

Acton Conservation Commission

Meeting Minutes

February 19, 2025

7:15 PM

Hybrid Meeting (Room 204 & Zoom)

Present: Terry Maitland (Chair), James Colman (Vice-Chair), Zywia Chadzynska, Jillian Peters (via-Zoom), Peter Hocknell, Amy Green

Absent: Kate Warwick

Conservation Agent: Olivia Barksdale

Public Concerns and Regular Business

7:20 Terry Maitland, Chair opened the meeting at 7:20pm.

7:21 Presentation Kim Kastens – Nashoba Brook Stream Flow Findings

Kim Kastens on behalf of Green Acton Water Committee presented her Nashoba Brook Stream flow findings. One year ago, she came before the Commission to ask for permission on behalf of Organization for the Assabet River “OARS” to install a continuously monitoring “Stream Monitor Conductivity Monitor” in Nashoba Brook Conservation Land with the condition that the findings have to be presented to the Commission.

Her presentation went over the salt distribution over space and time in the brook and watershed, what was measured, what they learned about salt concentration over time, impact of salt down stream and the impact of salt on aquatic ecosystems. Salt concentrations in Acton have been increasing in the last 50 years. There is a gradient from north to south and from upstream to downstream, the highest levels are by Route 495 and decrease as you come further south where the freshwater tributaries come in. The first deployment of the instrument was in the winter/spring where they wanted to capture the peak of stream flow and the second deployment was in the summer/fall where they wanted to capture low stream flow.

The data have the characteristics of New England streams where there are sharp peaks associated with either rainfall or snowmelt events. Much of the water is coming from local stream base flow out of groundwater. Ms. Kastens and team hypothesizes that every time there is a high stream flow the salinity is diluted with the rainfall, so they are not seeing peaks when you have large de-icing events (i.e. associated with snowstorms, equipment distributing salt as an anti-icing preventative measure). A high in salinity occurs when groundwater is dominating the flow, and lows are when the rainwater dilutes the salt. Summer is the most stressful time for organisms, there is the least water and therefore the most salt. Salt transport tends to be high when the stream discharge is high. About a thousand tons of chloride was transported during the 217 days of the survey. For scale the Acton DPW puts 2,000 – 4,000 tons of salt on the roads every year.

Salt can have an impact on aquatic organisms-- high concentrations impact life functions such as growth, reproduction, and more. Plants have not been well studied, but seem to be more resilient to fluctuating salinity levels. In the case of zooplankton they sit in the middle of the food chain, and are a source of food for others. The decline in a population can be attributed to increasing concentrations of salt. To summarize, salt concentrations in Acton have been increasing. A major source of salt in the watershed is in the headwaters near 495. Salt is primarily coming from ground water and not de-icing events. Salt concentrations remain high all year, the ecosystem exposure is chronic and significant enough that aquatic ecosystems especially zooplankton are impacted.

Questions

- Are they looking for renewal?
 - The pipe was left in the stream, waiting for warm water to remove it and they are hoping to do the project again. Next time they want to try during the snowiest part of the year to show de-icing events.
- Are you intending to publish the information, and next steps?
 - The information is published on the Green Acton website. A lot of work was done by an Acton- Boxborough High School student. The information would make for a good publication in an environmental science journal, the group has not figured out how to do a journal publication.
- How is the ground water getting salty, is it the recharge?
 - The group thinks the de-icing events percolate into the groundwater. The distinction they are trying to make is the overland flow that goes into the stream drains in a short time scale vs. ground water on a larger time scale. The system seems to be dominated by the slower system, ground water. Ultimately, it comes from the de-icing event. The magnitude is likely coming from de-icing. The de-icing is there for a good reason, to keep motorists safe. The Town could consider salt reduction.
- Public question, Tom Wolf (Sawmill Road), he recalls 20-30 years ago that the town used a sand mixture but it took a while to sweep it up in the spring. How does it correlate to the data presented?
 - Ms. Kastens spoke to DPW and the decision of salt vs sand is cost driven. Street sweeping is costly. It clogs sewers.

