

# Conservation Commission – Town of Spencer

## *Minutes*



Conservation Commission Meeting  
Wednesday, March 25, 2009 at 7:00 PM  
Conference Room A  
Memorial Town Hall

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The Meeting was opened at 7:08 p.m.

Commissioners Present: Ernie Grimes (Chairman), Judy Lochner, Mary McLaughlin, Steve Manuel

Commissioners Absent: Karen Rubino, Warren Snow

Staff present: Ginny Scarlet & Lisa Daoust

Mr. Paul Guida, Town Administrator, met with the Commission to discuss two issues. He asked the Commission to vote to authorize spending from the Wetlands fund to fund \$10,000 for the Wetland/Soil Specialist position in FY 2010. Ms. Lochner commented that is what the money is there for. *A motion to authorize the request of a transfer of funds to a necessary account to fund the Wetland/Soil Specialist position (Lochner/Manuel) passed 4/0.*

The second issue was the emergency work done on Pine Acres. Mr. Guida said a specialist needs to be hired to get some hydraulic studies of the road and culvert. Mr. Guida believes some of the work can be done by hand and the property owners should do it. Mr. Grimes said the property owners will not. Mr. Guida said if there is no Lake Association and the deeds are unclear, then the two direct abutters will have most of the problems, which is not fair.

Mr. Guida said the Town must figure out where to go from here and how the private infrastructure will get fixed. Ms. Lochner thought the town hired someone to replace the section of the road. Mr. Guida said no, only the pipe was replaced. The road was not touched. The town can not do the work. If the town filed a Notice of Intent and did the proper engineering work, it would be bad precedent, particularly in a time of scarce resources. That should be done by private property owners.

Ms. Scarlet has done a lot of research to find out who has responsibility for work on the culvert a month ago. Ms. Scarlet has submitted paperwork to Atty. Stanley Weinberg, Town Council, asking his opinion of who is responsible. Atty. Weinberg has not replied

yet. It is estimated to be around \$8,000 to get the title work done. Mr. Guida has to hire another attorney. Mr. Guida asked if Ms. Scarlet knew any other attorneys that would research title and give guidance on this matter. Ms. Scarlet said she knew Gregor MacGregor. He was a president of MACC and has been an active Environmental Attorney for years. Ms. Scarlet would prefer to find someone near Worcester. She will call MACC and find out who is working in Spencer's area.

Mr. Guida and Ms. Scarlet will put together a proposal for the Commission to review before any money is spent. Ms. Lochner asked how much money was in the Commission's Wetland Fund account. Mr. Guida said approximately \$71,000. Ms. Scarlet said the money can not be spent on land acquisition. *A motion was made to approve the use of up to \$8,000 from the Wetland Fund for legal search for the project and the Commission must see the project proposal (Manuel/McLaughlin) passed 4/0.*

Mr. Guida said that he wants the Commission to know that the Board of Selectmen is here to help in any way.

**Jennifer Gensel, DEP Circuit Rider:** Ms. Scarlet asked Ms. Gensel to come to the Commission to discuss enforcement and riverfront issues. Ms. Scarlet said there are a couple cases that the Commission is struggling with. Ms. Gensel said that she is not allowed to comment on any active cases, therefore, Ms. Scarlet can not identify the case. The discussion must be by type of case.

Ms. Gensel said allowing the Selectmen get a legal consultant on who owns the property for Pine Acres is absolutely the right step. They will need to know who caused the problem and whose property it is on. Ms. Scarlet asked if you can go after two parties. Ms. Gensel said absolutely, however, it is ultimately the property owner's responsibility. If the contractor does something and the owner is not aware, DEP will go after the contractor.

Ms. Gensel said during a hearing, she recommends that the Commission have a copy of the regulations on hand. If an issue should arise, the Commission will have the regulations there to look at.

