



Conservation Commission – Town of Spencer

Minutes

Conservation Commission Meeting
Wednesday, November 10, 2010
Town Hall, McCourt Social Hall

Commissioners present: Judy Lochner, Ram Moennsad, and Warren Snow
Mary McLaughlin arrived at 7:42 p.m.
Staff: Ginny Scarlet

The meeting opened at 7:09 p.m.

The Commission read the draft minutes of the October 27 meeting until 7:14 p.m., then tabled review and approval of the Oct. 27, 2010 minutes until later.

Nothing signed at this point.

7:15 p.m. Opened the Continuation of the Public Hearing for Notice of Intent for Flexcon Company, Inc.

**Property: 1 Flexcon Industrial Park & So. Spencer Road, Spencer, MA
DEP#293-0750**

At the request of the applicant, the hearing was further continued to **December 8, 2010.**

7:16 p.m. Opened the Public Hearing for Notice of Intent for Benjamin Minsk

Property: 12 Williams Drive, Spencer, MA DEP#293-0751

At the request of the applicant, the hearing was continued to **December 8, 2010.**

7:18 p.m. Opened the Public Hearing for Request for Determination of Applicability for Lake Whittemore Spencer Realty Trust

Property: Rustic Lane, Spencer, MA (Assessors Map U17, parcel 22)

Tom Fancy, Registered Surveyor, appeared for Mr. Carl Dworman, the primary trustee of Lake Whittemore Spencer Realty Trust. Mr. Fancy explained that he has started doing a plan survey of the property for Mr. Dworman who asked Mr. Fancy to represent him and who is presently in Florida. Mr. Fancy had nothing to add to the already submitted application. Ms. Scarlet said that responding to a complaint she found the lot, which abuts Lake Whittemore, cleared and grubbed in much of the buffer zone with bare soils. In the buffer there is also a small decrepit shack in dangerous condition. She sent the Trust a Notice of Violation letter requiring a Request for Determination which resulted in the present retroactive application. This application is for the already completed clearing and grubbing and for demolition of the building. Ms. Scarlet added

that on the phone Mr. Dworman indicated that he planned to eventually build a single family home on the lot, but would apply for that later. Mr. Dworman asserted that he does not own the right of way (ROW) east of his lot. The disturbed earth was over-seeded by Richard Monette of Monette Landscaping, the company that did the clearing.

Mr. Grimes and Ms. Lochner made a site visit on October 31st and Ms. Lochner reported that the brush work was 30 or more feet from the water and they did not see any impact on the lake. They did see the ruts going down the driveway (ROW??) to the lake. Both Mr. Fancy and Ms. Scarlet said the ruts were not new; they had been there for years. They believe that is a commonly used access area by the lake. .

Ms. Lochner asked whether Mr. Dworman used the right of way as a driveway or for access to the water. Ms. Scarlet said she believed that the clearing machinery had entered via the ROW. She had looked at the deed for the property and abutting properties. There is a ROW but it's location and who has the rights is unclear.

Mr. Fancy said that he has not completed his survey but did locate markers using a 1945 plan Mr. Dworman provided. After that Mr. Dworman had Monette Landscaping cut brush. Subsequently he and Mark Farrell of Greenhill Engineering returned to discuss possible perk test locations. Ginny found the cut area had been reseeded. No one knows who owns the water access. Mr. Fancy said that route to the water has probably been used for more than 20 years and if so the users could get "prescriptive" rights to it- a sort of adverse possession. Ms. Scarlet wondered whether in that case the Town could take possession. No one present knew. Mr. Fancy mentioned that Rustic Lane, a private road, is 40 feet north of its recorded location. The area's status is uncertain. Mr. Fancy reported that he did find one of the markers in the middle of the road.

Ms. Lochner asked if there were photos of the site. Ms. Scarlet had not brought them but did take photos during her first visit. She agreed that there had been no impact.