7:48 Staff Presentation – Land Stewardship Committee – Geocaching

Ian Bergemann from the Conservation Division and Tom Wolf, Chair of the Land Stewards Committee gave the Commission an update of the Geocaching policy. In 2006 the Land Stewards presented a draft policy to the Commission and the Commission recommended finalizing the policy. The project was put on hold by the Natural Resources Director, who delegated the work to volunteers. Between 2006- present the Land Stewards have been managing geocaches on conservation land. In 2009 there were 7 geocaches across conservation land. In 2023 a resident asked for permission about geocaches, but it was taken out of context as blanket approval. In 2024 there were about 70 geocaches on 21 different conservation lands.

A concern was expressed that there are several unintended consequences of geocaches such as the creation of unofficial trials, plastic containers left in ecosystems, and the placement of geocaches in inappropriate locations such as archeological sites or stone piles. In 2015 the policy was updated and is continued to be worked on by the Land Stewards. They want to make sure the sport can happen while being respectful to the mission of the conservation lands. July 2024 the Land Stewards voted to start using a form to log new geocaching requests. The form can help evaluate how long the geocaches can remain and if they should be removed. The Land Stewards are working to make the policy similar to Land Trust's policies where they are only looking to regulate the sport. The Land Stewards plan to work closely with the geocaching state reviewer to ensure the geocaches are properly placed, they can regulate the size of the containers, and make sure that the containers do not look like trash. Geocaches are often Tupperware containers that are camouflaged. There isn't a current time allowance for the geocaches; some have been in town since 2006, while others have been abandoned. On the app people can report abandoned geocaches or damaged ones. The Land Stewards suggest adding a policy that the geocaches owner has to report that it is still in use so it is not mistaken as trash. 3-4 years ago someone came in with the request to set up an orienteering course and the Commission denied it because the structures would not be removed.

The Commission is concerned the geocaches might not be removed for some time. They also find it problematic that they are placed on land with Conservation Restrictions. The Commission likes the idea of annual check-ins to ensure that they are not abandoned and if there is no response it is considered abandoned, and prefer that they do not look like trash. The Arboretum is the only place where the sport is not allowed. The Commission is concerned about the ones that look like rocks and logs because they don't want people turning over every stone. The location of the geocaches should not get degraded and new informal trails should not be created to find them. The Commission can send Ian their feedback and the Land Steward Committee should hopefully have a final draft by April.

8:12 Abbreviated Notice of Resource Area Delineation –Public Hearing –42 Taylor Road

Paul Kirchner from Stamski and McNary and Leah Stucke from Oxbow Associates presented the project on behalf of the landowner. The delineation is over three parcels. There are two houses onsite. There is an intermittent stream that runs through the wetland in the center of the site. During the site walk a couple of comments were made related to some flags that needed to be adjusted and areas that required more detail. The updated plan shows an additional segment of the intermittent stream. The intermittent stream was delineated in the northern part of the property. If a stream crossing was needed it would be in the northern section, where the stream is narrowest.

The stream is broken in the middle of the property and picks up in the southern portion of the property. The stream was not walked during the site visit; therefore, the Commission is not ready to approve the stream delineation. There was snow on the ground during the site walk. During the site visit the Commission couldn't see the hydrology in the lower southeast corner. The delineation was done when there was no snow cover and the ground was not frozen.

Bettina Abe called in with a concern. She wanted to make sure that Stamski and McNary know that there is a pedestrian easement across the property that connects with the Arboretum property, located on the left/north side of the plan. She suggested that the plan should show the easement and that the company double check the status of the easement.

