

# Conservation Commission – Town of Spencer

## *Minutes*



Conservation Commission Meeting  
Wednesday, October 24, 2012 at 7:00 PM  
Town Hall, McCourt Social Hall

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The Meeting was opened at 7:02 p.m.

Commissioners Present: Ernie Grimes, Mary McLaughlin, Dana Reed, Margaret Emerson

Commissioners Absent: Ram Moennsad, Warren Snow

Staff present: Margaret Washburn

**Minutes Approved:** September 26, 2012 – *A motion to approve as amended (McLaughlin/Reed) passed 4/0.*  
October 10, 2012 – *A motion to approve the minutes as amended (McLaughlin/Emerson) passed 4/0.*

**Signed:** Order of Conditions, 24 Chickering Road

### **7:15 p.m. Opened the Public Meeting for Request for Determination of Applicability for Robert Ferreira**

#### **Property: 63 R. Jones Road, Spencer, MA**

The project is to replace the existing septic system. The system will be installed in the same place. Hay bales will be installed instead of wattles. The Commission had no issues. Ms. Washburn asked for seven days notice for the hay bales inspection.

*A motion to close the public meeting (McLaughlin/Emerson) passed 4/0.*

*A motion for a Negative Determination (McLaughlin/Emerson) passed 4/0.*

### **7:21 p.m. Opened the Public Meeting for Request for Determination of Applicability for Paul Dansereau**

#### **Property: 40 Point Eastalee Drive, Spencer, MA**

The project is to construct a 2<sup>nd</sup> floor deck with stairs. A building permit has already been issued. Sonotubes will be dug by hand. Erosion controls are already in place. Excavated soil will be removed from the site except for a little bit needed next to the septic tank where the ground has subsided.

*A motion to close the public meeting (Reed/Emerson) passed 4/0.*

*A motion for a Negative Determination (Reed/McLaughlin) passed 4/0.*

**7:26p.m. Opened the Public Hearing for Notice of Intent for Richard Barrell  
Property: 26 Laurel Lane, Spencer, MA DEP#293-0783**

Mr. Barrell said he would like to construct an 18” – 24” retaining wall to stop erosion. It will tie in with the existing wall he got permission to do last year. The site plans do not show the wall he constructed east of the existing dock. Blocks will be added at the end of the boat ramp and pavers will be put down. Phase II of the project will consist of replacing the septic system, construction of a 36’ x 30’ garage and an addition to the house. Mr. Grimes said a hydraulic boom must be drawn on the plan. Ms. Washburn said she thinks more erosion controls need to be shown above the water line. Mr. Barrell said he will do the wall during drawdown. Mr. Grimes is concerned about the roof runoff. He said a dry well would capture the runoff from the roof. Mr. Grimes said the roof drainage needs to be addressed on the plan.

Ms. Bolafka, an abutter, asked to look at the plan. She said she lives “downstream” from Mr. Barrell. She says she has huge water runoff issues. She said it seems like a lot of building on a small property. Ms. Bolafka asked how all the water flow from Mr. Barrell’s property will be controlled. Ms. Washburn said there will be a retaining wall built around the septic system. Ms. Washburn asked where the stockpiling will be. Mr. Barrell said it would be up to the construction guys. Mr. Grimes said no, the stockpiling materials needs to be addressed before the plan is approved. He wants the excavated material removed daily from the site. Ms. Bolafka asked what will happen to the existing shed. Ms. Washburn said the shed will be moved 3’ closer to the water and the screen house is going to be turned 90 degrees and moved a little bit. Mr. Grimes said the plan needs to be taken back to Richard Gobi with the Commission’s concerns. The issues are as follows:

- A boom needs to be shown on the plan
- The roof runoff needs to be addressed
- The walkway needs to be a stepping walkway instead of a straight walkway
- Show the small shed on the plan
- Excavated materials removed daily from the site
- Grading needs to be shown after the addition is put on
- Show more ESC above the water line
- The grading mistakes must be corrected.

