

CONSERVATION COMMISSION  
AGENDA  
JUNE 1, 2005



7:15 Notice of Intent – One Robert Road - Nicholas Caldwell DEP File #85-904  
Installation of underground utilities and sewer main to an existing single family dwelling located within 100' of a wetland.

7:30 Acton First – Jim Connelly  
See additional information: proposed warrant article "Environmental Standards for Fill Material Bylaw".

7:45 Preliminary Review - Butternut Lane – Mark Donahoe & John Barbadaro  
Additional information enclosed from Mark Donohoe.

8:00 Continuation – NOI - 139 Prospect Street  
See attached additional information: answers to Concom questions.

MINUTES (I would like to get a majority of these signed 6/1 ~A)

February 16	comments rec'd by	TM, ADM
March 2	" " "	ME, CL
March 16	" " "	JR, TM, ADM
March 24	" " "	JR, ADM, CL
April 6	" " "	CL
April 13	" " "	ME, ADM, CL
May 4	" " "	TM, ADM
May 18	" " "	CL

CONSERVATION COMMISSION  
MINUTES  
JUNE 1, 2005

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

**ASSOCIATE MEMBER:** Janet Adachi

**CONSERVATION ADMINISTRATOR:** Tom Tidman

**RECORDING SECRETARY:** Andrea Ristine

**VISITORS:** Sean Towey, Mairead Curtis, John Murphy, Scott Goddard, Steve Marsh, Scott Hayes, James Connolly

7:22 Mr. Maitland called to meeting to order.

7:23 Notice of Intent – One Robert Road - Nicholas Caldwell DEP File #85-904

Chris Lambort, contractor, presented plans for the installation of underground utilities and a sewer main to an existing single family dwelling located within 100' of a wetland. The sewer main has already been installed. The Health Department issued the permit and the Town's contractor, Phoenix Corporation, installed the sewer main without filing with the Commission for work within the buffer zone. The closest point of activity from the sewer main and the pond was approximately five feet. Mr. Lambort will be installing the underground utilities in the near future; electric will be approximately 12' and natural gas will be approximately 27' from the edge of the pond. Staked haybales have been provided as siltation prevention along the entire length of the pond. Phoenix Corporation was told by the Health Department that the sewer line was a priority and work was done without a permit from the Conservation Commission. They did have a permit from the Health Department.

Upon query by Ms. Miles, Mr. Lambort reported that the sewer line trench is four feet deep and the electrical will be 18" deep.

Upon query by Ms. Lowe, Mr. Tidman reported that the pond is a man made pond which has nutrient loading due to current drainage patterns from the roadway and surrounding properties.

7:30 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision – One Robert Road

Mr. Magee moved that the Commission issue an standard Order of Conditions (OOC) for the plans as presented. Mr. Eder 2<sup>nd</sup>; unanimous.

7:31 Acton First – James Connolly

See additional information: proposed warrant article "Environmental Standards for Fill Material Bylaw".

James Connolly presented to the Commission the two warrant articles proposed for the Special Town Meeting on June 13, 2005 involving the Acton Land Fill. Acton First is asking boards and staff to comply with the existing Master Plan for Acton's approach to future growth and development. An alarming fact to him was that the Request for Proposal that was sent out by the Town had an allowance of 140,000 cubic yards to shape the landfill for proposed development. There are already unknown products in the landfill that have been detected in the existing town monitoring wells. Acton First is developing the two proposed warrant articles

to make sure that future development in Acton protects the groundwater, health and safety and specifically precludes the use of asbestos containing materials. The two proposed warrant articles are specific to the Land Fill at this time because final language was not settled regarding town-wide enforcement prior to special town meeting.

Upon query by Mr. Maitland, Mr. Connolly stated that the nature of the group is broad based with environmental concerns and in opposition to large retail stores coming into Acton in general.

Upon query by Mr. Tidman regarding other communities with similar bylaws, Mr. Connolly reported that the City of Cambridge has a similar bylaw but he is not sure which municipal entity enforces it. Acton First is proposing that the Acton Board of Health enforce their proposed bylaw.

Ms. Lowe stated that she interprets the proposed bylaw as clearly relating to asbestos. Mr. Connolly reported that they also are trying to address lead and gypsum. As gypsum breaks down it releases hydrogen sulfide gas. A number of land fills that have accepted demolition and construction debris have problems with hydrogen sulfide gas.

Upon query by the Commission, Mr. Connolly reported that he is an environmental hazardous waste consultant and is before the Commission asking for support of the proposed bylaw.

Upon query by Ms. Lowe regarding potential opposition to the bylaw, Mr. Connolly noted that a potential developer would find it more expensive to develop the land fill by having to pay for clean fill material.