Mr. Kirchner asked to continue to March 5th, in hopes that the Commission can do a site visit without snow cover. The Commission asked that Oxbow double check that there is no stream in the middle of the property. The Commission would also like to address their policies on evaluating ANRAD's during the winter. There is a concern that the Commission should not approve the application with 3- 4 inches of snow on the ground, and that they should wait till the snow is gone.

8:26 Notice of Intent –Public Hearing –124 Great Road

Ryan Rainville, landowner gave a project update. He provided information on the unilock permeable pavers, gave a list of native species, and confirmed the amount of impervious surface that will be added and removed. The pervious pavers will be used on the 4x4 landing and stairs. The existing garage structure and asphalt will be removed. The new garage will be shorter and wider than the existing garage. 865 square feet of impervious surface will be removed, 743 square feet of impervious surface will be added. There is a net reduction of 122 square feet of impervious surface and it is moving away from the buffer zone. The temporary storage of material will be on the gravel portion of the driveway. Ms. Green moved to issue a standard Order of Conditions with no special conditions and Mr. Colman seconded. Roll call vote all in favor (5-0).

8:31 Notice of Intent -- Public Hearing –Main Street over Fort Pond Brook

Bridget Hilgendorff and Brent Richard from VBH presented the proposed 4-sided culvert replacement project. The culvert is a dry stack stone culvert that has deteriorated and there is evidence of settlement of the stones, and cracking of pavement and potholes above. It would be a 1-1 replacement, hydraulically equivalent to the existing structure. The existing opening is 5-foot-wide and 3-foot-tall, and it is oriented 45 degrees skew to the roadway. The culvert carries Fort Pond Brook which supports bank, BVW, river front, land underwater, and waterways bordering land subject to flooding. There will be temporary impacts to the bordering land subject to flooding, and land under water. A small area of land under water will be permanently impacted due to the construction of new headwalls. The work does not result in any loss of bank or significantly impact wildlife habitat and there will be no net loss to flood storage capacity.

Main Street is busy, so the plan is to close the road over the weekend. Erosion controls and sedimentation controls will be installed and the work done in the summer during low flow. Water will be pumped on the upstream side, and dewatered for the excavation. The existing culvert will be demolished and the concrete precast box culvert and headwalls will be installed. Space will be allocated for a future sidewalk. The project does comply with stormwater standards to the maximum extent practicable. Standards 1, 5 and 7-10 fully met. Standards 2-4 and 6 met to maximum extent practicable as redevelopment. Land underwater will not be created in the BVW. There is no history of flood water backing due to size. There are beavers in the area that impact the upstream side. VBH will double check the material they will use at the bottom of the culvert.

There are flooding concerns, there are site constraints they are unable to make the structure wider. Waiting on DEP number. Continued to March 5th at 7:20pm.

8:47 Notice of Intent –Continued Public Hearing –12 Spring Hill Road #085-1379

Mark Arnold represented the landowner. There was a new development, Ms. Barksdale presented a memo with information from Town Counsel and the Town Engineer. According to Town Counsel the application is improperly filed. The regulations under DEP are clear that at the time of an application under the WPA all other feasible permits must also be applied for, at least at a minimum under Town Bylaw So, unless the applicant applies under both WPA and the Town Bylaw the Commission does not have to hear the proposal. Town Counsel references 310 CMR 10.05(4)(e)-(f).

The applicant stated that in previous work with other towns they have filled separately and through court proceeding there was no issue taken with their methodology. The project did go to Superior Court and the court didn't find issue with their filling. They did have to file an amendment to the application because the WPA filling was different from the bylaw filling. The applicant states that you have to have all permits in place before you start work and that the WPA does not give blanket approvals or have jurisdiction over the Bylaw.

The Commission would like to follow Town Counsel's guidance, where the requirements to obtain and or apply for all obtainable permits, variance and approvals required by local bylaw with respect to proposed activity. The regulation requires an applicant obtain or apply for local permits at the same time or before following an NOI under the WPA. If an applicant files an NOI under just the WPA and does not file under the local bylaw, the WPA regulations authorize the Commission to reject the NOI in writing, citing the permit(s) that the applicant did not apply for.