Ms. Bolafka asked how high the building is going to be. Mr. Grimes said that is not the Conservation Commission’s jurisdiction and she can ask the building inspector. Ms. Washburn said revised plans must be submitted by November 7, 2012.

*At the applicant’s request, the hearing has been continued to November 14, 2012.*

**7:45p.m. Opened the Public Hearing for Abbreviated Notice of Resource Area  
Delineation for TransDevelopment Group**

**Property: 22 Podunk Pike, Spencer, MA DEP#293-0782**

Ms. Washburn said a third party review is being done and TransDevelopment Group did not want to have the hearing until the review is complete.

*At the applicant’s request, the hearing has been continued to November 14, 2012.*

## **Other Business:**

**76 Chickering Road:** The contractor had removed a brick shelf around the house replacing rotted sills. The sills are being replaced with pressure treated plywood. A stone trench will be installed. The contractor filed an RDA today so the meeting will be on the November 14<sup>th</sup> agenda.

**109 & 111 Wilson Avenue:** Ms. Washburn inspected the properties. The projects are complete. There are no issues. *A motion to issue Certificates of Compliance (McLaughlin/Emerson) passed 4/0.*

**195 Charlton Road, James & Rachel Laliberte:** Ms. Washburn stated that a complaint was received on October 9<sup>th</sup> regarding “lots of excavating”. She inspected on October 16<sup>th</sup>. Many acres (at least 10 acres estimated) were clear-cut, including several future riding trails, definitely triggering the storm water bylaw requirements. Ms. Washburn said they did not need a forest cutting plan because the intention is to build a commercial riding ring and horse boarding facility. Foresters involved from Hull Forest Products include Christian Kruger and Ross Hubacz. Mr. Kruger had told Ms. Washburn that Mr. Hubacz got carried away and did about twice as much clear-cutting as he was supposed to do. Hurley Firewood of Sutton did the logging. An anti-tracking pad was installed but failed, as dirt was tracked out into Route 31 and Mr. Grimes and Ms. Washburn both saw it. An existing wetland crossing pipe was crushed by heavy equipment and Mr. Grimes gave them permission to replace the pipe, which was done on October 23<sup>rd</sup>.

Ms. Washburn said an area approximately 250 x 80 ft. was stumped. The rest of the clear cuts have not had stumps pulled yet. The Lalibertes cut a small clearing that is either in the buffer close to a BVW, or possibly partially in the BVW. Ms. Washburn recommends the wetlands near the existing crossing should be delineated, to begin with. Mr. Laliberte expressed a desire to cut more vegetation in the BVW. A 10 x 15 ft. area (approx.) of old farm dump debris was pushed toward the wetlands. Boulders were pushed toward the wetlands. Small buildings are being placed/constructed in apparent buffer zone. Ms. Washburn asked them to file an RDA. Steve Tyler inspected with Ms. Washburn on October 23<sup>rd</sup> and is recommending that no permits should be issued until the storm water bylaw is addressed.

Mr. Laliberte said he and his wife have always wanted to board horses. He said it becomes challenging to find properties location-wise and size-wise. They put an offer on the house in June and it was accepted. The lot is 37 acres and has various wetlands. Mr. Laliberte said the former owners were away a lot and the land was vacant. They really needed land to be cleared for the horses so they asked a forester to come in. They had hired Bill King, a farm appraiser and consultant. Nine stalls will be put in the barn. Sheds will be installed in the back on the property. There will be one dump site for the manure. The manure will be incorporated into the ground. They currently have farm insurance. Mr. Laliberte said they have no intention to violate any laws.

Mrs. Laliberte said they want to be in compliance. They do not want to hurt the environment. The horses damage the soil so it is imperative to have seeds. She said the goal for the farm is for it to be self-sustaining.

