

**Conservation Commission Meeting  
October 25, 2017  
Town Room, Amherst Town Hall**

**MINUTES**

**CALL TO ORDER**

Meeting called to order by Ms. Angus, Chair at 7:05 p.m.

**ATTENDANCE**

Present: Angus, Allen, Clark, Healey

Staff: Willson, Ziomek (late)

**CHAIR, DIRECTOR & WETLANDS ADM REPORTS**

Willson stated staff has been working out at Fort River Farm. Willson marked the wetland boundary and flagged where the new trail should go, Bordewieck mowed the trail and an area for community gardens that used to be the sharing garden. She stated the box culvert on SE St. has been installed for the driveway for a single family house. Willson to talk to contractor about repairing erosion control. Willson stated the draft OSRP update is almost done and will be presented at the Con Com's next meeting on 11/8 and the Planning Board on 11/15. Allen asked how work is coming on the Land Management Plan for the Orchard Arboretum. Willson stated a complete draft is done and will be brought to the Commission soon.

Angus asked what were the SE St. CR (910 SE St.) coming back for? Willson stated the Commission asked them to remove some of their landscaping, provide details on planting method along property line, and look into using porous pavement. Ziomek and Willson have walked the site since the last meeting and talked to Town Counsel about what's allowed under the CR and how to memorialize any decision.

**MINUTES**

**Minutes 11-9-16, 12-14-16, & 6-28-17**

**Clark moved and Healey seconded. Commission VOTED (5-0-0, Healey) to approve the minutes of 11-9-16.**

**Healey moved and Allen seconded. Commission VOTED (5-0-0, Healey) to approve the minutes of 12-14-16.**

**Clark moved and Allen seconded. Commission VOTED (5-0-0, Healey) to approve the minutes of 6-28-17.**

**PERMITS/DISCUSSIONS**

**7:30 PM Notice of Intent (cont'd from 9-27-17 mtg) – Adrian Fabos for construction of two single family houses and associated driveways, grading, and landscaping within resource areas at Canton Avenue (Map 11D, Parcel 189).**

Angus stated this is a continuation of a previously opened hearing for a NOI for construction of two single family houses on Canton Ave. She added the Commission does not have quorum to vote on this tonight. We have received additional information from the applicant which they can present tonight.

Bucky Sparkle, Zengineer, presented the updated plans with changes based on the Commission's comments from the previous meeting. He stated he spoke to Jason Skeels, Town Engineer, who said there was no safety issue with the steep grade (>5%) of the proposed driveway because it comes out on a dead end street. Willson stated she also spoke with Skeels and he said the same thing to her. Sparkle said the Lot lines for Lot 1 have existed for a while with no ownership issues and went through the ANR process. The new lot lines are just lines on a piece of paper that are going through the Town's permitting process. He stated they have supplemental information from an Environmental Consultant, Andy Kohn Env. He stated they've also provided additional cross sections, planting plan, bank replacement details, and a new sheet to the plans which is a blow up of the replication area. The rest of his response letter is responding to Haines Hydrogeologic's review letter. Willson asked if Sparkle had received Hanes Hydrogeologic's response to his response, and Sparkle said yes.

### **Responses to Haines Hydrogeologic review letter:**

Comment #1 - Can't impact >10% of stream bank. **Response:** The 52 linear feet of stream bank stated in the NOI is not the entire length of the stream, to the railroad it's >300 linear ft. So less than 10%.

Comment #2 - Can reduce wetland impact by moving Lot 3 driveway to the east. **Response:** Sparkle showed on plan where the driveway is currently proposed and where it would be moved to. He stated it would decrease overall wetland impact square footage but would require removal of a telephone pole, 28" maple tree, stream crossing, and be 8' from a shed. Applicant still prefers current path through more wetland but it's mostly multi-flora rose.

Comment #3 - Can't get to replication area without crossing stream. **Response:** Sparkle stated the majority of the replication area is on the southern side of the stream so it wouldn't need to be crossed. The culvert can go in first so then there would be a crossing before starting the small third replication area. If the contractor wants to do it in a different order the plan calls from matting to cross the stream and wetlands.