Mr. Colman moved that the Commission reject the NOI and that the permit that the applicant did not apply for is the Town of Acton's Wetland Protection Bylaw. Ms. Green also brought up that the applicant should also file for a Land Disturbance permit to address Chapter X. She would like more information from Town Counsel about the ramifications for denying solely under the provided guidance. She is concerned that the denial would be based on procedure, the applicant might appeal and DEP upholds the appeal and the Commission did not have the chance to issue an Orders of Conditions. No one seconded, the discussion continued.

Scott Goddard from Goddard Consulting proposed a solution. From experience he has seen this issue come up several times and it was handled differently. If the Commission is concerned about the procedure, the applicant could file a separate standalone application under the bylaw and stay the proceedings while the Commission acts under the WPA and then stratify the intent of the regulation. The applicant would request a stay while they file a parallel application under the bylaw and the applicant can revisit the WPA application. The Commission discussed that they are not going to concede that the applicant may have the right to choose the order of proceedings. Mr. Goddard suggested that they stay the application, the Commission consults Town Counsel and the applicant submits a filing under the bylaw. They would also have to file the Land Disturbance permit and a Board of Health permit.

Mr. Colman stated that at this point in time they have a memo from the Agent stating Town Counsel's guidance. He argues it is enough to end the hearing and the applicant can speak to Town Counsel. Mr. Goddard asked for the hearing to continue. Mr. Colman withdrew the motion to continue discussion. If the hearing continues, the applicant (unless advised by their counsel) would file under the bylaw. The Commission would have to look at two plans. Mr. Arnold request the hearing be continued to the next hearing so that the Commission can talk to Town Counsel and that the applicant can reach out to counsel and at this point they would file under the bylaw and a Land Disturbance permit. At the next hearing they would have applied for the permits.

The OOC form asks if the applicant has filed under the bylaw. It is a yes or no question that does not leave room for a temporary decline. The Commission would like Ms. Barksdale to ask Town Counsel if the applicant submits under the WPA and bylaw, can they submit two different plans and what is the process? There might be two different hearings because two different laws will be applied.

The Commission has the question of either rejecting the application or continuing. The Commission would like Town Counsel to be present during the meeting which would lead to a continuation and some members would like more time to digest the memo. Mr. Colman argues for a rejection because of the incorrect filing, then the applicant could start over.

Mr. Goddard argues that since DEP has issued their comments and the Commission has held two public meetings it means that the Commission has accepted the application as complete. He believes the Commission cannot reject the application because of the DEP number and previous hearings, and requested a continuance. The Commission states that they have questioned the application from day one and it took a while to get Town Counsel input. Mr. Goddard believes that when DEP issues the number they are determining that a project is complete and a public hearing can be held, and DEP did not flag this issue.

Mr. Colman moved to reject the application under 310 CMR 10.05(4)(e)-(f) Ms. Chadzynska seconded to reject the NOI. No further decision. Vote: Mr. Colman yes, Ms. Green no, Ms. Chadzynska yes, Ms. Peters no, Mr. Hocknell no, and Mr. Chair yes. It is a split vote 3-3, motion fails. The hearing is continued to the next public hearing, March 5th at 7:30pm.

Administrative Updates

9:20 Betty Estates CR

The question for the Commission, in the allowed uses section of the CR using motorized vehicles by persons with mobility impairments is potentially open to improper interpretation. It is language used in the state model CR. The agent will address this question in future CRs.

Bruce Ringwall represented the landowner, he is requesting to revise the OOC. It states that the CR has to be recorded before the first occupancy permit. He also has to request the revision at the Planning Board meeting. A draft was written in 2022 and then the project was delayed. A

new CR draft was made in 2024. Ms. Green found a few spelling errors and organizational issues such as saying that a conservation value is not applicable -- they should delete the section.