Christian Kruger and Ross Hubacz from Hull Forest Products submitted two sketches to the Commission. Mr. Kruger said the excavator was stored overnight in the buffer zone. A tracking pad was installed. Mr. Kruger said they did apply for Chapter 61A. Ms. Washburn said because of the size of the area they cleared, it triggers the Stormwater Bylaw. Mr. Kruger said stand one is 2 acres and stand two is 5.3 acres. Ms. Washburn said that trails add to the land conversion size.

Mr. Kruger said he got the Stormwater Bylaw from online and it says under page 36 there are exemptions. Under 310 CMR 10.01, Right to Farm, states this land is exempt under the bylaws. Ms. Washburn said what is being talked about here for this project is land conversion. She does not believe the land is exempt. The agricultural exemption only applies to commercial agriculture and areas that have been in production sometime during the previous five years. Ms. Washburn does not think this wood lot was for "commercial agriculture". Mr. Kruger read the definition. Forest products are an agricultural use. Ms. McLaughlin asked if the work has been going on within the past five years. Mr. Kruger said yes. Ms. Washburn said that Mr. Kruger had said the land was logged eight years ago. Ms. Washburn said the Commission needs to see a forest cutting plan that was in place within the last five years. Mr. Kruger also called NRCS regarding the town bylaw. He is waiting to hear back from them. He also spoke with Kent Loggie, MA Farm Bureau. Mr. Loggie had told Mr. Kruger that there is not enough money in farming to deal with storm water management. Mr. Loggie also told him that it is strictly in Massachusetts that the bylaw states that timber management is under agriculture. Mr. Kruger's concern is if they have to do storm water management, they are not going to be able to come up with the \$20,000 to deal with storm water management. If the Commission does require storm water management, a NOI will be required because of the grading. Also, the buffers will have to be pushed back, the wildlife will be strained and the water flow will be increased.

Steven Tyler said he supports the project. He sees no evidence where exemption applies. He believes that they are subject to the storm water bylaw. He said if the applicant can prove that the project was in active agricultural use, then they can be exempt from the bylaws. If the project is subject to storm water, an engineered plan would have to be designed along with finished grades, BMP's and how the storm water will be treated.

Mr. Grimes said before this property was sold, there was no USDA Forestry Plan in place for this property and the property was/is not in Chapter 61A. Mr. Kruger said not yet. He filed the form for Chapter 61A in October. Mr. Kruger said he has a forest management plan and he will get a copy for the Commission. Mr. Kruger was trying to educate the Commission on the difference between a Forestry Management Plan and a Forestry Cutting Plan. Both the Commission and Mr. Tyler said they know the difference. Mr. Tyler asked the owners if they wish to do the best management practices for the property or do they want to keep arguing. Mr. Laliberte asked what constitutes agriculture. Ms.

Washburn said that is a separate question from the storm water bylaw. Mr. Tyler said agriculture doesn't expand to the whole width of a lot. Mr. Laliberte said they have been conducting riding lessons for a while now. Mrs. Laliberte said they have had functional business under her name and social security number for five years. Ms. McLaughlin asked if the business has been conducted on this land. Mrs. Laliberte said no. Mr. Kruger said the previous owners had been doing forest management on the property. Mr. Kruger showed the Commission the soils map.

Ms. Washburn asked the Laliberte's if they want to voluntarily come into compliance or do they want enforcement. If this has to be handled by enforcement, the project could end up costing more. Mr. Laliberte said they cannot afford to spend the money. Mr. Tyler said he assumes the project is subject to the storm water bylaw, and as such, the permit should have been obtained beforehand. Mr. Tyler has a citation that will be issued tonight, either a warning citation or a fine. The first violation is for failure to obtain a storm water permit, \$300 per day. The second violation is failure to install erosion control, \$300 per day. The third violation is failure to treat storm water, \$300 per day. Mr. Tyler is deciding whether or not to check the fine box or the warning box on the citation. The Laliberte's are talking about constructing a commercial stable and Mr. Kruger is talking about forestry. Mr. Laliberte said they are trying to do both. Mr. Tyler said they can't do both. Mr. Tyler said the stable will occupy space wherever it is. Mr. Laliberte said the house is occupying space too. Mr. Tyler said the house already exists.

