buffer zones to a vernal pool. This proposed development will likely affect the vernal pool and if there is evidence that it will then the Commission does have jurisdiction over the buffer zone and habitat value of a vernal pool. How does anyone build a driveway and parking lot and still have the same habitat? Do you have the same habitat with a two-foot offset from pavement to a vernal pool surrounded by trees and other vegetation.

Mr. Goddard stated that he had not considered the loss of the tree canopy and vegetation around the vernal pool in his calculations and evaluation of the area for this NOI filing. He agreed that the loss of the tree canopy can affect a vernal pool habitat.

Mr. Magee noted that the site is designed so that snow will be plowed directly into the resource area that does not occur now; there needs to be a barrier or snow needs to be removed from the site. The Commission does not want snow dumped directly into wetlands. The parking lot directly abuts the resource area. The WPA is not supportive of the buffer zone issue but DEP will support the Commission's position with such a compromised site. If the design was reduced in size then some of the surrounding tree canopy could be preserved. Mr. Magee feels that the applicant cannot argue that the design does not alter the habitat area. The Commission will pursue the setbacks under the Bylaw with the Board of Appeals and under the WPA.

Mr. Tidman noted that the Commission stood before town meeting when amending the Bylaw and stated that vernal pools need a 100' setback and town meeting approved the setbacks.

Mr. Magee noted that the majority of Chapter 40B projects filed in Acton have basically met the required setbacks under the Bylaw with minor encroachment and/or had off site mitigation; this proposal offers nothing.

Upon query by Mr. Eder, Mr. Goddard reported that the plans do not show the 10 and 100 year flood elevations because this site is outside (above) those flood elevations. There is no floodplain on this site.

Upon query by the Commission, Mr. Goddard conceded that this site has a vernal pool although not a pristine vernal pool. He feels that protecting its buffer zone won't help with current conditions being caused from other abutting properties. He feels that this is a highly stressed vernal pool and efforts to buffer it would be futile. The Commission stated that the abutting K-Mart site is theirs to pursue and will be again, as in the past, regarding their violations.

Upon query by Mr. Maitland, Mr. Hayes reported that this design is not the maximum density possible for the lot; there are many alternative types of units. The maximum density for development as a 40B would be 8.6 units per acre. This is the maximum for the types of units that the applicant wants to develop; there will be three bedrooms per unit.

Sean Towey from 143 Prospect Street reported that the pooling area between him and this proposed development measured approximately 35' onto his property making a pool of water a total circumference of approximately 70' earlier this spring. He feels that wildlife habitat corridor would be cut off by this proposal.

Upon query by Mr. Magee, Mr. Towey granted the Commission access to his property for a site walk.

Mr. Towey also expressed concern regarding current and proposed elevations and future drainage of the area.

Upon query by Mr. Eder, Mr. Hayes stated that he disagrees with the statement that there is a connection between the two pooling areas.

Abutter, Julia Miles, from 138 Prospect Street, stated that she feels that it is inappropriate for the developer not to address the issues under the Bylaw because it will be heard by the Board of Appeals. The applicant needs to protect the wetland resources involved. The applicant's representative seems to be resistant to answer some questions. It is impossible to say that the habitat won't be affected. The wetland and vernal pool currently have shade which will no longer exist with this proposal. Noting that the hydrology is groundwater and the proposed fill she wants to know how much water will be displaced laterally. A lot of people will reside in this proposed development and what little habitat is protected will be further destroyed. The applicant also cannot justify their development based on another abutter's detriment to the resource areas. She also noted that Prospect Street has a steep drop off along the frontage of this property and asked if the applicant and the Commission are sure that there is no connectivity between this wetland resource area on this property and the other farther up the street to the west along Spencer Road. Ms. Miles encouraged that the Commission protect the 50' buffer zone under the provisions of the WPA.

Bob Ferrara from 10 Wachusett Drive and a board member Congregation of Beth Elohim expressed concern with the hydrology in this area of town. Other neighbors have serious flooding problems since the recent development in this area including the sewer pump station installation. One abutter only had seasonal flooding issues and now is pumping their basement constantly year round.