Under the prohibited uses page 7, structures or improvements sign fence and gate was struck out. Need to check if fences or gates are needed, which might be on the CR. On page of the CR Page 9 permitted acts, composting add a 100-foot setback from wetlands. On page of the CR Page 5 indigenous culture practices, consider deleting. Page 10, trail maintenance, add dimensions of the trail. Is the need to make the trail ADA applicable required; and put the fences and gates in this section. All of the forest management section was crossed out despite that it was listed as a value. They are not proposing to have the property under forest management. The parcel is forested, so agriculture use can be taken out. On page 14 the special use area was struck out; the parking lot could be added to this section. Need to double check that parking lot is off the CR but within the access easement. On page of the CR Page 16, legal and injunctive release the light font should be taken out. On page 17 number 4 language should come out. The CR needs a Baseline Documentation Report. The report is voted and signed at the same time as the CR. Commission needs at least a draft.

Mr. Ringwall would like to change the OOC to state that the CR needs to be signed at the state and recorded by the last occupancy. The 4 units are not complete. The 4th might be done by the end of the 2025 construction season. There are five parcels that make up the CR, about 14.7 acres. He would also like to change the boardwalk provision in the OOC. The boardwalk is not on the plan and the OOC states it has to be built before the first occupancy. The proposed revision is to have the Boardwalk completed by July 1st. The Commission needs a letter formally asking for the minor modification and the request will be heard on March 5th.

Susan Mitchell-Hart called in with a comment on the Betty Estates CR. Ms. Mitchell-Hart would like clarification on the CR. There is an existing CR on the land and people in the past have tried to develop it and didn't know there was a restriction. For Betty Estates to be developed they had to update the CR. The previous CR is very old, Ms. Mitchell-Hart is very worried about the status of this CR. David Mitchell-Hart researched the document. It is a 30-year term CR that has to be reaffirmed. It was reaffirmed in 2007. Normally, if you want to do an amendment it has to be more restrictive.

Piper CR

Ms. Green had three comments for the Piper CR, updating the open space language, adding signature pages for the Conservation Commission and stating that the BDR has been drafted.

