

MINUTES

CALL TO ORDER

Meeting called to order by Mr. Gerber at 7:05 p.m.

ATTENDANCE

Members: Gerber, Robb, Allen, Baker (arrive 7:16), Kaplan, Stein

Staff: Ziomek, Lass

Presenters: Harb, Parasiewicz, Marcus, Tucker

CONSERVATION COMMISSION'S ACTION

Special Municipal Employee Status

Otto Stein reported that the Select Board voted unanimously to approve Special Municipal Employee (SME) status for the Conservation Commission for FY08. The Commission will be required to reapply for SME status next year (prior to June 30, 2008).

Approve Minutes

VOTED unanimously to approve the Conservation Commission minutes of April 11, 2007, as amended.

Fort River Swimming Hole at Stanley/Kiwanis Park

Ryan Harb presented his proposed improvements to the Fort River at Stanley Park:

- Removal of invasive species adjacent to the swimming hole bridge
- Improve parking lot by filling the holes and covering the area with pebbles/gravel
- Add trashcan beside the bridge
- Make necessary changes to the trail leading to the Fort River at Kiwanis Park

The Commission was supportive of the idea of improving this area for swimming, but since there were several issues to resolve (liability, contamination upstream & maintenance), Dave Ziomek recommended that this site be added to the Conservation Commission's site visit list to walk the area with Mr. Harb, Stephanie Ciccarello, and members of the Conservation Commission. After the site visit, Mr. Harb will be required to submit a Request for Determination to the Conservation Commission.

Fort River Project – Rushing Rivers Institute

Piotr Parasiewicz, director of the Rushing Rivers Institute, presented a proposal to study a 1-2 mile stretch of the Fort River. Research would entail positioning several cameras in the river to study river geomorphology, hydraulics, stream ecology, fisheries, etc. There were issues raised about the potential impact to the stream and the bank, due to compaction by educational groups & researchers and what the public component of this project will be in the future. Dave Ziomek noted that Natural Heritage and U.S. Fish and Wildlife approval will be needed and a Request for Determination filed, before the Conservation Commission can consider approval.

PERMITS/CERTIFICATES

Public Hearing – NOI 07-1073: Paul Cole, West Street (cont'd from 3/28/07)

Paul Cole for construction of an eight lot cluster subdivision in the buffer zone of bordering vegetated wetlands located on West Street (Map 25B, parcel 29).

- Opened the public hearing at 7:27 p.m.

John Gerber noted that the applicant is still having difficulty with the post-peak flow rates and will need to continue the hearing until that issue has been corrected.

VOTED unanimously to continue the public hearing to May 9, 2007 at 8:15 p.m..

Public Hearing – RFD 07-1074 – The Evelyn Rackcliffe Trust located on Pine Street (Map 6A, parcel 20).

For determination of the wetland resource boundaries.

- Opened the public hearing at 7:44 p.m.

VOTED unanimously, to continue the public hearing to May 9, 2007 at 7:15 p.m.

Public Hearing – NOI 06-1042: Richard Brazeau for the Department of Conservation and Recreation (cont'd from 11/08/06)

Repair of the existing Rail Trail embankment as well as permanent water level reduction in a land under water body resource area on the Norwottuck Rail Trail off Station Road (Map 16B, parcel 5).

- Opened the public hearing at 7:54 p.m.

Dave Ziomek gave an update on repairing the damage to the Rail Trail. Natural Heritage has required a habitat assessment be done by DCR to determine if the four-toed salamander inhabit this area. No work likely until September 1 – October 1.

VOTED unanimously, to continue the public hearing to May 23, 2007 at 7:30 p.m.

Certificate of Compliance Cheryl Phillips – 390 Potwine Lane

No Action

Amended Order of Conditions – Berkshire Design

No Action

Deed Restriction & Registry Exhibit Plan – Andy George

No Action

Special Conditions - NOI 05-1009: Levi-Nielsen Company, South East Street

The Levi Nielsen Company for construction of a 24 unit residential development in the buffer zone of bordering vegetated wetlands located on South East Street (Map 17D, 18C & 21A, parcels 21 & 24, 80 & 62).