Joe Galletta from 128 Prospect Street stated that he supports the statement made by Mr. Ferrara regarding flooding since the installation of additional parking at the Congregation Beth Elohim and the sewer pump station. He is very concerned about additional paving and runoff in the area. Upon query by Mr. Maitland, Mr. Galletta reported that he has lived at 128 Prospect Street since 1999 and the project at the Congregation Beth Elohim was completed three years ago.

Upon query by Mr. Tidman, Mr. Hayes reported that the Vortex collecting system is essentially vented through the catchbasins. The Vortex Sediment Trap has oil/water separators and are a three compartment unit. This will prevent contaminated runoff from recharging into groundwater. A 100 year storm exceeds their capacity and will overflow over land during that type of storm event.

Upon further query by Mr. Tidman and Mr. Magee, Mr. Hayes stated that he will provide the Commission with the specifications for the Vortex Collection Systems.

Mr. Maitland stated that the Commission reported that they will need to conduct another site walk to check refreshed wetland flagging, the isolated land subject to flooding and noted to the

applicant that they will want more information regarding habitat and stormwater runoff. The Commission will provide a written list to the applicant.

Mr. Maitland continued the hearing until June 1, 2005 at 8:00 PM.

Mr. Rogers and Ms. Miles returned to the Commission table.

8:30 Continuation – NOI – Ellsworth Village

Mr. Dimakarakos reported that the Planning Board issued their decision for this project on April 30, 2005 and the Commission should have been able to review his letter dated April 6, 2005. He reported that they did do another 5' observation hole on site and the results groundwater and soil characteristics are noted in his letter dated May 3, 2005. His letter dated 4/6/05 also addresses the issue of ownership of this parcel and the abutting properties and relative zoning changes. Properties located at 133 and 135 Great Road are owned by the same person but there were time line issues with ownership and zoning provisions. It is not a reasonable alternative access through 133 & 135 Great Road. The Planning Board decision addressed the public safety perspective for access from Great Road to this site.

Upon query by Mr. Eder, Mr. Dimakarakos stated that the proposed environmental improvement on this site is speculative.

Upon query by Mr. Rogers, Mr. Dimakarakos displayed the alternatives for access from Great Road that were presented to the Planning Board.

Mr. Magee reported that he consulted with the Planning Board and noted that the potential access from 133 Great Road would be of less impact to the wetlands but there are ownership issues. Mr. Dimakarakos noted that they are below the threshold of 5,000 sf of fill and feels that this is a reasonable alternative for access.

Upon query by Mr. Eder, Mr. Dimakarakos reported that the alternatives analysis as defined under the WPA is addressed in his letter dated 4/6/05.

Mr. Rogers stated that he is not satisfied with the turnoff configuration and inquired as to how its design was derived. Mr. Dimakarakos reported that the original proposal had a temporary turn around but it had to be removed under the subdivision control law. The Town's major concern was having plows on private property and under the advisement of town counsel they created an alternative turnaround just outside of the wetland and giving that piece of land to the town.

Mr. Rogers expressed concern regarding snow management. Mr. Dimakarakos stated that they will pile the snow at the end of turn around.

Mr. Magee suggested requiring that a wall be provided to disallow the storage of snow beyond the end of the turnaround. Mr. Dimakarakos stated, in his opinion, he feels that there will be less impact to the adjacent wetlands because best management practices will be used where currently everything goes directly to wetlands with no management practices.

Mr. Rogers also expressed concern noting that snow plowed from the proposed sidewalks will deposited into the wetlands.

The Commission reviewed the proposed replication and planting plan.

Upon query by Mr. Magee, Mr. Dimakarakos reported that he did not take credit in the calculations for groundwater recharge for detention basin located in the western corner of the property because it ultimately discharges to Great Road. The volume of recharge is the same or more on site for water balance.