Rodney Foisy, an abutter to Rustic Lane, commented that Monette "took 10 loads of stuff out of there" and cleared the whole area down to the dirt, completely scraping off the grass with his excavator. He objected strongly to work being done in the buffer without a permit and that if he, as a builder, did that he would be in deep trouble. He conceded that picking up trash and cutting and mowing to the ground would have been OK but grubbing and scraping as though in preparation for a foundation was not. Ms. Lochner asked whether there had been forest to the west. Mr. Foisy, Mr. Fancy and Ms. Scarlet agreed that the area had been scrub and grass with some trees. Mr. Foisy also asserted that the lot is non-conforming and "unbuildable." The Commission said that's a planning/zoning issue not a CC issue. Mr. Foisy reported that the ROW area is used only occasionally and sometimes to put a boat into the lake. He asserted that the Commission was only surmising that there had been no impact to the lake. The cleared area was bare and tips toward the rutted ROW.

Mr. Snow wondered whether an Enforcement Order should have been issued. Ms. Scarlet explained that the application is retroactive. No additional work can be done in the buffer or lakeside without another filing. The work done was no less than 30 feet from the top of the bank; the lakeside 30 feet was not disturbed. The area is subject to review under the local bylaw and activity is also in the Wetland Protection Act defined buffer zone.

Mr. Fancy gave the Commissioners a copy of his preliminary survey superimposed on a 2005 aerial photo of the area. He pointed out that the area now cleared isn't wooded in the photo. He and Ms. Scarlet agreed that the work stopped at the stone wall 30 to 40 feet from the waterfront.

Mr. Snow made a suggested determination that the law does apply but the work did not alter a resource area so an NOI is not required for this activity. This application includes demolition of the shack. However, since the local bylaw protects areas within 100 feet of a water body, no additional work can be done without another application. Such a Determination did not seem to fit the options in the DEP form. Mr. Fancy preferred to close the hearing rather than continue because the pertinent information had been covered.

A motion to close the hearing (Snow/ Moennsad) Commission passed 4/0.

The Commission plans to vote on the Determination at their December 8, 2010 meeting and asked Ginny to draft a customized Determination. Ginny promised to have the photos available at that meeting.

7:57 p.m. Other Business

Lake Street Extension Enforcement

Alice Berry, 27 Delude Avenue, recounted that she has spent \$2100 to cut trees along the drainage path from Lake St Extension across her land to Lake Whittemore. Then she got estimates from 2 contractors to create the rip-rap lined swale the Commission has directed her to build to trap silt and convey water. Both estimates were for \$5200. She said that she does not have the money. She and Mr. Berry were advised by one contractor that if the swale work is done before the runoff coming down the road isn't under control, the work will be wasted. That control depends on the property owners above. Mrs. Berry asked with frustration, what the Commission would require which would cost less.

Mr. Berry pointed out that once the flow is reduced up the hill, the Berry's job could be smaller and less expensive. The Berry's described their situation as victims of changes made uphill. Mrs. Berry said there had been no problem until Mr. Houston's house was built and his driveway and the connection to Lake Street paved. Before that, drainage from the top of the hill flowed out to the drainage system of Lake Street instead of going down Lake Street Extension. Mrs. Berry did not believe that the Wissiups driveway is the primary source of runoff. The Berry's indicated that they will tackle their part of the work when they see what is left to control. They will be away after Christmas for the rest of the winter and propose to use hay bales to somewhat reduce sediment transport. Ms. Scarlet asked that they avoid setting the bales in a way that directs the water onto the abutting Orsi land. Mr. Berry commented that Mr. Orsi could buy bales too.

The Commissioners agreed that starting the project at the top made sense. They asked Ms. Scarlet whether Mr. Houston or Mr. Simakauskas had done anything. Ms. Scarlet reported that she had checked the driveways and neither had been significantly changed.

Ms. Scarlet urged the Commission to adjust the project but not abandon it. She believes that silt reaching the lake is serious. The erosion is accelerating as the gullies get deeper and wider. Dredging sediment out of the lake would be difficult and exceedingly expensive. In addition, even now, turbidity is interfering with swimming at Luther Hill Park and can cause cancellation of the summer swimming programs. She suggested extending deadlines.