Mickey Marcus attended the meeting on behalf of the applicant, Scott Nielsen, to answer questions put forth by the Conservation Commission. Mr. Marcus indicated that if the Conservation Commission voted setbacks that were different than the plan, a revised set of plans would have to be submitted. The Commission discussed issues regarding the erosion control and stormwater management plan and ways to assure that the systems are monitored and working as designed and that the Commission receives notification on a yearly basis. There was also discussion regarding protecting wetland dependent species during the construction and that a qualified biologist should be called in to confirm that the area has been cleared of these species prior to work beginning. The Commission also felt it prudent to have an on-site supervisor walk the perimeter of the limit of work on a daily basis and remove wetland dependent species outside the construction site. The Commission also indicated a need to have the Homeowner's Association provide documentation regarding the use of lawn care products to the Commission on an annual basis.

VOTED, Robb, Baker, Kaplan, Manire-Gatti, and Stein voted "Aye", Gerber voted "No", Allen recused himself, to issue an Order of Conditions with Special Conditions as follows:

Order of Conditions - Special Conditions – NOI05-1009

Issued to: Scott Nielsen

For: Strawberry Fields Housing Development located on South East Street

Date of Issuance: May 2, 2007

This Order of Conditions pertains to the construction of a 24 unit residential development. There is a certified vernal pool (#3985) immediately adjacent to the project site. Since it is well documented that vernal pools provide critical breeding habitat for species such as the Jefferson salamander (*Ambystoma jeffersonianum*), blue-spotted salamander (*A. laterale*), marbled salamander (*A. opacum*), spotted salamander (*A. maculatum*), and wood frog (*Rana sylvatica*), as well as feeding and occasional breeding habitat for the gray tree frog (*Hyla versicolor*), spring peeper (*H. crucifer*), American toad (*Bufo americanus*) and four-toed salamander (*Hemidactylium scutatum*); and it has been further established that wetland dependent species often may be found well beyond the vernal pool itself, it is the judgment of the Commission that any work done within 100 ft. of the mean annual boundary of said wetland is likely to result in impairment of the capacity of the protected resource to provide adequate wildlife habitat.

The Commission recognizes that this presumption is rebuttable and may be overcome upon a clear showing that the seasonal wetland does not play a role in the protection of wildlife habitat. However, the Commission believes there exists reasonable doubt that adequate protection of the habitat function of the wetland resource can be provided both during construction activity and in the long-term due to the density of this particular development without at least 100 ft. of a permanent no disturbance area (see attachment B for reference documentation).

A. GENERAL CONDITIONS:

1. A member of the Conservation Commission or its agent may enter and inspect the property and the activity that are the subjects of this Order at all reasonable times, with or without probable cause or prior notice, and until a Certificate of Compliance is issued, for the limited purpose of evaluating compliance with this Order (and Town Bylaw and Bylaw Regulations).
2. The term "Applicant" as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and this Order of Conditions. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance.
3. The applicant shall provide a copy of this Order to the person or persons supervising the activity that is the subject of this Order, and will be responsible for ensuring that all persons performing the permitted activity are fully aware of the terms and conditions of this Order.
4. Any person performing work on the activity that is the subject of this Order is individually responsible for understanding and complying with the requirements of this Order, the Act, 310 CMR 10.00 (and Town Wetland Bylaw and Wetland Bylaw Regulations).
5. A permanent 100 foot no-disturbance area shall be maintained from the delineated boundary of the vernal pool.
6. All construction materials, earth stockpiles, landscaping materials, slurry pits, waste products, refuse, debris, stumps, slash, or excavate may only be stockpiled or collected in areas as shown and labeled on the approved plan(s), or if no such areas are shown must be placed or stored outside all resource areas and associated buffer zones under cover and surrounded by a silt barrier to prevent contact with rain water.
7. All waste products, grubbed stumps, slash, construction materials, etc. shall be deposited at least 100 feet from

wetland resource areas and 200 feet from rivers, unless specified in this Order.