Mr. Kruger said the 80' x 250' area is where the stable is proposed to go. This is the area that is being discussed that has changed land use. Ms. McLaughlin said the trails are not a changed land use; they will grow back into trees. Mr. Kruger said the stumps all remain. Ms. Washburn said the land has already been converted. Mr. Kruger said under Mass Code, the change of use begins when stumps are pulled. He has pulled stumps on the 80x200 feet. That is the change of use. Ms. Washburn said they are not talking about the Mass Code, they are talking about the town bylaw. Mr. Kruger said the town bylaw is very vague.

Mr. Laliberte quoted from the Agricultural Bylaw and he is still not clear on why they are not considered agricultural. Ms. Washburn said even if the woods were agriculture, the land conversion still triggers the storm water bylaw. Mr. Grimes said you cannot hay in the wetlands. Agriculture is exempt up to the wetland line. Mr. Grimes said they can come into compliance without hiring engineers. They can draw up a sketch with locations of hay bales, silt fence, and swales.

Mr. Kruger said under the storm water bylaw, it says an engineer. He asked if his forestry engineering license is sufficient for the Conservation Commission. Mr. Grimes said it would be acceptable to the Conservation Commission. Mr. Tyler said if the environmental measures are understandable and can be followed for construction, he would accept the licensing. Ms. McLaughlin said the plan that Mr. Kruger submitted is not acceptable. There are no erosion control measures on the plan.

Mr. Kruger asked if they are working within the 100 foot buffer zone and he is off by two feet, will that matter. Mr. Grimes said no. He asked if the soil types need to be laid out on the plots. Ms. Washburn said yes. Mr. Kruger then asked if he will be able to delineate the wetlands. Mr. Grimes asked if he has any experience with soils or any soil certifications. Mr. Kruger said as a forester, he is required to take a soils class. He would like to flag the wetlands and have Ms. Washburn review them. Ms. Washburn said she has not had time to review a delineation since she started working here.

Ms. Washburn said an RDA along with a storm water plan must be submitted by November 28, 2012. Mr. Laliberte said there is a proposed addition on the left side of the barn. There are footings that need to be dug for sonotubes. Processed gravel will be placed inside the barn. Mr. Laliberte asked if this is ok. Mr. Grimes said the processed gravel inside the barn is fine. Ms. Washburn said the wetlands are approximately 35 feet away from where the sonotubes will be installed. Mr. Grimes said he will allow the sonotubes to be installed. They can get the barn started. Mr. Grimes said the barn must be shown on the plan. The Commission will do a site walk on November 4<sup>th</sup> at 9:15 am. They must file the RDA by 4:30pm on November 28<sup>th</sup> or touch base with Margaret if the filing is not ready. Mr. Laliberte expressed his gratitude to the Commission for working with them.

Mr. Hubacz came back in and asked the Commission if they can pull out the hay bales installed in the stream when the pipe was replaced. Mr. Grimes said yes they can pull out the hay bales and then mulch the exposed soils with the hay.

**175 Paxton Road:** Ms. Washburn said Mr. Cutler submitted a restoration plan today. It did not include a site sketch showing the flags in relation to the disturbance. Today Mr. Cutler said he would ask Julia Fiske to submit one and call Ms. Washburn to say when we will receive it. The restoration plan includes applying herbicides in the wetlands to invasive species. *A motion to ratify the Enforcement Order (Reed/McLaughlin) passed 4/0.*

**45 Point Eastalee Drive:** Ms. Washburn said, at the Commissions' request, she sent the owners a letter on October 3<sup>rd</sup> telling them they need to file an RDA to install a year-round permanent barrier to contain the sand they had delivered. A letter was received on October 16<sup>th</sup> in response. Mr. Grimes read the letter. Mr. Grimes said no decisions can be made in the field by the Commission. Mr. Grimes told Ms. Washburn to send a letter stating that no decisions can be made by the Commission in the field and that the Chairman needs a plan or a sketch submitted showing some sand containment device by November 28, 2012.