Mr. Snow proposed linking the projects in order of altitude, starting work at the top, with projects 6 months apart. As one is finished the next owners down would be given 6 months to do their part. Once all those individual projects are complete the road repair can be done and would last a while.

The Commission agreed. At the meeting of September 8, 2010 the Commission approved the runoff control plans from Mr. Houston and Mr. Simikauskas, the owners at the top. At that time both stated that they would get their work done "right away." Ms. Scarlet will contact Mr. Houston and Mr. Simikauskas and urge them to get it done. Ms. Scarlet noted that they were first contacted in 2005 and after four years have done nothing. She undertook to check the meeting minutes looking for a specific deadline. She will call or mail a "nag-gram." The commission will consider the timing of follow up action at their December 8 meeting after it is clear whether there was a verbally agreed deadline. The Commission promised to send the Berry's an update in the spring about what has been accomplished and the projected schedule.

Margaret and Mary Wissiup, 45 Lake Street Extension.

The Wissiups indicated that they are working on a plan to repave their driveway. During repaving the driveway must be elevated to go over protruding bedrock. During the paving work they plan to have diversion swales constructed on the down-slope side of the drive to disperse runoff into the woods. That should reduce runoff reaching the bottom of the driveway where it flows into the road. They hope to do the work next spring. They will give a full plan to the CC for review and approval at the Commission meeting on January 12, 2011. Margaret Wissiup asked for advice about temporary integration of the driveway with Lake St. Ext. until the road is also fixed. She wants to avoid rebuilding the driveway – road intersection. Ms. Scarlet offered to seek informal technical advice from Spencer Highway Department. Ms. Wissiup will call Ms. Scarlet by mid-December to work together on the plan. The plan must have a drawing. Ms. Scarlet can help sketch that.

Sunset Holmes Subdivision Change in Plan for 27 Holmes St. (Lot 3)

Glenn Krevosky represented James Laney, now owner of the subdivision plan. Mr. Laney is resuming construction and wants to modify the plan, changing the house to a duplex and shifting its location. Mr. Krevosky presented the new plan (drawing). The Commission considered whether the proposed changes could be approved as minor or whether formal amendment of the Order of Conditions is necessary. Mr. Krevosky pointed out that the only changes are to the building and driveway, substituting a duplex for a single family home. The lot will be served by town water and sewer. The proposed minimum distance from the duplex to wetland is 17' ft. Mr. Krevosky has verified that

the wetland boundary has not changed. More trees would have to be cut down if building were moved further from the wetland. The duplex footprint is 2400 square feet in contrast to 1220 square feet for the original. The new plan shows a deck on sonotubes 13 ft from wetland. Erosion controls would be installed at least 10 ft from wetland. The original planned structure was to be no less than 45 feet from wetland. Mr. Krevosky also proposed the addition of infiltration chambers to handle the roof runoff and compensate for increased impervious surface.

Ms. Scarlet noted that conditions approved without formal amendment of the Order cannot be easily enforced. Mr. Krevosky suggested an As-Built Plan be required with the Request for Certificate of Compliance to ensure compliance. Mr. Laney commented that as he has a whole subdivision of lots to complete, he is unlikely to go afoul of the Commission and wetlands regulations at this point. Mr. Krevosky said the applicant would pay for the wetland marker disks supplied by the Commission.

Ms. Lochner noted that there were numerous objections to development in this area during the original hearings for the subdivision in 2005. This discussion is not an advertised public hearing so the public has no chance to comment. Mr. Krevosky reminded the Commission that the earlier objections had been to the new road and associated major changes. He believes that it's now accepted and said that abutters have asked him when home construction could resume.

(Mr. Krevosky noticed a mouse at the side of the room, eating something. Ms. Lochner asked what it was eating. Ms. Scarlet asked whether it was a meadow mole, or a wood mouse? Mr. Krevosky said it was a field mouse, and a member of the public come to comment. Mr. Krevosky attempted to catch the mouse but missed. The mouse ran out into the hall.)

Mr. Fancy continued the discussion saying that he, too, had been asked by neighbors to the subdivision when "they'd get something built in there." Ms. Scarlet said she'd been asked similar questions.