8. No fuel, oil, or other pollutants shall be stored in any resource area or the buffer zone thereto, unless specified in this Order.
9. No trash dumpsters will be allowed within 100 feet of areas subject to protection under the Massachusetts Wetlands Protection Act or the Town's Bylaw.

B. PRE-CONSTRUCTION:

1. Before any site work begins, the applicant shall record the Order of Conditions at the Hampshire County Registry Deeds within the chain of title for this property and submit proof of recording to the Commission.
2. No activity may proceed until the applicant has received all other permits required by law, including but not limited to any permit required by Health Inspections, Planning Board, Zoning Board of Appeals, Department of Environmental Protection, and/or the Army Corps of Engineers.
3. Before any work begins on the site, **a performance deposit of \$5,000** shall be submitted to the Commission. The deposit will be returned with any accumulated interest upon completion of the project to the satisfaction of the Commission, together with the issuance of a Certificate of Compliance.
4. Prior to the Pre-construction Meeting and any work commencing on the site, the applicant shall display the DEP file number for this Order on a sign with minimum dimensions of two feet by two feet at a location clearly visible from the street. The sign shall remain in place and visible until a Certificate of Compliance is issued for the activity.
5. Before any site work begins, a site meeting scheduled by the applicant shall be held to review the Order of Conditions and verify placement of the erosion control. Representatives of the applicant, the Commission, and the contractor in charge of site work shall be present.
6. The Wetlands Administrator shall receive forty-eight (48) hours advance notice, before the commencement of any activity within, or within the 100 foot buffer zone of, the resource area(s), including installation of erosion control, site preparation and construction.
7. The Wetlands Administrator shall be provided the name(s) and telephone number(s) of all person(s) responsible for compliance with this Order.
8. Erosion controls shall be installed one hundred feet from the vernal pool or thirty-feet from the isolated and bordering vegetated wetland boundaries (whichever is further) and shall serve as the limit-of-work/no disturbance boundary. No work, including but not limited to grading and storage of materials, may occur beyond this boundary.
9. Before any work begins, erosion control shall be installed along the limit-of-work line. Extra materials shall be kept onsite for use as needed. Such controls shall remain in place and be maintained until all disturbed areas have been stabilized to the satisfaction of the Commission and a Certificate of Compliance has been granted.
10. The silt fence shall be installed in such a way as to exclude animals east of the disturbed area. Silt fencing should wrap around north and south ends of site.
11. Immediately after installation of erosion controls, the Wetlands Administrator shall be contacted in order to conduct a follow-up inspection to ensure that erosion controls have been properly installed.
12. Prior to commencing any activity on the site, the applicant shall submit a set of photographs depicting the project site in pre-activity condition to the Conservation Commission.
13. Prior to any work, a qualified biologist shall search the work zone, interior to the fencing, for any state listed species encountered. Any species encountered shall be reported to Natural Heritage and moved away from the work zone. The biologist must be in possession of a valid collection permit for this site.

