

## MINUTES

### CALL TO ORDER

Meeting called to order by Ms. Angus, Chair at 7:03 p.m.

### ATTENDANCE

Present: Angus (C), Boice, Allen, Healey, Clark, Brooks, Butler

Staff: Ziomek, Willson

### CHAIR, DIRECTOR & WETLANDS ADM REPORTS

Angus introduces new members again, Fletcher Clark and Brett Butler. Willson stated that the ANRAD for the Retreat project was submitted and is on the agenda for next meeting on 5/14. The RFP for 3rd party review is ready to be released, the legal add will go in the newspaper tomorrow, proposals are due May 23rd. RFPs will also be directly sent to a number of known consulting companies. Commissioners can access the ANRAD on the Town website under the Conservation Commission. Healey asked what will the public hearing for the ANRAD entail. Willson stated the public hearing will be opened, Landmark's consultant will present the ANRAD, we will formally discuss the 3rd party review with the applicant, and take public comment.

Willson stated she attended the pre-construction mtg for the town water/sewer project on Harkness Rd. We have been receiving many public comments about the rock drilling at 172 State St. The physical removal of invasives at 170 University Dr. is complete, she will be doing a site visit on Friday. The farmers on Potwine Ln put up a fence for alpacas & sheep on the eastern end of their land in ag use. Willson inspected to make sure within LIAU.

Ziomek stated that he and the building commissioner went to project at 172 State St. due to noise complaints. It is a hydraulic drill breaking up the rock, they are not blasting. Berkshire Design and Town Eng. came out to take a look at hazard to dam. Conclusion was work not a threat to dam. Public is concerned about noise and impacts to pond and dam.

Summer field staff being hired. Friends of Puffer's Pond raise about \$6000 every year at pancake breakfast that partially goes to hiring staff. Breakfast is June 6th this year. Town Meeting starting up, he handed out info on Article 20 CPA requests. Money is being requested for due diligence and conservation restrictions. Article 20B is aquisition of Fort River Farm property. Butler asked if CRs will have long term monitoring. Ziomek said yes some of money goes to fund for Kestrel to do monitoring over time. The have negotiated about \$120/acre for CR and monitoring. In the future the CR will be built into land aquisitions.

### MINUTES

No minutes reviewed.

### PERMITS/DISCUSSIONS

Approved at the June 25, 2014 Conservation Commission Meeting

**7:30 PM Notice of Intent (cont'd from 2-26-14 mtg) – UMASS and Northeast Utilities Service Company (NUSCO) for construction of a new substation and associated transmission lines within resource areas on Tilson Farm Rd. (Map 8C, Parcels 13C & 13D).**

Angus recused herself from discussion. Boice stated this is a continuation, at the last meeting Willson was going to work with applicant and DEP on restoration options being proposed under Water Quality Cert and those imposed by the Commission. Willson stated the applicant has submitted their Water Quality Cert application but has not yet received the Water Quality Cert. The WQC application presents the wetland mitigation being proposed for the forested wetland impacts. Since our last meeting the plan has changed and decreased the width of the cleared portion of the right of way from 200' to 150' so the wetland impact area has decreased. The mitigation area is a wetland area along a trib to the Hawley Brook north of the site along Tilson Farm Rd., known as near Poultry House 7. Mitigation for Riverfront impacts is not handled through the WQC process so is the responsibility of the Cons. Com.

Brian Benito (NEUS), Mickey Marcus (NEE), and Kim Jaworski-Bruschi (UMASS) here to present the project. Benito said UMASS study showed they need more electricity, they approached WMECO/NEUS about the project – UMASS Tilson Farm Rd. Substation. UMASS proposes to tie into existing WMECO/NEU electric lines that run from Henry St. south to Strong St. Entire project is on UMASS property. With clearing width decreased to 150' impacts to the forested wetland decrease to approximately 1,600 square feet. Those impacts are being addressed through the WQC. Impacts within Riverfront include temporary impacts from approximately 9,000 square feet of matting so equipment can work at the site and some clearing of the right of way (two trees). Permanent fill of wetlands for two new utility poles is 98 square feet. Access alternatives were looked at, crossing of railroad is least impact it actually has no wetland impact. Permits have been filed with NE Railroad for that access, haven't gotten confirmation from the railroad yet. Because didn't have OK from railroad DEP required looking at two other alternatives – coming in from Henry St. and coming in from Strong St. More wetland impacts with both those plans.

One option for Riverfront impact mitigation is an area just over the tracks is a small wetland with 22 large concrete culverts, proposing to remove culverts and replant area. Culverts do not contain asbestos. Healey asked if removing culverts would damage wetland more than leaving them there. Brooks responded that as the culverts breakdown they would essentially be fill in the wetland. He added removing the culverts may restore the hydrology. Healey stated she wanted to make sure this is the best mitigation option. Marcus stated other mitigation options include invasives removal adjacent to the Tilson Farm Rd. pond and replant with native shrubs. Clark felt the pond area would be easier to monitor and maintain in terms of making sure invasives don't take over again. Benito said another option is to add more to the mitigation work proposed near Poultry House 7. Healey asked if the square footage of mitigation is sufficient with both options. Marcus stated this is a limited project, they don't have to meet performance standards, they are looking for the Commission to propose what they think is appropriate for mitigation for Riverfront impacts.

