

Conservation Commission – Town of Spencer

Minutes



Conservation Commission Meeting
Wednesday, August 22, 2012 at 7:00 PM
Town Hall, McCourt Social Hall

The Meeting was opened at 7 p.m.

Commissioners Present: Ernie Grimes, Ram Moennsad, Warren Snow, Dana Reed,
Mary McLaughlin

Staff present: Margaret Washburn

Minutes Approved:

July 25, 2012 – *A motion to approve the minutes as amended (Moennsad/McLaughlin) passed 5/0.*

July 25, 2012, Executive Session – *A motion to approve the minutes (Snow/McLaughlin) passed 5/0.*

Signed:

Flexcon Industrial Drive, Certificate of Compliance: *A motion to issue the Certificate of Compliance (McLaughlin/Snow) passed 5/0.*

Richland Avenue, Certificate of Compliance – Attorney Damien Berthiaume said they were initially seeking a partial Certificate of Compliance but now would like a full Certificate of Compliance because all the work within the buffer zone has been completed. Jeff Howland said the only work associated with the buffer zone is about half of the existing detention basin that was constructed. There is an Operation and Maintenance plan in effect that can handle any maintenance. Mr. Moennsad read Mr. Howland's letter requesting the partial Certificate of Compliance. Mr. Moennsad asked why only a partial was requested. Attorney Berthiaume said at the time of the request, the plan of land cut out was not yet completed. The plan has recently been completed and approved by the Planning Board. There is no more work in the buffer. *A motion to issue a full Certificate of Compliance (McLaughlin/Snow) passed 5/0.*

7:15 p.m. Opened the Continuation of Public Hearing for Notice of Intent for Paul Huard

Property: 22 Longview Drive, Spencer, MA DEP#293-0772

At the request of the applicant, the hearing has been continued to September 12, 2012.

7:17 p.m. Opened the Public Hearing for Notice of Intent for William Klansek

Property: 96 Wilson Avenue, Spencer, MA DEP#293-0773

Jason Dubois, Engineer from Bertin Engineering, and William Klansek, property owner, were present. Mr. Dubois said there is currently an existing well that will remain in use. There was an existing septic tank which will be abandoned. Mr. Klansek is proposing to build a 26' x 28' raised house on a slab with a garage underneath. Mr. Dubois flagged eight wetland flags. Hay bales and silt fence will be installed. The property will be loamed and seeded when complete. Board of Health has approved the septic system.

Ms. Washburn did a site visit. She said wetland flag five is missing, the soil borings in the field near wetland flag six are not shown on the plan, the soil boring data on the flag outside the wetlands is different from the data shown on the plan. Mr. Grimes said he walked around the property and could not find wetland flag five either.

Mr. Klansek asked with that one flag missing, what variable it has on the outcome of this project affecting any wetland or any runoff into that wetland. Mr. Grimes said he cannot establish the wetland line. He needs to see the flag to determine if it is in the correct spot. Mr. Klansek stated he is curious whether or not where the house is going to be constructed will have a detrimental effect on the wetland as it exists. There was already a house in existence there. Mr. Grimes said he can't tell if there was a house there. He can only verify that there is disturbed soil. Ms. Washburn said there was a lot of disturbance within the buffer zone. Mr. Klansek explained that when he bought the property, it was a mess. Trees were uprooted and laying all over the property. The only way to clean the lot was to demolish the house and clean up the trees. When they were able to reach the back of the property, they found the wetland which is why Mr. Klansek is here tonight.

At the request of the applicant, the hearing has been continued to September 12, 2012.

7:35 p.m. Opened the Public Hearing for Notice of Intent for Joyce Tomlinson

Property: 40 Point Eastalee Drive, Spencer, MA DEP#293-0777

Jason Dubois, Bertin Engineering, said the Title 5 inspection failed. A new septic system is going to be installed. There are two trees that will have to be removed. Hay bales and silt fence will be installed around the work. A boom will be placed in the water if the equipment is within 40 feet of the water. Mr. Reed asked why the system failed Title 5. Mr. Dubois did not know why it failed.