9:58 Review and Approve Meetings Minutes

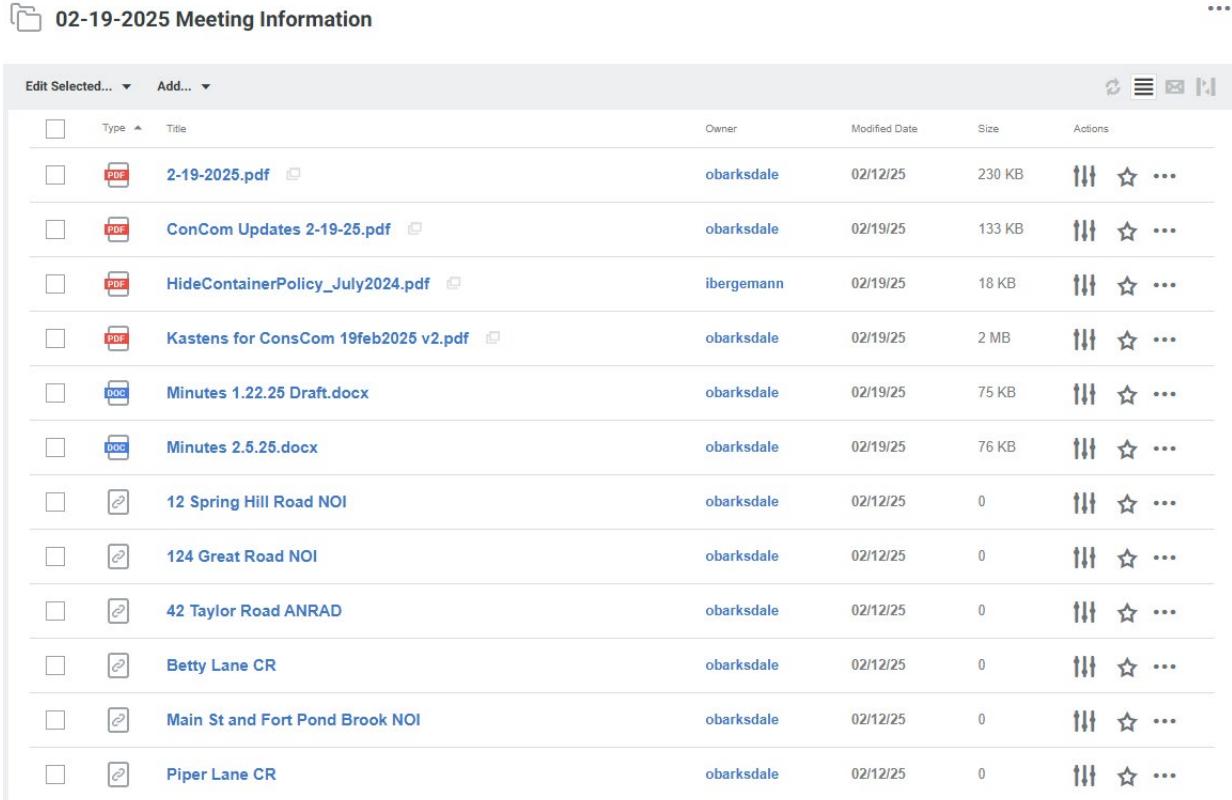
Minutes

Mr. Hocknell moved to approve the January 22nd 2025 minutes and Mr. Colman seconded. Roll call vote all in favor (5-0).

Mr. Hocknell moved to approve the February 5th 2025 minutes and Mr. Colman seconded. Roll call vote all in favor (5-0).

10:00 The meeting closed at 10:00PM

Documents and exhibits used at this meeting:



The screenshot shows a list of documents in a digital collection. The header of the list is "02-19-2025 Meeting Information". The columns in the table are: Type, Title, Owner, Modified Date, Size, and Actions. The "Actions" column contains icons for edit, delete, and more options. The documents listed are:

Type	Title	Owner	Modified Date	Size	Actions
PDF	2-19-2025.pdf	obarksdale	02/12/25	230 KB	⋮ ⚡ ⚡ ⋮
PDF	ConCom Updates 2-19-25.pdf	obarksdale	02/19/25	133 KB	⋮ ⚡ ⚡ ⋮
PDF	HideContainerPolicy_July2024.pdf	ibergemann	02/19/25	18 KB	⋮ ⚡ ⚡ ⋮
PDF	Kastens for ConsCom 19feb2025 v2.pdf	obarksdale	02/19/25	2 MB	⋮ ⚡ ⚡ ⋮
DOC	Minutes 1.22.25 Draft.docx	obarksdale	02/19/25	75 KB	⋮ ⚡ ⚡ ⋮
DOC	Minutes 2.5.25.docx	obarksdale	02/19/25	76 KB	⋮ ⚡ ⚡ ⋮
DOC	12 Spring Hill Road NOI	obarksdale	02/12/25	0	⋮ ⚡ ⚡ ⋮
DOC	124 Great Road NOI	obarksdale	02/12/25	0	⋮ ⚡ ⚡ ⋮
DOC	42 Taylor Road ANRAD	obarksdale	02/12/25	0	⋮ ⚡ ⚡ ⋮
DOC	Betty Lane CR	obarksdale	02/12/25	0	⋮ ⚡ ⚡ ⋮
DOC	Main St and Fort Pond Brook NOI	obarksdale	02/12/25	0	⋮ ⚡ ⚡ ⋮
DOC	Piper Lane CR	obarksdale	02/12/25	0	⋮ ⚡ ⚡ ⋮

All Documents can be found at:
<https://doc.actonma.gov/dsweb/View/Collection-18970>