Boice stated we have three options – removing the culverts and doing some plantings there, removing multiflora rose from around the pond and replacing that with natives, or increasing mitigation at Poultry House 7 area. Healey suggested removing culverts and putting down seed mix and removing multi-flora and replanting with native shrubs around pond. Marcus stated a seed mix will probably not grow in that

area because it's so shady. Healey said how about if you damage the plants that are there during the culvert removal you have to replace them otherwise no extra plantings.

Pat Wagner, abutter, stated that taking down the trees and other vegetation will increase drainage problems on her property. Are the roots coming out? Benito said no. Removal of the culverts may could disturb the old buried landfill in that area. There already was contamination of the Hawley Brook from that landfill. Is there any potential of stray voltage from this project? Benito said the voltage in the lines is staying the same. Was there any soil and groundwater testing done in the area of the culverts? Benito said we only sampled the culverts themselves. Marcus said the historical contamination of the brook was caused by the old coal piles at the coal storage area which has been cleaned up and remediated. Wagner said the landfill is still there.

Healey moved and Boice seconded. Commission VOTED (6-0-0, Angus recused) to close the public hearing and have Wetlands Administrator draft the Order of Conditions for review at the next meeting. Mitigation plan including the following:

1. Remove culverts
2. If damage plants during removal replace but don't do any extra planting
3. Remove multi-flora rose and replant with natives

**7:45 PM Notice of Intent (cont'd from 2-12-14 mtg) – Peter Heronemus for construction of a single family house and associated driveway within resource areas on West St. (Map 22B, Parcel 1).**

Angus stated at the February hearing we had asked the applicant to continue the hearing until warmer weather so the wetlands could be properly reviewed. We also asked the applicant to take another look at potential house locations that were not on top of an isolated wetland. Ward Smith, wetland scientist, stated it's a 17-acre parcel, the applicant would like to build a SFH on. The wetlands were flagged in 2004 by Chuck Dauchy, reflagged and checked by Ward. He found one area along driveway where he felt the wetland connected and came across the driveway. Construction of driveway will impact 543 square feet of wetland.

He presented a new plan showing new house location. Portions are within 50' of wetland boundary but are outside the 100' buffer for the vernal pools. He said applicant is offering to donate the eastern portion of the property to the Town, about 5 acres. He said if the Commission likes this proposal applicant would like to continue the hearing in order to finalize the plans.

Healey asked why house can't be rotated so it's outside 50' buffer zone? Smith said that could be done, they will have surveyor fit house in as far from wetlands as possible. House needs to be facing south because the applicant wants to use solar. Heronemus stated he wants to keep the house design so has tried orienting it different ways.

Angus stated Commission would like to see the limit of work shown on the plan and have the work area outside the 30' buffer. If that can't be done the burden is on the applicant to prove why provision should be waved.

Boice moved and Healey seconded. Commission VOTED (7-0-0) to continue the public hearing until 8:00 PM on May 14, 2014.

**8:00 PM Request for Determination**— 57 East Pleasant Street LLC for construction of a multi-use building and associated paving and drainage within the buffer zone of an intermittent stream at 57 East Pleasant St. (Map 11C, Parcel 266).

Angus stated that first the applicant will present the project, the Cons Com and staff will ask questions and then we will open the meeting up to public comment. Kyle Wilson, Archeipelago Design, presented the project. The northeast corner of the building is about 95 ft from the bank of the intermittent stream. He stated that the stormwater system design was reviewed and approved by Amherst DPW. The stormwater plan includes 230 ft of 5 ft diameter pipe that collects the water from the roof and paved parking and takes it to the 24 inch stormwater pipe that drains East Pleasant St. So all stormwater will drain to the west away from the intermittent stream along the eastern boundary. Erosion control will wrap the entire site.

Boice asked if the drainage from the paved pedestrian walkway was being collected. Kyle Wilson said yes. Beth Willson asked if equipment would be accessing the site adjacent to the stream. Kyle Wilson said the main access would be along the west side of the site and the site will be fenced.

Page Wilder stated she was confused as to where the drainage was going and if it was entering Tan Brook. Kyle Wilson showed on a map where the intermittent stream is located to the east of the site and where it enters a culvert and is piped to the Tan Brook. He showed approximately where the underground piping for Tan Brook is. Wilder stated that the sign for Tan Brook is right on the projects property line on Triangle St. K Wilson said if you look at the DPW utility information you can see where Tan Brook flows.

B Willson presented a map showing where the intermittent stream flows from and goes to. She stated that Tan Brook is over 200 ft from the site and is also culverted for a length of over 200 ft in this area and is therefore not the jurisdiction of the Conservation Commission. Wilder stated that the stream close to the site is perennial and has a 200 ft setback. B Willson stated that that stream had never been proven to be anything, and that if you follow the regs and look at watershed size it's intermittent. Wilder stated that state law is perennial unless proven intermittent.