Mr. Maitland noted that this seems to be an admirable effort but would like to defer to the Board of Selectmen and would not want to rush to judgment since the Commission has not heard much about this issue.

Ms. Miles stated that she needs more time to review the proposal but is in favor of the concept of protecting groundwater.

Mr. Magee stated that although it seems that some clean construction debris gets captured in the proposed article, he would like the Commission to make a supporting statement.

Mr. Magee moved that the Commission finds the goal to promote clean soils and groundwater in town and commends the effort and supports the proposed warrant article.

Discussion.

The Commission agreed that the issue of large scale retail was outside of their perview.

Mr. Eder moved to amend the motion to state in principal the Commission supports the premise of this article. Given that this is the first time the Commission has looked at the article they cannot speak to the appropriateness of the language and legality of the article and differ to the BOS and Town Council regarding those issues.

Ms. Miles 2<sup>nd</sup>; unanimous.

7:45 Preliminary Review - Butternut Lane – Mark Donahoe & John Barbadaro

Mark Donohoe presented to the Commission preliminary plans for Butternut Lane. This will be a senior housing project that will not be filed as a Comprehensive Permit but is applicable to a local housing initiative plan. As described in the previous meeting this proposal will provide benefits to the town including additional seven acres of open space and access easement. They will be submitting a request for waiver under the current setbacks under the Wetland Protection Bylaw. The proposed development site plan meets the Zoning Bylaws and the older 25' and 40' wetland protection setbacks. The septic system would be outside of the 100'

wetland buffer zone. Upon filing the NOI they will only be requesting a waiver under the wetland setbacks.

Mr. Magee stated that given the cost of open space this proposal would benefit the town and offer wetland protection in the form of a wider corridor than required by setbacks.

The Commission expressed that they would be favorable to concept of the proposal presented. Mr. Tidman suggested that the Commission conduct a site walk.

8:30 Continuation – NOI - 139 Prospect Street

Julia Miles recused herself from the Commission table since she is an abutter to the property.

The Commission conducted a site walk on this date, June 1, 2005.

Scott Goddard submitted his final response, dated June 1, 2005, to the Commission's questions and concerns requested at the previous meeting.

Mr. Magee stated that he believes Mr. Goddard's assumptions are wrong; he and the Commission have issues with the vernal pool habitat area. The stand of trees adjacent to Wetland Flags 17, 18 and 18A contribute shade to the vernal pool. Removal of these trees would certainly change, and have a direct impact on, the habitat unless mitigation can be proven. Mr. Magee is not prepared to accept the answer given to Question 1.

Mr. Eder stated that it is not clear to him that the Commission agrees with Mr. Goddard's statement that the wet depression on the property that flows onto the abutting property in a horse shoe shape was addressed during the ANRAD process in 2002. The Commission was led to believe the wet area was much smaller. The applicant did not submit information concerning this area in the ANRAD and the Commission did not inspect the adjacent property.

Mr. Goddard acknowledged that the wetland area is much larger than what he saw during the ANRAD process.

Mr. Magee stated that there is a dilemma on the connection of the two wet areas because there is an old historic raised road running between them. What wasn't addressed is that over the upland there is a sizable wetland that actually may make a link to the site wetland and if this adjacent wetland had been presented in the ANRAD this link may have been made. There is no readily apparent hydrological connection; the roadway had no hydric soils but yet there are Red Maples existing on both sides of the old roadway and wetland fern species and jewel weed connect the two wetlands. The issue here is, during the time of the ANRAD process, there may have been an ability to make the linkage if they had done more than observe from the property line. Most cases are obvious where this one isn't.

Upon query by Mr. Eder, Mr. Goddard stated that he will not readdress issues from 2002. The isolated area may connect but it is not part of the larger Bordering Vegetated Wetland (BVW). There is no stream, pond, culvert or hydric soil connections. Red Maples are not enough to make wetland delineation.

Mr. Magee stated that now it seems that there are two isolated wetlands that may be connected. If this is true then they become protected resource areas; but this was not observed. This is a very wet unusual site; hydrology seems to be connected without soils present.

Mr. Goddard stated the 'horse shoe' wetland on the adjacent property bends and ponds into the cartpath with a shallow connection with no surface water connection. Mr. Magee noted that the abutter, Sean Towey has marked the boundary of the surface water of the pooling area during the spring, but admitted that at that time there was not a clear surface water connection.

Mr. Magee asked Mr. Goddard what it would mean to this proposal if this area was found to be Isolated Land Subject to Flooding (ILSF). Mr. Goddard reported that flood storage and wildlife habitat would have to be further addressed in more detail.

Mr. Magee stated, nonetheless, with the filling proposed on site there should be some consideration of the hydrologic indications and the large amount of storm water storage on the abutting property.