A motion to close the public hearing (Moennsad/Reed) passed 5/0.

A motion to accept the plan as submitted (McLaughlin/Moennsad) passed 5/0, Order of Conditions to be issued.

7:42 p.m. Opened the Public Meeting for Request for Determination of Applicability for Mass Audubon Society

Property: 131 Greenville Street, Spencer, MA

Charlie Wyman submitted a slightly revised plan. Mass Audubon would like to get approval for three parts of this project:

- Construction of parking lot and orientation center for the public on Greenville Street
- Regrading and restoration of the meadow
- Restore the fields to the north. They have been invaded by invasive species.

Mr. Wyman said they found out late in the process about the Stormwater Bylaw. This project is considered a major project because of the amount of ground disturbance so they are subject to the bylaw. Mass Audubon is asking the Commission for a waiver from the application requirements for a major project.

Mr. Wyman said that Steve Tyler, U&F Director, raised good questions about the storm water mitigation at the parking lot. Mr. Wyman is not prepared to address all the questions and concerns. Mr. Wyman asked if the Commission would be willing to allow them to split the project so they can go ahead with the meadow restoration so seeding can be done before winter. Also, as the buildings are demolished there will be holes to fill. They would like to use the sand and gravel in the riding ring to fill the holes and restore the meadow.

The Planning Board had no objection to the design. The Board felt the bus pullover leaned toward a major site plan review with abutter notification. The hearing will be held September 18, 2012. Mr. Snow asked if any of the area is part of the Agricultural Preservation Restriction (APR). Mr. Wyman said no, the APR is all on the old Sibley Farm to the north. Mr. Reed asked what the soil ratio will be between before and after the project. Warren Monette said the cuts will equal the fill.

Joan Deely said that most of the herbiciding treatment will be upland. Their practice is to use the least amount of herbicide. It is either sprayed on the foliage or applied to large, cut stumps. For multiflora rose, they will use an herbicide called Garlon. Before the herbicide is applied, they will post signs 48 hours in advance.

Ms. Washburn wanted Mr. Wyman to clarify what this partial permit will cover. Mr. Wyman said it's essentially everything except the construction of the parking area, hard pack trails, bus pull over and orientation center.

Mr. Wyman said the one change to the plan is that the utility pole will not be removed. The bus turnaround will be a U-shaped turnaround. All the driveway permits will be pulled.

Jan Parke, President of Common Ground Land Trust, stated that CGLT has voted their approval for this project.

A motion to close the public meeting (Moennsad/Reed) passed 5/0.

A motion to re-open the Public Meeting (McLaughlin/Snow) passed 5/0.

This public meeting was continued but the work described below, Phase 1, is allowed:

- prepare for visitor access and passive recreation
- restore the existing horse pasture and riding rings to a naturally-sloped and vegetated meadow
- restore grassland habitat by controlling invasive shrubs and removing woody vegetation from stone walls.

A motion for a Negative Determination for Phase 1 which includes everything except parking area, hard pack trails, bus pullover and orientation center (McLaughlin/Snow) passed 5/0.

At the applicant's request, the meeting has been continued to September 12, 2012.

8:13 p.m. Opened the Public Meeting for Request for Determination of Applicability for Mike Audette

Property: 130 Wilson Street, Spencer, MA

Mr. Warren Monette said that a new driveway is going to be constructed, a garage will be constructed and a pool will be installed. There is an intermittent stream across Whittemore Cove Road that was not delineated. An inspection took place on 8/7/12. Hay bales were not staked and silt fence was not entrenched. Some silt had washed into Whittemore Cove Road. Mr. Audette was told to have Warren Monette stake the hay bales and entrench the silt fence. Ms. Washburn said that she inspected on 8/20/12 and the hay bales were staked and silt fence was entrenched. Mr. Audette said that he does not have a driveway permit yet but is in the process of obtaining one. Mr. Lee Jarvis recommended issuing a Determination with the condition that a driveway permit is obtained. Eventually all exposed slopes will be stabilized with vegetation or landscaping.