Ms. Scarlet explained a scenario to Ms. Gensel. There are two subdivisions with the same name, I and II. The first one has a superseding Order of Conditions from DEP. The Order has expired with no Certificate of Compliance. The wetlands replication required by the superseding Order was never done. The Order is for the roadway only. The road is complete, houses are built and the lots have been sold. Phase II has an Order of Conditions and is under construction. The Commission currently has enforcement issues with Phase II and the owner has asked for an Extension of the Order of Conditions. Ms. Scarlet's question is at this late stage, what can be done now? Ms. Gensel said in the future, you can make the applicant do the wetland replication prior to building; that is best. Ms. Gensel said for a current case the Commission does not have to issue an extension. An Extension can be issued for up to three years with conditions. An Extension must be recorded at the Registry of Deeds.

Ms. Scarlet said when the Order of Conditions was written for part I, the original owners' map and parcel and book and page was written on the Order. Since then, the development company has become owner. When the Extension is issued, it must have the new book and page numbers of the appropriate owner. Ms. Gensel said the Extension can be issued to the applicant. Mr. Grimes said that this individual has a company name but when he files the paperwork with the Commission, he files under his personal name; not the company name the land is deeded to. Therefore, when recorded at the registry, it does not link up to the land that is owned under the company name. Ms. Gensel said to issue the Extension however the Commission sees fit.

Ms. Gensel said when an Enforcement Order is issued; a Notice of Intent does not always have to be required by the Enforcement Order. If there is something that the Commission wants fixed in a timely manner, having an Order of Conditions gives the person three years to fix it and an abutter can appeal it. The Commission should issue an Enforcement Order with a timeline and a remediation. Enforcement Orders should be copied and sent to DEP.

Ms. Scarlet said the second scenario is a house built about 100 feet from a perennial stream. There is a hand dug well near the house and lots of ground water in the basement frequently. The contractor for the homeowner wants to file a proposal to put an overflow on the old hand dug well. He wants to use it to drain down the ground water by using the well. Ms. Scarlet is not sure if draining the well will work to dry out the basement. Ms. Scarlet asked Ms. Gensel if the contractor has to submit engineered plans to the Commission or can he do a sketch himself. Ms. Gensel said the Commission can ask for whatever they feel is necessary. She does, however, try to talk Commissions out of getting engineered plans for small projects. Ms. Gensel would recommend a trench drain but she also said the Commission should never tell someone how work should be designed. Ms. Gensel suggested installing a perforated pipe and having the pipe drain right up to the wall abutting the brook.

Another case that the Commission had to deal with, which is now closed, was 13 acres with a perennial stream going through it. The land used to be ditched to drain into the perennial stream. Maintenance stopped on the ditch about 30 years ago. It has gradually plugged up and a whole basin has become a wetland. There is an old house just a few feet from the edge of the stream. A developer buys the old house and wants to renovate the house. There are huge pine trees that the developer would like to cut down to let some light in. The developer also wants to install a septic system that has been approved by the Board of Health. The system is within 100 feet of the stream. Ms. Gensel said the developer is allowed to install the system within 50 feet of the wetland. Since the house is existing, the septic system can be installed within 25 feet of the wetland but would have to be a fancy (high tech) system. The developer would also need to get a variance from DEP. Ms. Gensel said the contractor should have the driveway sloped away from the stream so the runoff will infiltrate into the ground. Ms. Gensel said she thinks there

would not be a significant amount of warming to the stream if the trees are cut down. Also tell the contractor not to de-stump the trees.

Ms. Lochner asked if the Commission can issue a generic Order of Conditions for road and culvert work for the Highway Department. Ms. Gensel said yes a generic Order can be issued for the whole town. Ms. Gensel said the only problem is with a Notice of Intent you have to notify all abutters, but how could the town notify every person in town. Ms. Gensel will investigate and get back to Ms. Scarlet.