Mr. Tidman asked what the impact would be to the abutting property if the isolated area on this site is filled. Mr. Magee also asked if there is a means to compensate for this. Mr. Tidman and Mr. Magee both agree that 2002 was a dryer year than what is being observed now.

Mr. Eder stated that he needs more information and suggested an outside consultant also get involved with this project proposal. How does the Commission know that this isolated area does not have vernal pool characteristics today that were not supported in 2002 since it was a dryer year? Mr. Magee added that vernal pool species can be absent in a given year depending on dry conditions.

Upon query by Mr. Eder, Mr. Goddard stated that a vernal pool is not a wetland resource area. They were denied access to conduct survey work on Mr. Towey's abutting property. He does not believe that this area meets the definition of ILSF. Mr. Towey had stated on site today that there is no surface water connection. Mr. Eder pointed out that they were denied access only for the time between this meeting and the last. Prior to that, and during the ANRAD process they had access.

Mr. Towey stated that Mr. Goddard did observe his property but he did not allow him to conduct survey work in 2002.

Mr. Eder asked Mr. Hayes if he would conduct the survey work on the abutting property if allowed access to do so.

Upon query by Mr. Maitland, Mr. Hayes reported that they are proposing to create a grass swale along the stonewall behind the units that will bring the storm water toward the wetland area on site. There will be no post development discharge of storm water onto Mr. Towey's property. Pre and post storm water discharge does not travel from this site; they will discharge back into the ground.

Mr. Maitland noted that the answer to Question #7 is genuine and earnest yet still flooding has occurred creating a cumulative effect. The Temple Beth Elohim wants to hold the Town's sewer pump station accountable, and vice versa, for the change in increased flooding issues in this area. He does not feel that this development will not be an impact on the serious flooding problem south and west of this site. Mr. Hayes stated that there is a definite increase of flooding in this area within the past five years; water seems to be rising but he does not know the cause. This past spring of 2005 is different than in 2002; it is a dynamic area he suspects that there is more water now than in the past 10 years. Spring 2005 was a very wet season comparatively with heavy snows and spring rains but feels that the Commission can't penalize the applicant for current conditions but only the impacts of the proposal.

Mr. Magee stated that there is a large amount of water with no place to go and asked how much storm water storage is absorbed by the existing tree canopy and evapo-transpiration? Mr. Goddard reported that he could conduct water budget calculations if the Commission so requested which would account for changes of land use and watersheds.

Mr. Magee noted that the difference of topography in this area is only inches between the uplands and wetlands and felt that this site might be worthy of such calculations above and beyond the basic engineering calculations.

Mr. Tidman noted that in past discussions with the Commission he found it hard to grasp 'cumulative impact' but this site has changed his perspective on this issue. A lot of water on

this site flows both north and east toward the adjacent K-Mart area (252 Main Street). Both K-Mart and the Temple Beth Elohim sites have a mass impact to this adjacent wetland and vernal pool. Is there anything that can be done to lessen the impact to this resource area?

Mr. Magee noted that groundwater recharge may not be beneficial here but surface discharge may be better. Mr. Hayes reported that he could scale down the groundwater recharge beds.

Upon query by Mr. Magee, Mr. Hayes reported that the proposed parking area would not have to be reduced if the groundwater recharge system was not proposed underneath.

Upon query by Mr. Tidman, Mr. Hayes reported that they could possibly create more of a natural buffer around the vernal pool/wetland by rotating the units and provide drainage to detention basins on the surface to pick up drainage that would be impacting abutting properties but this would be constructing a pond above grade.

Mr. Goddard stated that the applicant admits that this proposal is in tight proximity to the wetland resource area. The applicant has indicated that some scaling back of the development can be considered and wishes to continue this hearing to allow for the opportunity to increase the setbacks.

Mr. Hayes stated that better mitigation could be provided; improved plantings could augment the vernal pool/wetland area on their side by providing more shade. This design has room for improvement for the site and resource area.

Sean Towey, from 143 Prospect Street, reported that he has owned his property for 3.5 years and his property and the surrounding area was dryer in the beginning than recent. He is interested in receiving more data pertaining to the possible connection of the isolated flooding areas and is willing to fund it himself. Mr. Magee reported that this would involve a topographical survey by a licensed land surveyor and flagging of wetlands on his property to determine if it is regulated or isolated. It would be helpful to the Commission to understand whether or not this area has a connection that meets the requirements governed under the Act.

Mairead Curtis, from 3 Spencer Road, expressed great concern regarding flooding on her property; she has experienced increased ground water in recent years. She has lived at her address for the past seven years and there has been a distinct increase in groundwater levels. Since the construction of the additional parking area at the Temple Beth Elohim and the sewer pump station her property went from seasonal flooding to constant large amounts of groundwater inundating her property. The wetlands in question are 16' above the level of her basement. Prospect Street used to be a barrier between the wetland and Spencer Road and no longer is. This proposal seems to provide a fast release of drainage.