Comment #4 - Seed mixes. **Response:** Sparkle has provided additional information on seed mixes.

Comment #5 - Stream channel restoration not described in narrative. **Response:** A description has been provided in both the plans and narrative.

Comment #6 - Wetland replication not best location. **Response:** Replication are description revised to reflect wetland type as identified by NEE in delineation report. He stated the proposed restoration locations are some of the flattest areas of the site, at or below the stream elevation, as long as the stream is flowing these areas will be wet. He can provide more contours and cross sections if needed. He wants to hear if the Commission thinks the proposed area won't be hydrologically sufficient before he provides additional information.

Comment #7 - Snow storage area. **Response:** The snow storage has been moved.

Comment #8 - Stormwater retention area on Lot 2 within 30 ft setback. **Response:** Sparkle stated current location best catches and treats runoff from driveway and parking area so best protects wetland. If had to move it out of 30' and up hill some stormwater would not get treated and flow into wetland. Would like to hear Commission's feedback on location.

Angus asked for questions or comments from the Commission or public. David Haines, Haines Hydrogeologic Consulting, stated Comment #1 has been addressed. Comment #2 stated that if you move the driveway to the east you eliminate 512 square feet of impact, could eliminate one of the replication areas. The stream there is just a ditch with lawn on either side. Can move utility pole, tree is an issue. Comment #3 he said you'll still have impact to wetland to create replication areas. Applicant mentions swamp mats but it isn't clear how opening up replication areas and sequence, needs to be clear for contractor. Comment #4 addressed. Comment #5 still no narrative describing stream channel restoration. Comment #6 area has a perched watertable so water coming out in seeps. Complicated to construct wetlands here, OK with wetland along western side of driveway, the others are on a slope may need test pits to determine hydrology. Comment #7 snow storage in the trees, addressed. Comment #8 could move the Lot 2 retention area out of 30' setback, or use piping.

Benjamin Bailey, abutter, presented sections of the bylaw on the overhead. He stated that the application form is a state form and everything marked on the form has to do with state law. Angus said we use the same form for both the state and local laws. He stated the town bylaw uses the home rule authority to issue additional protection to the resource areas stricter than the Wetlands Protection Act. Bailey read, and presented on the overhead, portions of the Bank resource area section of the Amherst Wetlands Bylaw. He stated the Commission is following a section (the Limited Project section) that uses the term "may" which is much weaker than the language such as "shall" in the Bank section. He asked why the Commission hasn't discussed this for this project? Will the Commission discuss how this is overcome and why the bylaw isn't relevant to this project?

Angus said we will discuss this and she feels we discussed this at the last meeting as well. She added we seem to be reading the bylaw differently, the section of the bylaw directs the reader to the sections of the state regulations that discuss the types of limited projects, and for the process the Commission must use to determine if a project can be considered a limited project. Bailey said he didn't hear a discussion, he heard that because the applicant checked the box it was a limited project. Angus stated that the bylaw sections Bailey is presenting pertain to sections 4.a-4.e resource area performance standards, while the section on Limited Projects comes after that. She read the Limited Project section of the bylaw. Bailey stated that the word "may" in the Limited Project Section implies that the Commission doesn't have to if they want to use the stricter sections of the bylaw. Angus stated she believes at the last meeting we determined that the project doesn't need a variance because it meets the description of one of the Limited Projects. Bailey said Angus has stated that but he'd like to hear the Commission discuss it and vote. Angus said it's not our practice to vote on every regulatory status of a project, however, the Commission can certainly go through looking at the Limited project provision and discuss it. Angus attempted to read the Limited Project section of the state regulation and was interrupted by Bailey who said that's the state law can we discuss the town bylaw. Angus said there is nowhere in the bylaw that describes the various Limited Projects, it refers to state law for that. Willson stated the question seems to be whether the Commission should be using the performance standard for Bank or the Limited Project sections of the bylaw. Clark stated he supports Angus' interpretation of the bylaw which uses the states

list of Limited Projects.