Angus stated that the request before us is for the work, it does not question the status of the resource area if anyone wants to question that they are welcome to file an RFD. Healey said the stormwater design will slow the water down and has been approved by DPW for 10 & 100 yr. storms. K Wilson said in their design they were not allowed to increase stormwater leaving the site. Their design will reduce runoff from it's current state. The storage pipes are perforated so the water does infiltrate the ground on site.

Page Wilder stated that advertising this meeting without referencing Kendrick Place, Archeipelago or Tan Brook is not adequate. It was also falsely advertised by stating that the stream is intermittent, never been proven to be intermittent. She asked the Commission to verbally indicate if they were given the documents and video she submitted. She has lived on Tan Brook for 15 yrs has drainage issues and has serious concerns that the development project could impact her property and would like any decision to take into account compensation & recourse if that were to occur. She asked if there are any records/previous filings stating whether the stream behind Bertucci's is intermittent or perennial. Willson said no. Wilder stated that if it is proven intermittent state law requires 3 days of no flow on video. Angus stated we are not being asked tonight to determine the status of the stream. Wilder stated if you

are not being asked that then it reverts to perennial. Angus and Willson said they disagree with that interpretation of the regulations. Willson presented a figure showing where the stream starts and ends and the approximate watershed which comes to 0.04 square miles, much less than the required 0.5 miles for a perennial stream.

Maurianne Adams stated that the Kendrick Place project has brought out the bigger discussion of how to protect basements and yards near Tan Brook from flooding. How can residents discuss ways to fix this situation with Tan Brook if parts are intermittent and parts are perennial? Angus stated streams are that way, sections can be intermittent while others perennial. Adams said this is very serious to the residents. Angus said anyone can submit an application to have the status of a stream at a certain point determined.

Ziomek stated that the Town realizes that the Tan Brook is causing problems to residents to the west/northwest of Kendrick Park. A large amount of the drainage comes from the upper watershed of Tan Brook, near Wildwood Elementary, Junior High & High School. It's a systemic problem, it's not going to be solved by looking at one property. This project has been designed to not increase the stormwater drainage from the site.

Alisa Rubenstein asked if the site drainage will go west? K Wilson stated yes into the storm drainage on East Pleasant St. Rubenstein said and then into Tan Brook. John Fox asked if an expert came in and determined the stream to be perennial would that change your decision for this project? Angus said based on current information the stream appears intermittent, anyone can file to have to determined. If found perennial the buffer for the stream would be 200 ft. Wilder stated that there has been no determination that this stream is intermittent therefore state law says it's perennial and the 200 ft buffer must be used. Angus & Willson state they disagree with that interpretation of the regulations. Fox said it's the burden of the applicant to prove that the stream is intermittent.

Angus read the perennial vs intermittent regs. She stated again that if someone wants to challenge the status of the stream they can file an RDA. Wilder stated she was told the previous determination of a portion of Tan Brook being intermittent couldn't be overturned. Angus stated that is correct, the previous determination was not appealed during the appeal period therefore can not be overturned. However, a new filing can be issued for the status of any portion of the stream.

Fox said where will there be documentation on how this stream was determined intermittent. Angus said in the minutes for this meeting. The stream is not on the current USGS map as perennial, the Wetlands Adm has mapped the watershed and it is much less than 0.5 square miles, it meets the definition of intermittent. She asked the Commission if they agree? Yes they agree.

Woodfred XX stated that her son, a hydrogeologist, said that often the USGS maps don't have thorough depiction of intermittent vs perennial flow. Angus said that is why you look at watershed.

**Brooks moved and Healey seconded. Commission VOTED (7-0-0)** to close the public hearing and issue a Negative Determination #3 for work in the buffer zone that will not alter an Area subject to protection under the Act.

#### Miscellaneous Untimed Items:

- Meadow St. Enforcement Order - update

Willson stated the farmers will be coming to our next mtg on 5/14. They are required to provide a planting plan and have permanently marked the LAIU line by then. Willson will be checking their temporary marking of the line this Friday. Farmers have a consultant on board who will come to the next mtg. Angus stated the Cons Com needs to decide whether or not they want to issue an Enforcement Order to the contractor, Wagner Wood. Angus stated we need to consider whether the contractor has done previous work in Amherst under the Wetlands Protection Act and knew it needed permitting. Healey asked what the process was. Angus stated we would issue a new Enforcement Order to Wagner Wood. We can issue fines, we could have them work with farmer on restoration. We would first ask them to come to a meeting. Angus asked the Commission if they were in agreement with having Wetlands Adm write and issue the Enforcement Order.

Healey moved and Boice seconded. Commission VOTED (7-0-0) for the Wetlands Administrator to write and issue an Enforcement Order to Wagner Wood requiring them to come to a Cons. Com mtg (date determined by Wetlands Adm.) to discuss clearing work done on Russelville Rd./Meadow St. property.

- Topics not reasonably anticipated 48 hours prior to the meeting.

#### ADJOURNMENT

VOTED unanimously to adjourn the open meeting at 9:40 p.m.