A motion that amendment is not required for approval of the proposed changes (Snow, McLaughlin) passed 4/0.

The Commission approved the changes with the following conditions:

- The wetland boundary must be marked with permanent markers,
- The proposed infiltration system must be implemented,
- An as-built plan must be supplied with the Request for Certificate of Compliance.

(When leaving Mr. Krevosky found the mouse still in the hall and attempted to catch it. Ms. Scarlet asked him to export it but he missed again and replied, "It's yours Ginny.")

Enforcement – Notice of Violation for Todd Hunter, 64 Browning Pond Rd.

Ms. Lochner and Mr. Grimes did a site visit and Ms. Lochner took photos. Ms. Lochner reported that the wall is caving in and the stone blocks are washing out into the lake. The sand bags which were used to hold back the water during wall construction are entrenched into the ground now.

(Ms. Scarlet left to correct an error in the drafted Notice of Violation. As she returned Ms. Lochner asked if Mr. Krevosky had killed the mouse. Ms. Scarlet replied, “No, it’s running around out there.”)

The CC members viewed the photographs on the screen of Ms. Lochner’s cell phone. She’ll email them to Ms. Scarlet for the record. Ms. McLaughlin commented that the wall has deteriorated very quickly, within the term of the permitting Order. Ms. Lochner reported that the blocks were glued in place rather than held with rebar.

A motion to issue a Notice of Violation for 64 Browning Pond Rd (Snow/Moennsad) passed 4/0.

The Commission signed the Notice of Violation for 64 Browning Pond Road.

Request for Certificate of Compliance from Ed Jardus for Sullivan St. Subdivision

Ms. Scarlet reported that together Mr. Jardus and Mr. Kady have completed all the work required to comply with the Order for the subdivision road and drainage system. Mr. Kady bought 2 lots in the subdivision and his projects got entangled with Mr. Jardus’s responsibilities for the subdivision as a whole. The gentlemen eventually reached an agreement and then finished the drainage system work by August 31, 2010. The wetland replications completed themselves by August 31 because the environmental consultant, Glenn Krevosky, chose such suitable sites and the project took so long, that wetland vegetation took over those areas. Mr. Kady still has an Order of Conditions for construction of a single family home on one of his lots. One of the newly established replications is now a protected wetland on that lot.

Ms. Lochner asked if the subdivision detention basin is “all set.” Ms. Scarlet said that both Mr. Krevosky and Mr. McNeil have said that it could be improved by creation of a stone filter-berm dividing the east end from the final pool. That would lengthen the settling area and keep most of the accumulating silt at the end of the basin which is most easily cleaned. The town may do that work in future but neither DEP nor the Order required it and the basin is better than anything required in the subdivision Order. That Order had no requirement for an engineer’s certification either.

A motion to issue a Certificate of Compliance to Mr. Jardus (McLaughlin/Snow) passed 4/0. The Commissioners signed the Certificate.

A motion to ratify a letter of partial compliance for Charlie Kady to be sent by Ms. Scarlet to DEP (McLaughlin/Snow) passed 4/0

Request for Certificate of Compliance from Mike Lussier for 2 Buteau Road

The Commission read Ms. Scarlet’s inspection report and looked at her photos of the site. *A motion to issue the Certificate of Compliance (Snow/Moennsad) passed 4/0.* The Commissioners signed the Certificate.

Return to review of the draft October 27, 2010 minutes: The Commission returned to reviewing the draft Minutes of 10/27.

(The mouse came back from the hall and behind the audio equipment near Ms. Scarlet. Ms. Lochner suggested she bring her cats to the next meeting. The mouse then ran back along the wall to the hall. Mr. Moennsad noted that the mouse never signed in.)

Minutes Approved: October 27, 2010 – *A motion to approve the minutes as amended (Moennsad/Snow) passed 4/0.*

Ginny Report –November 10, 2010

Public Access: Mass Audubon Burncoat Sanctuary and the Greenville Street side properties are ALL open to the public from dawn to dusk every day.

Bob Fournier and Chickering Rd culvert/ Emergency Certification: Mr. Bellino now says SOC issue in the “next week or two.” Mr. McNeil is OK with waiting. He forecasts the work wouldn’t start until after Thanksgiving anyway.