A motion to close the public meeting (Moennsad/Reed) passed 5/0.

A motion for a Negative Determination with the condition to follow the plan (Moennsad/Reed) passed 5/0.

8:23 p.m. Opened the Public Hearing for Notice of Intent for Thomas & Donna Flannery

Property: 17 Laurel Lane, Spencer, MA DEP#293-0774

Glenn Krevosky said retaining wall work and grading was done on the property. Mulch has been applied around the driveway. The retaining wall was built without filing with the Conservation Commission. This Notice of Intent filing is for work after the fact and work that will take place in the future which will be repaving the driveway. Grass is growing on the slope and there are also trees on the slope. Mr. Krevosky feels the slope is stabilized. The swale in front of the slope is not an issue.

A motion to close the public hearing (Snow/Moennsad) passed 5/0.

A motion to issue an Order of Conditions with Standard Conditions (Snow/McLaughlin) passed 5/0.

8:31 p.m. Opened the Public Meeting for Request for Determination of Applicability for Thomas Fancy

Property: 5 Hastings Road, Spencer, MA

Mr. Fancy said that two utility poles will be installed in the buffer zone to an intermittent stream. The Commission did a site visit on 8/7/12; they had no issues.

A motion to close the public meeting (Moennsad/McLaughlin) passed 5/0.

A motion for a Negative Determination (Reed/McLaughlin) passed 5/0.

8:34 p.m. Opened the Public Hearing for Notice of Intent for Joann McGinn

Property: 43 Oakland Drive, Spencer, MA DEP#293-0776

Ms. McLaughlin recused herself because she is an abutter. Richard Gobi said the septic tank repair is between the house and Sugden Reservoir. Mr. Gobi submitted the specifications on the fiberglass tank. Prior to start of the work, a retaining wall will be constructed. It will be 18 to 32 inches in height. Hay bales have been installed. The system has been approved by the Board of Health. The area outside the retaining wall will have a minimum change in grade. Some of the hedge on the side will have to be trimmed. The closest point of the system is 15' from the water. The retaining wall is 9' from the water. Material will be removed and carried out as excavated.

Tom Flannery, abutter, asked how they plan to get down there to do the work. Mr. Gobi said that they will move a shed and put it back. Mr. Flannery is not opposed to the work but the shed is on his property. He doesn't want to come home to a clear cut. He will lose privacy. He is also concerned because his D-Box and septic tank are very close to the edge. The hedge is on Mr. Flannery's land and he is ok with the trimming. He asked that the forsythias do not get cut. They form a privacy screen.

A motion to close the public hearing (Reed/Snow) passed 5/0.

A motion to issue an Order of Conditions with Conditions to follow the plan and trim only vegetation along the property line that needs to be trimmed (Snow/Reed) passed 5/0.

8:47 p.m. Opened the Public Hearing for Notice of Intent for Joseph Zalieckas

Property: 57 Oakland Drive, Spencer, MA DEP#293-0775

Ms. McLaughlin recused herself because she is an abutter. Mr. Gobi said this project is relatively similar to 43 Oakland Drive. Hay bales and silt fence will be installed around the site. The existing retaining wall is slightly above grade level which forms a barrier for some of the work. There are no problems with access to get materials in and out of there. The front of the retaining wall is 15' from the water. The septic system itself is 22' from the water. The Board of Health has approved the system.

*A motion to close the public hearing (Moennsad/Reed) passed 5/0.
A motion to issue an Order of Conditions with Standard Conditions (Reed/Moennsad) passed 5/0.*

8:56 p.m. Opened the Public Hearing for Notice of Intent for Spencer Housing Authority

Property: Salem Street, Spencer, MA DEP#293-0778

Courtney Rheault from Graves Engineering presented the project to construct full reclamation of the pavement. The existing pavement will be milled up and blended in with the gravel base beneath it. Some of the material will be removed. Then they will pave over it. The wetlands were flagged by EcoTec. The closest point of work is 1 ½ feet to the wetlands. There is a drainage channel from an intermittent stream behind the building. They will stockpile material outside the buffer zone. Filter socks for the catch basins are shown on the plans. Ms. Washburn asked that when the erosion controls are installed to call for an inspection. Mr. Grimes said the conditions are standard and to follow the plan.