**8:22 p.m. Opened the Continuation of Public Hearing for Notice of Intent for Country Spirits Corp.**

**Property: 10 West Main Street, Spencer, MA DEP#293-0724**

Neither Jason Dubois, Engineer, nor the owner of Country Spirits were present for this hearing. Lisa called Mr. Dubois and asked if he wanted a continuance to the next meeting. *At the applicant's request, the hearing has been continued to April 8, 2009.*

**Minutes Approved:**

March 11, 2009 – *A motion to approve the minutes (Lochner/Manuel) passed 4/0.*

**Signed & Notarized:**

87 Jolicoeur Ave., Certificate of Compliance – *A motion to issue a Certificate of Compliance (McLaughlin/Manuel) passed 4/0.*

Lots 2 & 3, Wilson Street – 3 year Extension

**Other Business:**

**7 Dufault Road:** A contractor sent in a letter to the Commission asking if he had to submit engineered plans for construction of a drain. Ms. Scarlet took photos of the property to show the Commission. Ms. Scarlet informed the contractor that engineered plans do not have to be submitted; a hand drawn plan is fine. Ms. Scarlet told the contractor that it was suggested by the DEP Circuit Rider to keep the water under ground by installing a perforated pipe. A Notice of Intent must be submitted. Ms. Scarlet will help the contractor fill out the paperwork if requested.

**Deer Run, Phase II:** Ms. Scarlet was there on March 19<sup>th</sup>. Mr. Grimes and Ms. Lochner were there on March 26<sup>th</sup>. There is road sand accumulating in the road and 4 catch basins covered with asphalt. There are only two catch basins accepting water. When there is water in the road, when the snow melted for example, the water level in the road goes up and goes over the top of the berm. The lowest point in the road is right at the stream crossing. There is silt in the stream. When the stream was wider than its bank, you could see the silt on top of the leaves when the water went down. The bankings along the side of the road are unvegetated and exposed. Ms. Scarlet liked Ms. Lochners idea of a short term extension with a letter stating the Commission will extend further if the Enforcement Order conditions are met. One of the things Ms. Scarlet wants to require in the extension is that a Notice of Intent be submitted for the wetland replication and the wetland replication is done as the first step. The original Order of Conditions does not state that

the wetland replication has to be done first. The project is half way through construction and the replication has not been started. Ms. Lochner asked Ms. Scarlet if she had contacted DEP regarding Mr. Harrington not following the Superseding Order of Conditions for Deer Run I. Ms. Scarlet did contact them and DEP said they would look into it. Ms. Lochner asked if Ms. Scarlet could contact DEP again and ask them for a written decision. Ms. Scarlet said she will.

Mr. Grimes said that Mr. Harrington has to control the water in the road. The catch basins need to be opened. Ms. Scarlet said on one side of the road is a thick rock berm that filters silt from road runoff. If Mr. Harrington built a rock berm on the side that is leaking and opened the catch basins, that would be improved protection. Mr. Grimes said that would help. Ms. Scarlet said the Commission can give a 6 month extension and that there will not be another extension issued unless the Enforcement Order is completed and closed according to the deadlines in the modified Enforcement Order.

The following conditions will be written into a modified Enforcement Order with timelines to go with the 6 month extension:

- Open catch basins and ESC up the road from the stream crossing
- Stabilize and plant grass on the roadside slopes
- Improve erosion controls by the wetlands
- Get the replication excavated and planted by the end of the 6 month extension
- Sweep the streets and clean catch basins

Ms. Scarlet said she will check with DEP to see if the Commission can require the Enforcement Order be recorded at the Registry of Deeds. That way there will be a record for anybody else who wants to buy the property. Ms. Scarlet will have the Enforcement Order, Extension and cover letter drafted for the next meeting.

**75 Maple Street:** There appear to be pollutants in the wetland replication basin seeping in from groundwater; possibly petroleum of some sort. Ms. Scarlet spoke with the homeowner, Tracy Ouellette, and told her what she had found. Glenn Krevosky, the Ouellettes' consultant, is going to take samples to be analyzed for hydrocarbons, iron and manganese. He thinks the problem is buried organic debris, iron and manganese. Ms. Scarlet observed that the slick did not break up into panes; it held together like oil. Ms. Scarlet recommended that the Commission wait for Mr. Krevosky to come back with the analysis.