Mr. Hayes noted that their design is required to provide groundwater recharge. He may be able to redirect surface water instead of infiltrate it back into the ground if the Commission was inclined to allow less infiltration than what is required by law.

Julia Miles, from 138 Prospect Street, stated that she glad to hear that the applicant is willing to do some redesign based on the concerns raised. She also stated that the answers to the Commission's questions provided by Mr. Goddard seem very callous and the proposal maximizes the potential development allowable under the provisions of Chapter 40B Comprehensive Permits.

Upon query by Ms. Miles, Mr. Magee stated that they did look at the area relating to Question #4 during the site walk. It did not visually appear that if the two ponding areas were not connected it would not make an ISLF. It did not seem to meet the criteria of ISLF, but from a hydrologic stand point (not habitat) this could be addressed.

Upon query by Ms. Miles, Mr. Goddard reported that the lowest contour on site is at the elevation of 217' and the point of refusal was 12".

Mr. Miles stated that although flooding is a major issue in this area, she is concerned regarding the discussion of redirecting storm water from current flow patterns. She reported that unlike her neighbors, her property is drier now than before. The cumulative effects in the area are a good reason to be conservative with this property and its proposed development. The proposed development is too dense for this area. She feels that the previous removal of vegetation in adjacent areas is not the only contributor to flooding; there was also a major amount of blasting done.

Mr. Goddard stated that everyone agrees that this wetland system has more flooding than in previous years; there is also a culvert under Prospect Street that is filled with sediment that prevents proper drainage.

Mr. Miles and Ms. Curtis both attested that all of the drainage in this area does not flow in a westerly direction. Storm water does overtop Prospect Street during a major storm event.

Ms. Miles also stated that habitat is sorely disregarded and unrepresented in the response from Mr. Goddard. The residents of Acton approved a 100' setback from all vernal pools. The loss of over and understory vegetation will have an effect on the resource area. She also feels that the proposed guardrail along the parking area will not be sufficient for activities foreseen in this proposal.

Mr. Goddard reported that there are no large trees adjacent to this wetland/vernal pool; it is an open sun wetland for the most part. Based on discussions on the site walk the applicant is willing to consider the increase buffer zone setbacks.

Mr. Magee suggested that the applicant's representative meet with a couple of Commissioners to address the issues of buffer zone, drainage and habitat. Mr. Magee stated that he would be willing to participate in the discussions as it seems worth while to try to work on the main issues that keep resurfacing and try to come to a place more in agreement with each other.

Ms. Miles objected to meetings with one or two commissioners to be held outside the public hearing process. Mr. Magee stated that it could be helpful to sit down and suggest what might be acceptable to the Commission.

Ms. Curtis expressed concern stating that the people of the town need to feel that the Commission is a third party and is very uncomfortable with unofficial discussions outside the public hearing process. Mr. Magee stated that input from hearing officers and site walks with staff are often factored in on the design by the applicant.

Mr. Magee withdrew the suggestion of meeting with the applicant.

Mr. Maitland stated that the Commission will want the applicant to provide water budget calculations since Mr. Goddard stated that the applicant has requested to continue the hearing.

Mr. Goddard, Mr. Hayes and Steve Marsh left room for private discussion.

Upon their return Mr. Goddard stated that the applicant does not wish to continue the hearing and wishes to close and not redesign his proposal.

Mr. Maitland inquired as to why the applicant has changed his mind since the statements made on site during the site walk and in this hearing process that the applicant would consider redesign. Mr. Goddard reported that Westchester Corporation has considered the concerns and the possibility of redesigning but the plan meets the requirements under the Wetland Protection Act.

Mr. Maitland expressed great disappointment stating that he finds the applicant and its representatives to be cynical. There seemed to be a showing/sharing of concerns for the site raised during this hearing and on the site walk finds the request to close to be nauseating.

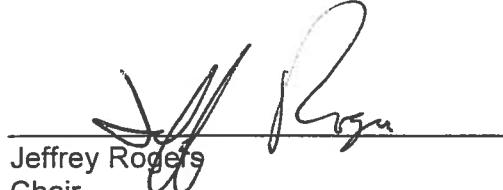
Mr. Goddard stated that the applicant wishes to close the hearing.

10:05 Hearing no further comments or questions, Mr. Maitland closed the hearing.

Minutes

Mr. Magee moved that the Commission accept the minutes for February 16, March 2, 16, 24, April 13 and May 4, 2005. Ms. Lowe 2<sup>nd</sup>; unanimous.

10:17 Meeting adjourned.



Jeffrey Rogers  
Chair

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