**65 Oakland Drive:** Ms. Washburn received a complaint about trees being cut near Sugden Reservoir. Ms. Washburn issued a NOV on October 22<sup>nd</sup> and sent the tree cutting company a letter. Ms. McLaughlin said she had told the owners and the tree company that they needed to file with the Conservation Commission. The owners flaunted their land owner rights.

**129 Wilson Avenue:** Ms. Washburn said Ms. Paquette filed a request for a hearing regarding the ticket she was issued. She told the court that she feels she is being treated harshly, even though she has been told she can file an RDA instead of an NOI. She has yet to file for a permit since her first NOV which was issued four months ago, in June. The hearing at the East Brookfield District Court is scheduled for November 7<sup>th</sup> at 2:30pm. Ms. Washburn cannot attend the hearing. Mr. Reed said he will attend the hearing. Ms. Washburn will prepare the file for Mr. Reed to take to the hearing.

**Site Visits:** The Commission will do site visits on Tuesday, October 30<sup>th</sup> at 3 p.m. to 175 Paxton Road, 183 Paxton Road, 31 Thompson Pond Road and 1 Jameson Lane. On Sunday, November 4<sup>th</sup> at 9:15 a.m., the Commission will do site visits to 195 Charlton Road, 10 William Casey Road and 70 Chickering Road.

New Applications:    20 William Casey Road, RDA  
                              30 Bond Street, RDA  
                              7 Woodland Lane, RDA  
                              1 Jameson Lane, NOI  
                              70 Browning Pond Road, RDA  
                              70 Chickering Road, RDA  
                              76 Chickering Road, RDA  
                              183 Paxton Road, NOI

*A motion to adjourn the meeting at 9:15 p.m. (McLaughlin/Emerson) passed 4/0.*

Respectfully submitted by:

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Lisa Daoust, Senior Clerk  
Development & Inspectional Services

Documents reviewed at the 10/24/12 Spencer Conservation Commission meeting:

Agenda for the 10/24/12 meeting.

Margaret's report dated 10/24/12.

Minutes from the 9/26/12 and 10/10/12 meetings.

Order of Conditions for 24 Chickering Road (signed).

RDA file and Negative Determination for 63 R. Jones Road (signed).

RDA file and Negative Determination for 40 Point Eastalee Drive (signed).

NOI file and continuance form for 26 Laurel Lane (signed).

Continuance form for 22 Podunk Pike (signed).

Certificates of Compliance for 109 and 111 Wilson Ave., DEP file numbers 293-630 and 293-631 (signed).

File for 195 Charlton Road.

Two site sketches, a portion of 310 CMR 10.04, and a soil resource map submitted by Hull Forest Products for 195 Charlton Road.

Brochure for Dreamwell Stables submitted by Rachel Rogers, R.N.

Town of Spencer Right to Farm By-law submitted by James Laliberte.

Letter from Margaret Washburn to Cheryl and Rodney Maxwell re: 45 Point Eastalee Drive, dated 10/3/12.

Letter from Cheryl and Rodney Maxwell re: 45 Point Eastalee Drive, dated 10/15/12.

Enforcement Order for 175 Paxton Road (ratified).

Letter from MACC dated 10/8/12 re: new MACC dues schedule.

MACC Annual Calendar and Fall Conference 2012 announcement.

Invoice from MACC for fall conference attendees.

Notice of Hearing on Ticket from Commonwealth of MA Housing Court dated 10/18/12.  
Spencer Town News dated Fall 2012.