*A motion to close the public hearing (Snow/Moennsad) passed 5/0.
A motion to issue an Order of Conditions with Standard Conditions (McLaughlin/Reed) passed 5/0.*

8:58 p.m. Opened the Public Meeting for Request for Determination of Applicability for Craig Hadley

Property: 62 Smithville Road, Spencer, MA

Ms. Washburn said the project is to do foundation work under a portion of an old house and to demolish a shed in the buffer zone to an intermittent stream. An inspection took place on 8/21/12. The members had no issues. Mr. Hadley submitted a revised sketch. He will move most of the fill to the property line wall to the east which is far out of the buffer zone. Mr. Grimes told Mr. Hadley to call Ms. Washburn for an ESC inspection before he starts to dig.

*A motion to close the public meeting (Moennsad/McLaughlin) passed 5/0.
A motion for a Negative Determination (Moennsad/Snow) passed 5/0.*

Other Business:

Extension for Lot 1, Greenville Street: This property is covered under the Legislative Extension Act. The permit is valid until 2016.

70 Browning Pond Road: William Toupin, property owner, and David Schnare, neighbor, were present. Mr. Toupin said the property was purchased 62 years ago. There has been a beach there all these years. Mr. Toupin has been maintaining the beach. He maintains it for his kids, grand and great-grand kids. He has sand delivered periodically. Ms. Washburn said she received a letter on 8/14/12 from NHESP stating that the mapping for the subject property is for a species of special concern, a fish called the Bridle Shiner. NHESP said they would support the Commission's Enforcement Order to have the sand

that got into the lake removed. Mr. Grimes told Mr. Toupin that the sand he is putting on the beach is going into the lake which is filling of a water body. Mr. Toupin needs to install a vegetated barrier so wave action doesn't take the sand away.

Ginny Scarlet, abutter, said she bought her house from Mr. Toupin's brother. At the time she bought it, there was a beach on her property. There is no longer a beach there. She had planted a band of vegetation along the water line. That prevented the sand above from flowing into the lake. She went on to say that there are millions of people that do not know about the Wetland Protection Act. She suggested that Mr. Toupin sit down and think about how much beach he still needs. Some of it might be natural beach. Over 10 years, he can re-vegetate the strip, if he re-vegetates just above the normal high water. Ms. Scarlet said there is no reason why the volley ball court can't remain there. Mr. Toupin should come back to the Commission with a plan. Ms. Scarlet told Mr. Toupin she is the one who complained because she has seen the sand build up down the river over time.

Mr. Moennsad asked who decides where the timbers go. Mr. Grimes said Mr. Toupin would submit a plan. The high water mark can be defined by a surveyor. The Commission would like to do a site visit. Ms. Scarlet said for the record, she believes strongly in personal property rights. She did not complain while she worked for the town. She went on to say it is a great pond. The pond and land under it is owned by the Commonwealth.

The Commission will do a site visit on Sunday, September 9th at 9 a.m. Mr. Toupin will be put on the September 12th agenda to discuss the next step.

175 Paxton Road & 183 Paxton Road: Steven Cutler and Tim Masterson were present. Mr. Cutler said a wetland specialist has been scheduled to come out to the properties. Her name is Julia Fiske, Fiske Environmental, out of Shelburne Falls, Mass. She told Mr. Cutler she would be out to their properties as soon as she can.

Mr. Snow read the site inspection report. The Commission told Mr. Cutler and Mr. Masterson to file their Notices of Intent by September 19th to be on the October 10th meeting agenda.

45 Point Eastalee Drive: Rod Maxwell, property owner, had put some sand on his property around the middle of June for his daughter. He has been on the lake since 1999. His aunt and uncle lived next door and always put sand down for him when he was a child. Mr. Maxwell has removed some of the sand. Mr. Grimes said Mr. Maxwell needs some sort of containment so the sand doesn't wash into the water. Mr. Moennsad asked if a sandbox is allowable. Mr. Grimes said of course, if the sand is contained. A site walk has been scheduled for Sunday, September 9th at 9:30 a.m. Mr. Maxwell will be placed on the September 12th agenda to discuss the next step.