Upon query by Mr. Maitland, Mr. Dimakarakos reported that they will replicate 4,150 sf of wetlands for the proposed 3,965 sf of fill. These numbers also account for the pedestrian boardwalk.

Henry Chapin from 4 Brabrook Road stated to the Commission that Robert Moran is listed on this NOI filing as the owner of the property and the owner of the easement has not signed the NOI. The Commission noted that the issue of ownership has been sufficiently addressed by the applicant.

Upon query by Mr. Rogers regarding the vertical wall structure, Mr. Dimakarakos reported that the Planning Board advises the applicant of what the standard will be to comply with the Bylaws for a new proposed roadways and they have issued the permit for this development.

Mr. Magee noted that under the Bylaw, wetland buffer zone is considered a resource area and asked if the proposed wetland replication plan provides for the loss of buffer zone. Mr. Dimakarakos stated that the open space easement cannot be altered and will remain with this property so the answer is "yes, they do provide for the buffer zone with the replication area". The covenants will not allow further clearing and development of the open space easement. Mr. Magee suggested that the Commission reference a special condition supporting this statement.

Ed Vrablik from 1 Brabrook Road noted that in the previous hearing the question of accessing this proposed development through his property was addressed. He reported to the Commission that he had offered his entire property for sale to both the applicant and the owner and has not received response from either.

The applicant, James Fenton, reported that he has been the owner by agreement of this proposed development, planning and designing for 2.5 years. He bought a piece of land from Mr. Vrablik to gain access to the site one year ago and now 2.5 years from the start of the project design Mr. Vrablik changed his mind and has decided to sell his entire parcel.

Upon query by Mr. Maitland, Mr. Vrablik refused to inform the Commission of the sum of money he sold the small parcel for the access easement to Mr. Fenton and refused to state his requested price for the entire parcel.

Mr. Fenton stated that he bought the parcel to access his proposed site from Mr. Vrablik for \$25,000 for and Mr. Vrablik is now asking \$700,000 for his entire parcel. Mr. Fenton stated that he paid \$700,000 for the land proposed for this development. It is not financially feasible for him to double the cost of his land to do the same designed development. This information is stated in the pro forma submitted to the Planning Board under the special permit.

Graham Knowland from 29 Esterbrook Road noted that the proposal alters 42 linear feet of 'bank' associated with the intermittent stream and the proposed wetland replication accounts for zero linear feet of bank replacement. It is also his opinion that the easement is not covered under the NOI application.

10:16 Hearing no further comments or questions, Mr. Rogers closed the hearing.

The Commission tabled the decision until May 18, 2005. Ms. Miles will draft the decision for the Commission to vote upon.

Extension Permit – 45 Martin Street - 85-796 - Hadley Farm – N. Zavolous

Requesting a three year extension to allow time to absorb costs associated with construction of the new on-site septic system and farm fields.

The Commission tabled the issue until May 18, 2005 and asked that Mr. Zavolous come and clarify the reason for the extension request.

Certificate of Compliance – 342 Massachusetts Avenue – S. Anestis 85-832

Mr. Magee and Mr. Tidman reported that they inspected the site on April 25, 2005 and it is ready for a Certificate.

Mr. Maitland moved that the Commission issue a Certificate of Compliance for DEP File 85-832. Mr. Miles 2nd. The motion passed with five aye and one abstained (M. Eder).

Certificate of Compliance – 360 Great Road – 85-817

Mr. Tidman reported that he has inspected the site and recommended that the Commission issue a Certificate.

Mr. Magee moved that the Commission issue a Certificate of Compliance for DEP File 85-817. Ms. Miles 2nd; unanimous.

Certificate of Compliance – 12 Nash Road 85-856

Mr. Tidman reported that he has inspected the site and recommended that the Commission issue a Certificate.

Ms. Miles moved that the Commission issue a Certificate of Compliance for DEP File 85-856. Mr. Maitland 2nd; unanimous.

11:00 Meeting adjourned.

J. Maitland, Acting Chair
Jeffrey Rogers
Chair

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