**Lot 1, 9 Terkanian Drive:** A Certificate of Compliance was requested. Ms. Scarlet did a site visit. She said they have a long driveway in riverfront area that's not shown on the approved plan. The house is outside of riverfront area. The grading for the septic system intrudes into the riverfront area. There is no grass over the septic system, the grading is steep and there are no erosion controls. There has been no impact that has washed down into the riverfront. The slope below the new septic system is thickly vegetated and is holding on its own. However, the driveway comes downhill around the edge of the septic and turns parallel to said river. The drainage for the driveway is on its up hill side. A catch basin was installed but not completed. A pipe under the driveway was installed

with an outfall 60 feet from the river. None of the drainage, catch basin or piping is on the plan. That work is additional work that was not filed for, therefore, not covered in the current Order. Ms. Lochner said they need to file a Notice of Intent for that additional work. The Order expired on March 20, 2009. The request for Certificate of Compliance was submitted on March 12, 2009. It was not submitted 30 days prior to expiring, therefore, another Notice of Intent must be filed for work not completed.

**47 Chickering Road:** A request was submitted for a three year extension. Ms. Scarlet said that the Order expired long ago and they can not have an extension. The wetland replication was never planted. Mr. Grimes said to issue an Enforcement Order with a deadline of when the whole project needs to be complete.

**Luther Hill Park improvements:** Ms. Scarlet said the Parks and Recreation Commission will need to submit a Notice of Intent for improvements to the park. There will be no fee because it will be a town filing.

**Pine Acres:** Ms. Scarlet took pictures for the Commission to look at. Ms. Scarlet believes the fill around the culvert is collapsing. The bridge is going to collapse one of these days. Ms. Scarlet has concerns whether the new pipe that was installed is strong enough to hold the bridge. If oil trucks or fire trucks have to pass over the bridge, how long will the bridge hold? Ms. Scarlet said the Commission needs to start putting some pressure on the people that live on the road. The reality of that bridge holding up is not good.

**Flood areas:** FEMA is doing an update of the flood maps. The maps in use were created in 1995. In Spencer, those shown are largely theoretical. FEMA is asking the town for information about “observed flood hazard areas” which they define as areas of significant flooding, new construction, bridge and road work and dam removal. Spencer hasn’t kept records of where flooding has occurred. Ms. Scarlet asked the Commission what areas they think are prone to flooding. Ms. McLaughlin said the section near the Audubon land on Greenville Street floods. Ms. Scarlet said another flood area is where GH Wilson Road meets Chickering Road. Ms. Scarlet said that a big project that needs to be put on the map is New England Gateway. Wire Village School and Knox Trail School needs to be added to the map.

**221 North Spencer Road:** A request for a Certificate of Compliance was submitted. The Order required permanent markers be installed along the wetland. Mr. Faucher installed lightweight green metal fence posts with cardboard signs saying “do not disturb”. Ms. Scarlet told the property owner to write a letter to Mr. Faucher stating that he had to install better permanent markers. Ms. Scarlet said she will re-inspect at the end of May.

**Pine Cliff Condos:** Ms. Scarlet requested that the building location and the areas that will be filled be staked so the Commission can look at it relative to the wetlands and see how they think it will look. Ms. Scarlet also requested one more rendition of the plan. The erosion controls are on one sheet and grading and topography on a different sheet. Ms. Scarlet asked the engineer to put them together.

**Site Visits:** The Commission will do a site visit on Sunday, April 4<sup>th</sup> at 8:45 a.m. Meet at the Town Hall.

New Applications: Greenville Street, Pine Cliff Condos, NOI

*A motion to adjourn the meeting at 9:45 p.m. (Lochner/Manuel) passed 4/0.*

Respectfully submitted by:

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Lisa Daoust, Clerk  
Development & Inspectional Services