21 Shore Drive: Ms. Washburn received a complaint about silt running into Thompson Pond. Ms. Washburn did an inspection and took photos on July 31st. Lots of silt obviously ran into a pipe and into the pond from work done on the steep, long driveway. The work was done just slightly over 100 feet from Thompson Pond. A NOV was issued on August 8th telling Mr. Curtis to file an RDA. Mr. Curtis came into the office on August 20th. He told Ms. Washburn he was willing to file soon.

Mr. Curtis said the whole road has an issue with silt. Mr. Curtis wants to make his property right and then try to work on the street with the abutters.

Ms. Washburn asked if Mr. Curtis could install a berm and make a ditch with rocks in it. Mr. Curtis said yes he can do that. Ms. Washburn told Mr. Curtis that the Commission appreciates him putting his time and effort into this project. The work that Mr. Curtis will do is on his property and someone else's property. He must submit along with the NOI a note stating this person gives permission to Mr. Curtis to do the work.

The Commission accepted the RDA that Mr. Curtis submitted. His hearing will be on the September 26, 2012 agenda.

New England Automotive Gateway: Ms. Washburn received a Request for a Certificate of Compliance on July 19th. Dan Feeney of Beals and Thomas submitted a letter stating that the project as built complies with the plans. Ms. Washburn responded by email asking which plans he meant. Ms. Washburn told him her impression is the same as it was when she last met with him. They must file a NOI retroactively for all the work that has been done there that was not shown on the plans referenced in the Order of Conditions issued on April 17, 2003. Mr. Feeney sent Ms. Washburn an email stating he was unable to find plans referenced in the 4/17/03 OOC but did find a plan dated July 28, 2003. These plans were used to compare to the as-built in lieu of the plans referenced in the OOC.

Ms. Washburn said no plans dated July 28, 2003 were referenced in the OOC issued on April 17, 2003. The dates of plans referenced in the Order are February 27, 2003 and March 10, 2003. No plans dated April 17, 2003 are filed in the ODIS office. None of those plans show the existing conditions, as built.

A Notice of Intent was received on August 16, 2012 for an after-the-fact filing for the "paved area", storm water facilities and fence the Commission inspected on their last visit to the site, as well as the construction of a truck maintenance building, parking within the "paved area", and a septic system.

Ms. Washburn said at her last meeting with Mr. Feeney, she explained that in order to obtain a Certificate of Compliance for the 4/17/03 Order, they needed to file an NOI for all work done beyond the scope of that Order. They have combined previous work along with existing conditions and proposed work in the latest NOI. Ms. Washburn said she thinks they should separate everything out. Mr. Grimes said they have to. They cannot start a new project until the old project is closed out. Mr. Grimes told Ms. Washburn to

return the Notice of Intent with a letter stating that the application was found to be invalid and that a NOI must be submitted for old work and a NOI for new work.

After much discussion, the Commission decided to issue a Certificate of Compliance on a revised as built along with an attachment stating the following:

- The statute of limitations has run out. The work did not and does not comply with the Order of Conditions, therefore, the Conservation Commission cannot enforce. The Conservation Commission accepts the attached as-built plan which must be recorded as an accurate representation of the condition of the property as of the date of this certificate. A new Notice of Intent must be filed for any further work.

The plan that is to be recorded will be signed by the Conservation Commission. Ms. Washburn will tell Mr. Feeny that two sets of plans must be submitted. Both plans will be signed by the Commission. One will be kept in the office and the other must be recorded at the Registry of Deeds. Mr. Feeny then must submit a copy of the recorded book and page number.

The Commission will do a site visit on Tuesday, August 28th at 6 p.m. Ms. Washburn will contact Mr. Feeny and tell him the Commission is going to do a site visit.