Julia R suggested that since the Commission is supervised by the Select Board that this bylaw question be submitted to the Town attorney. What Bailey is saying is the Commission has the discretion to go to the state law but she hasn't heard the Commission discuss that decision. Angus stated the applicant is requesting the project be considered as a Limited Project and the Commission needs to discuss and decide on that. She added that there are avenues in the bylaw and state regs to appeal a decision made by the Commission. Town Counsel has been consulted already for this project regarding work within buffer zone setbacks. Angus stated she doesn't think we need Town Counsel's input on how to administer the Limited Project provision of the bylaw.

Michael Pill stated if the Commission has made a decision these folks have the right to go to court. He added the Commission is right you don't go to the Select Board or Town Counsel you make a decision. He stated they have 60 days to appeal not the 10 in the state Wetlands Protection Act. Angus said yes we are aware of that process.

Angus read the Limited Project provision for driveways over resource areas to gain access to an upland area. Angus asked if the Commission wants to further discuss this issue. Commission said no. Angus asked for further comments from the public.

Lou Lucien stated his main concern is stormwater runoff and he's wondering if the Town Engineer has reviewed the project and provided comments. Willson said both she and the applicant spoke to the Town Engineer. The applicant provided stormwater system sizing and layout, the Town Engineer had no concerns and felt like the design would meet volume and treatment needs. Lucien stated he doesn't understand how a basin the size of half this room will manage all the runoff from the hill. He said over time more water has gotten in his basement and collects on Canton Ave.

Clark asked if the clearing for the current Lot 3 driveway location will involve a lot of tree removal. Sparkle said yes, all clearing on the site involves tree removal. Healey said it is nice to decrease impact and amount of replication area, the utility pole we don't care about, it's the maple tree versus the wetland impact. She wonders how it compares to other trees that will be taken down. Sparkle responded it's a three trunk 28" very prominent maple tree that can be seen from the road. Angus asked the abutters what they think about saving the maple versus impacting more wetland. Amy Sweeting said it's fully wooded site so no matter where you go you're taking down trees, she doesn't know the specific maple tree so preserving more wetland may be more important. Lucien agreed. Angus asked if there are other laws, zoning, etc. driving where the driveway can be located. Sparkle said the closeness to the shed, but that can be dealt with. He said it would be hard to meet the <10% of Bank. Allen said the maple is probably more valuable than some of the other trees. Healey agreed, it transpires thousands of gallons of water. Healey will visit the site on her own. Commission doesn't need any additional info on this issue. Lucien stated that tree only collects water before getting to the railroad tracks other trees protect houses. He added if they're worried about it being close to the shed, the driveway to Lot 2 is right next to his shed.

Applicant to provide additional info on contours and grades to show success of replication areas. Sparkle presented another slide showing cross sections of replication areas. The replication area is within 4" of stream. Happy to provide additional contour mapping for next meeting. David Haines stated that the

state regs do talk about contours, cross sections, and test pits. It's a difficult area to build a wetland.

Sparkle re-stated he placed the detention basin on Lot 2 where it is because it's downhill of the parking/driveway and will collect and treat the runoff before it enters the wetland. Healy asked if it could run snug along the north side of the driveway. Sparkle said he has safety concerns with cars falling into a rain garden that close to the driveway and snow being plowed into it. Sparkle will take another look at location.

**Clark moved and Allen seconded. Commission VOTED (4-0-0)** to continue the public hearing to November 8th at 8pm. Applicant agreed to continue to the specified date and time.

**7:45 PM Request for Determination** – Berkshire Gas Company for relocation of a gas main within buffer zone to an intermittent stream on Northeast St. (Map 15A, Parcel 29).  
Madlyn

Paul Scarpa, Berkshire Gas Company, presented the project. He stated the project is to replace an existing 2-inch gas pipe that currently goes over a 48-inch stream culvert. The culvert goes under NE St. The current gas main is too close to the ground surface so must be replaced. They want to directionally drill a new pipe under the stream culvert so they don't have to trench. The bore head will be 4-inch diameter, they drill the hole the entire length then attach the pipe and pull it back through. Angus asked what are the resource areas. Willson said there is an intermittent stream that goes through the culvert flowing west to east and it was flowing during the site visit. Willson provided photos. She stated they are leaving the existing main in place and all the work is in the Town's right of way. They will need to trench out into NE St. to connect to the gas line going to Hedgerow Ln. Silt fence will be installed on both sides of NE St. to protect the stream. Work will either be done late this year or not until summer 2018 during low flow conditions.