C. DURING CONSTRUCTION:

1. Work shall conform to revised plans and information submitted to the Commission in the Notice of Intent, the erosion control plan and the accompanying revised Stormwater Management Report.
2. Work shall proceed in strict accordance to the revised plan(s) or plan(s) referenced in the Permit, and to information submitted in the Application. For any change in the approved plans, the applicant shall inquire of the Commission in writing whether the change is substantial enough to require an Amended Order of Conditions or the filing of a new Notice of Intent.
3. No grading, operation of machinery, storage of materials, stockpiling of fill or brush or other work shall occur on the wetland side of the erosion control. The area between this line and the wetland edge shall be kept as a permanent vegetated buffer for the purpose of minimizing any potential negative wetland impacts.
4. The storm drainage system, detention basins, and compensatory storage areas shall be constructed and functioning as part of the initial project phase.
5. No fill or topsoil shall be stored within 20 feet of the silt fence.
6. Equipment for fuel storage and refueling operations shall be located outside all areas within the jurisdiction of the Commission unless indicated otherwise on the approved plan.
7. The burial of stumps and any other type of construction refuse or other waste material is prohibited in the buffer zone.
8. Dewatering activities shall be conducted as shown on the approved plans and shall be monitored daily to ensure that sediment-laden water is appropriately settled prior to discharge toward the wetland resource areas. No discharge of water is allowed directly into an area subject to jurisdiction of the Wetlands Protection Act or the Town of Amherst Wetlands Protection Bylaw.
9. A copy of the Permit shall be kept on-site at all times during construction. All contractors and sub-contractors engaged during construction shall be provided with a copy of the Permit, and should be prepared to produce said Permit upon request of the Commission or its agent.
10. All structures, facilities, and equipment as part of the project shall be continually operated and maintained so as to comply with the Permit. This provision applies specifically to all heavy equipment used on the project. Any leakage of oil, hydraulic fluid, gasoline, or any other pollutant must be cleaned up immediately, and the defective equipment responsible for said leaking shall be repaired immediately or taken off-site.
11. All work shall be completed in such a manner as to prevent eutrophication or sedimentation in wetlands, water bodies, or public or private water supplies.
12. The area of construction shall remain in a stable condition at the close of each construction day. Erosion controls should be inspected at this time, and repaired, reinforced or replaced as necessary.
13. All existing and proposed catch basins and oil traps on the site or on the streets adjacent to the project shall be protected by Silt Sacks to prevent sediment from entering the drainage system. Silt Sacks shall be maintained and regularly cleaned of sediments until all areas associated with the work permitted by this Order have been permanently stabilized and the Commission and/or Staff has formally approved their removal.
14. Cement trucks shall not be washed out in any wetland resource or buffer zone area, or into any drainage system. Any deposit of cement or concrete products into a buffer zone or wetland resource area shall be immediately removed.
15. Erosion and sedimentation control devices shall be inspected after each storm event and repaired or replaced as necessary. Any accumulated silt adjacent to the barriers shall be removed.

16. Site grading and construction shall be scheduled to avoid periods of high surface water. Once begun, grading and construction shall continue in an expeditious manner to minimize the opportunity for erosion.
17. Grading shall be accomplished so that runoff shall not be directed to the property of others.
18. All disturbed areas in the Buffer Zone shall be loamed, seeded, mulched and stabilized within 48 hours of project completion.
19. Any substantial changes made or intended to be made in the plans shall require the applicant to file a new Notice of Intent or to inquire of the Commission, in writing or by certified mail, whether the change is so substantial as to require the filing of a new Notice.
20. An on-site supervisor shall walk the perimeter of the limit of work boundary on a daily basis and remove wetland dependent species outside the construction site.

D. POST-CONSTRUCTION:

1. Prior to the issuance of a Certificate of Compliance, permanent markers shall be installed along the limit-of work/no disturbance boundary. The type and size of the markers shall be approved by the Commission prior to installation.
2. A Certificate of Compliance shall be requested from the Commission upon completion of the proposed work. Said request shall be accompanied by a written statement from the professional who prepared the plan certifying compliance with all plans, as well as an "as built" plan.
3. The Commission reserves the right to amend this Order of Conditions if changed conditions or new information so warrants.
4. Representatives of the Commission shall have the right to inspect the premises to ensure compliance with the Conditions and the Performance Standards applying to this Order and with the Massachusetts Wetland Protection Act and the Town of Amherst Wetlands Protection By-Law.
5. This Order shall apply to every successor in interest of the property described in the Notice of Intent and accompanying plans. In the event that this land changes ownership before or during construction, the current owner shall notify the new owner of this Order by registered mail prior to the transfer of ownership and shall forward proof of this notification to the Commission.