129 Wilson Avenue: Ms. Washburn said landscaping timbers and fill were removed from between Stiles Reservoir and the house and were dumped on the edge of the perennial stream across the road. Ms. Washburn issued an Enforcement Order ordering them to have the wetlands delineated and have a restoration plan prepared by a qualified professional. The restoration plan is due on August 22, 2012. Ms. Paquette was told to be at tonight's meeting and she did not show. Ms. Washburn will issue a \$100 ticket. Ms. Washburn will tell Ms. Paquette that she must attend the September 12th meeting. *A motion to ratify the Enforcement Order (Snow/McLaughlin) passed 5/0.*

2 Sherwood Drive: An inspection was done on 8/14/12. Mr. Grimes told Mr. Olson to stop driving through the wetlands and to only mow the cart path through the wetland once per year. No other issues at this time. *A motion to issue a Certificate of Compliance (Moennsad/McLaughlin) passed 5/0.*

16 Debbie Drive: Ms. Washburn inspected. There were no issues. *A motion to issue a Certificate of Compliance (Reed/Snow) passed 5/0.*

30 Bond Street: A building permit for an in-ground pool was issued in July. Fill was pushed into the wetlands. While the fill was being pushed into the wetlands, the pool company drove over the town water line to the house. Ms. Washburn had to issue an Emergency Certification to the water department for them to work in the wetlands to fix the water line. In the meantime, Ms. Washburn met with the owner. An Enforcement Order will be issued by Ms. Washburn to take the fill out without re-rupturing the water line. The owner will have until September 26th. The Commission will ratify at the next meeting. Ms. Washburn will also write the pool company a letter.

Site Visits: 62 Cranberry Meadow Road & 49 Jolicoeur Avenue on August 28th.
10 Cooney Road & 61 Lake Avenue on September 4th.
The Commission will meet at the Town Hall at 5:30 p.m. on both nights.

New Commission member: Ms. Margaret Emerson would like to volunteer to be a Conservation Commission member. She is a resident in town. Ms. Washburn will tell Adam Gaudette, Town Administrator, the Commission recommends Ms. Emerson for appointment by the Selectmen.

New Applications: 62 Cranberry Meadow Road, RDA
49 Jolicoeur Avenue, RDA
Podunk (Route 49), NOI

A motion to adjourn the meeting at 10:53 p.m. (Snow/Moennsad) passed 5/0.

Respectfully submitted by:

Lisa Daoust, Senior Clerk
Development & Inspectional Services

Documents reviewed at the 8/22/12 Spencer Conservation Commission meeting:

Agenda for the 8/22/12 meeting.
Margaret's report dated 8/22/12.
Minutes from the 7/25/12 Spencer Conservation Commission regular meeting and executive session meetings.
Extension Permit for Orders of Conditions for Lot 1, Greenville Street (not signed).
Certificate of Compliance for Richland Avenue.
Certificate of Compliance for Flexcon new dry lab building.
Certificate of Compliance for 16 Debbie Drive.
Certificate of Compliance for 2 Sherwood Drive.
NOV, photographs, RDA and inspection report for 21 Shore Drive.
Inspection report, photographs and Emergency Certificate for Spencer Water Department to do a water line repair at 30 Bond Street.
Volunteer form from prospective member, Margaret Emerson.
File for 70 Browning Pond Road.
File for 45 Point Eastalee Drive.
File for 173 Paxton Road.
File for 183 Paxton Road.
File for 175 Paxton Road.
File for 129 Wilson Avenue.
New England Automotive Gateway Request for Certificate of Compliance (not signed).

File and Negative Determination for 62 Smithville Road.
NOI file for Spencer Housing Authority repaving project, Salem Street.
NOI file for 57 Oakland Drive.
NOI file for 43 Oakland Drive.
RDA file for 5 Hastings Road.
NOI file for 17 Laurel Lane.
RDA file and determination for 130 Wilson Street.
NOI file for 96 Wilson Ave.
NOI file for 40 Point Eastalee Drive.
RDA file and partial determination for 131 Greenville Street.