**Clark moved and Healey seconded. Commission VOTED (4-0-0)** to close the public meeting and issue a Negative Determination 3 for the work. Applicant to contact Wetlands Administrator prior to work.

**8:00 PM Notice of Intent** – UDRIVE, LLC for construction of three apartment buildings and associated driveway, parking, utilities, and landscaping within resource areas on University Drive (Map 13B, Parcel 33).

Angus opened the hearing. Willson stated the applicant has submitted their certificates of mailing for abutter notification. Tom Reidy, Bacon & Wilson Attorneys, on behalf of UDrive LLC stated there are two NOIs they will probably start with the apartment building project then transition into talking about the restaurant project. Reidy stated his team includes Andy Bohn, Landscape Architect, Phil Henry, Civil Engineer, Mickey Marcus, Wetlands Consultant, and Barry Roberts, Developer. Reidy said the project is awaiting stormwater review from the Town engineer and additional MADEP comments. He added there was an ANRAD for the delineation approved by the Commission in 2016. The Planning Board and Town Mtg voted to change the zoning from office park to limited business in 2016. Access to the site from University Dr. was granted by Town Mtg and Select Board this year. Reidy stated the residential project is for 29 units with 56 parking spaces. Other project is a 4,400 square foot restaurant with 31 parking spaces.

Mickey Marcus, PWS, stated the housing project hasn't received MADEP comments. He stated the

project is to just work in the already cleared areas the forested areas will remain wooded. The driveway off University Dr. crosses a wetland swale impacting 1,205 square feet of wetland and takes down one tree that had been planted as a shade tree along UDrive when the bike trail was built. Barry Roberts has been given permission by the Shade Tree Cmt to take down that tree. There will be wetland replication for the wetland impact and over an acre of currently cleared land will be re-vegetated including both buffer zone and some wetland. So, approximately 45,000 square feet of restoration. He pointed out that the wetlands along UDrive were constructed as part of the installation of the bike trail. There has been good success with wetland replication in this area.

Phil Henry, Civil Design Group, stated the residential portion of the project is on 4.2 acres (of the 5.8 total property). There are 26 units in three buildings with 56 parking spots. The site climbs about 9 vertical feet from University Dr. from west to east. The site is a challenge in regard to stormwater and high groundwater. They dug 14 deep test pit holes this summer which showed groundwater ranging from 30-50 inches below grade. They used that info to design a stormwater system they believe meets the MA Stormwater Standards. They've proposed a pond on the SW end of the site that takes roof runoff from building 1 and the pre-treated water from the lower third of the driveway. There is a pond on the NE section of the residential lot that takes runoff from buildings 2 & 3 and the top third of the driveway. There are two raingardens that receive sheetflow that is pretreated at the edge of pavement along the southern end of the project. They have designed to lessen both peak flow and volume discharging to both a point discharge into a drain pipe that goes under UDrive and sheet flow southerly onto the abutting property.

Andy Bohn, Place Alliance, stated there basically three areas of re-vegetation (landscaping): heavily planted/manicured areas next to buildings, wetland buffer zone which includes some currently wooded areas and some ag areas, and existing wetlands that are currently used for ag and the wetland replication area. All plants will be native and biodiverse. Invasive species control will be done, proposing to remove invasives and include an invasive species management plan. He showed the wetland replication area planting plan and grading plan. The cross section shows how development will be centralized along the driveway and the rest will be restored (currently in ag) to wetland and buffer with plantings.