E. PERPETUAL CONDITIONS:

1. Pesticides, herbicides, fungicides, and fertilizers **shall not be used** within 100 feet of the wetlands. Organic pesticides, herbicides, fungicides and fertilizers may be used subject to the review and approval of the Conservation Commission. This shall be noted in the Certificate of Compliance and shall be an ongoing condition.
2. De-icing chemicals (e.g. sodium, potassium, and calcium chloride) are prohibited on driveways located in wetland resource areas and buffer zones. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
3. Only slow-release organic granular type fertilizers shall be used within the wetland buffer zone. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
4. Dumping Prohibited: There shall be no dumping of leaves, grass clippings, brush, or other debris into the wetland or stream/body of water. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

5. Snow removal shall not be directed to, or deposited in, wetland resource areas or their associated buffer zones. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
6. Maintenance of the stormwater system shall be done in accordance with the operations and maintenance plan and a report of such maintenance will be reported to the Conservation Commission on an annual basis. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
7. Performance of the stormwater system, including water quality assessment, shall be monitored by the Homeowners Association and reported to the Conservation Commission on an Annual Basis. In addition, during the first 5 years following completion of construction, the effectiveness of the stormwater system shall be assessed following each 1-, 2-, and 100- year storm event and results shall be submitted to the Commission on a monthly basis. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
8. The Homeowners Association shall provide documentation of use for any lawn care products or de-icing products to the commission on an annual basis. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
9. The Homeowners Association shall provide notification of these Perpetual Conditions to all members on an annual basis. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.

MISCELLANEOUS

Beaver Management Memorandum of Understanding

The Commission briefly reviewed the document and made note of areas of concern for future discussion. Liv Baker has an issue with using the word “removal” in place of what really happens to the beavers. “Removal” is just a euphemism for killing. Ms. Baker and Mr. Stein had an issue with the tone of the document, in particular, the presentation of the rights of humans over animals. Dan Kaplan feels that the document needs to make the process for beaver management options for farmers very clear and suggested a bulleted format that would be easier to follow. Dave Ziomek noted that the State website has a very easy to follow flow chart and suggested that one should be included on the Town’s website.

Director’s Report

Dave Ziomek spoke of the preparation for Town Meeting. There are several conservation related articles on the Annual Town Meeting Warrant: Articles 8, 9 10, 12, 27, 28, 29, and 37, as well as articles on the Special Town Meeting Warrant.

Questions about funding the Puffers’ Pond and summer trail crew and the implications of budget cuts were posed. Mr. Ziomek noted that \$15,000 for trail crew will be cut and will likely not be funded if the override does not pass; he is looking for creative ways to fund these summer positions. On a related note, he announced that the Friends of Puffers’ Pond Breakfast will be held on Saturday, June 2, 2007 from 8:30 – 11:30 AM and the Commission’s help at the event will be greatly appreciated.

Mr. Ziomek gave an update on the work that Martha Powers has been doing on farm related and agricultural issues. She has created a draft for the Town website on Farming in Amherst and is looking at a launch date at the end of May or early June. The focus of the website will be on the business of farming and how farmers are making a living in Amherst. They have had a fairly good return on the farm survey – 31/70.

Mr. Ziomek spoke of the new trail funded by a DCR grant that runs from Larch Hill eastward across Amherst College land all the way to the Rail Trail. This would have meant that there were two trails running along the river – one on the east side and one on the west side which was problematic, as it

would impact wood turtle habitat. It was proposed that the trail on the west side be moved several 100 feet north to alleviate this situation. Amherst College approved the relocation of the trail just this week.

Town Meeting Warrant Articles - Discussion

Jonathan Tucker gave a brief overview of two Zoning Bylaw Articles: Article 8: Farm Stand Amendments, Article 9: Accessory Farm Stands and Article 10: Flood Prone Conservancy Amendments.

ADJOURNMENT

VOTED unanimously to adjourn the open meeting at 10:50 p.m.

Approved at the May 9, 2007 Conservation Commission Meeting.