98 Chickering Road: No wetlands problem. See photos. All work more than 105 feet from the closest top of the bank (retaining wall). It’s a nice way to handle the drainage from their driveway and the runoff they get from Chickering Road.

Northwest Road: The builder responded quickly. Erosion controls and construction entrances, and DEP signs had been installed by the end of October 28th. The road had been cleaned up. Jason Dubois of Bertin Engineering called Ms. Scarlet on Monday November 1st to work out finishing the NOV requirements. The next deadline is November 12th.

MACC Fall Conference – They gave us the presentations with extra information on a flash drive. The whole thing is too large to email but Ms. Scarlet can email pieces and components. She can also print out the docs. Let her know what you’d like to read.

They cover:

Fees & funding

- DCS Self Help and DCR Trails grant programs

- Community Preservation Act – a pitch for adopting it as a source of money looking beyond wetlands

- The EEOEA Green Communities Program – help available, + eligibility for grants

- Lennox progress toward being a Green Community

Flood plain –

- The Invisible Resource – encouragement to watch for it. Some discussion of the utility of the FIRM Maps and Flood Study Report.

- Adopting a flood plain bylaw

LIST OF DOCUMENTS USED

- Conservation Commission- Town of Spencer, Agenda, Conservation Commission Meeting, Wednesday, November 10, 2010.
- Conservation Commission- Town of Spencer, DRAFT Minutes, Conservation Commission Meeting, Wednesday, October 27, 2010.
- Town of Spencer, Conservation Commission, Agreement to Continue Public Hearing for 12 Williams Drive, DEP # 293-0751, Benjamin Minsk to Dec. 12, 2010.
- Town of Spencer, Conservation Commission, Agreement to Continue Public Hearing for Flexcon, Industrial Park, Flexcon, Inc., DEP # 293-0750 to Dec. 12, 2010.
- Request for Determination; Applicant Lake Whittemore Spencer Realty Trust, Carl Dworman Trustee re property on Rustic Lane, Spencer Assessors' Map U17, parcel 22.
- Aerial Photo: "Compiled Preliminary Survey, Spencer, MA; prepared for Carl Dworman by Fancy Land Surveying, dated July 14, 2010.
- Inspection report re Rustic Lane, by Judy & Ernie, dated 10/31/2010.
- Letter to Margaret and Mary Wissiup from Ginny Scarlet, dated November 4, 2010.
- Cost of Materials (3 pages) 11/10/10.
- Building Permit Plan, Lot 3 Holmes Street, dated Nov. 9, 2010
- Order of Conditions, DEP # 293-0617, issued 5/11/06 to Richard Hill, SRP-Hill Development, LLC.
- Notice of Intent Plan (Phase 1) prepared for SRP- Hill Development, LLC by McNeil Engineering, LLC, April 06, 2006.
- 10-31-10 inspection report re 64 Browning Pond Road by Judy & Ernie.
- Nov. 11.2010 Certificate of Compliance, DEP # 293-0424, Ed Jardus, Ridgemont Properties, Inc.; Property, Sullivan Street Subdivision.
- Letter to Philip Nadeau of DEP CERO from Ginny Scarlet, dated 11/10/2010 re the Superseding Order for Charles Kady lots in Sullivan Street Subdivision.
- Request for Certificate of Compliance from Michael Lussier, dated 11/3/2010
- Inspection report of Ginny Scarlet, re 2 Buteau Road, dated 11/3/10
- 4 photographs on 1 page showing 2 Buteau Road, taken 11/3/10 by Ginny Scarlet
- Nov. 11, 2010 Certificate of Compliance, 2 Buteau Road, DEP# 293-0661, Michael & Deborah Lussier.
- Notice of Violation, dated November 10, 2010; To Todd Hunter, re 64 Browning Pond Road, DEP# 293-671.
- 7 photos on 2 pages taken 10/29/2010 by Ginny Scarlet at 98 Chickering Road
- Ginny Report 11-10-2010 now incorporated into the meeting minutes.