Willson stated they did a site visit that morning. The intermittent stream was flowing. The Commission has visited the site before during the review of the ANRAD in 2016. Angus asked if the Commission had any comments. Allen asked if some of the parking can be eliminated and bike racks be provided since the property is along the bike trail. He would also like to see electric plugs for electric cars, and see the roof drainage saved using rain barrels and used to water plants, etc. Would also like to see a pollinating garden. Bohn responded that the rain garden mix has 25 perennial species that provide habitat for pollinators and berry producing capacity. Wetland seed mix has these things also, and they are planting berry producing and thicket producing shrubs in addition to trees. Angus asked where project is with ZBA and what are the parking requirements. Reidy responded they have submitted a Special Permit application with the ZBA for 56 parking spaces, ZBA requires 2 spaces per dwelling unit so they would be required to have 52. Allen said with a student population they can use a bike or bus. Angus said Commission will always ask for applicant to ask ZBA for relief from parking requirements to reduce impervious surface. Henry said on Lot B (residential lot) there are two areas for bike racks. Ziomek said we don't require developments to have electric car plug ins.

Clark asked what the vegetation mgmt plan is. Bohn said they are proposing a five-year invasive species treatment and replanting plan. Angus asked if the NOI asks for relief from any performance standards. Marcus responded they did MADEP forms for the proposed replication area and test pits. Angus stated so it's just replication. Clark asked about snow removal, Reidy said plan is to truck it off site.

Rob Cusner, member of public, stated he is generally a supporter of the project. He said he learned something a few minutes ago that there is an intermittent stream going through the property between the proposed residential and commercial projects. Has it been delineated and is it going to be? Angus asked if Marcus could stand and show on plans where resource areas are. Angus stated the delineation didn't look at Bank because no work is proposed within the wetland boundaries. Cusner said he thinks the residents of the proposed project will use the existing farm road going through the wetland and over the stream to get to Newmarket Ctr and the new restaurant. A similar issue is happening in southwestern Amherst on East Hadley Rd to get to the malls. Angus stated this is something to consider. Cusner suggests having the stream delineated and a crossing be part of the project. Allen suggests a fence on either side of the stream. He said this is an opportunity to encourage people to use the bike trail vs cars.

Michael Pill, Green Miles Lipton, LLP, stated he is here representing Ann Marley abutter to the south. He said there is a mistake on the plans, they show forest along the southern boundary where actually Ann Marley's yard extends about 60 ft on the project site and is lawn. There is a drainage swale along the southern boundary which he thinks is protecting his clients parking lot from getting drainage from the site. Allen said we saw that swale today. Pill said they are looking at historical aerial photos to see how long the swale has been there, they don't want a new building put there that eradicates the swale and drains onto Ms Marley's property. He said there is a mistake on page 10 of his report, he will send a revision. All he wants to do tonight is make sure his 27 page report and the memo from Ward Smith have been given to the Commission and are part of the record.

Angus stated the Commission needs to decide if they want peer review of the NOI/wetland regulation compliance and the stormwater design. Angus recommends a peer review of the stormwater report. Willson stated we haven't heard the restaurant presentation yet which may impact the Commission's decision on peer review. Angus stated she doesn't see a need for a 3rd party review of the NOI and it's meeting the state and local wetland regulations. She added let's hear the restaurant presentation before we decide. The Commission would like the applicant to address the comments we've heard tonight from the public for the next meeting.

**Allen moved and Healey seconded. Commission VOTED (4-0-0)** to continue the public hearing to November 8th at 8:15pm.

**8:15 PM Notice of Intent** – UDRIVE, LLC for construction of a restaurant and associated parking, utilities and landscaping within buffer zone to bordering vegetated wetlands on University Drive (Map 13B, Parcel 33).

Tom Reidy, Bacon & Wilson, stated they are proposing a 4,400 square foot restaurant on 1.57 acres on University Drive. It's Lot A, the northerly, smaller parcel closer to Newmarket Ctr. Access is proposed off of Newmarket Ctr driveway, it shares an access agreement with Newmarket Ctr. Mickey stated this is a buffer zone only project using an existing driveway. He pointed out wetland, forested, and open field areas on overhead map. There is a portion of the wetland along UDrive that was built as replication during construction of the bike path. He stated there will be over 17,000 square feet of wetland and buffer zone restored from open field through plantings/seedings. Building is mostly outside 75' commercial setback, and parking will use pervious pavement. Reidy stated the restaurant will be run by the same people running Rafters, it will have a wood fired oven, and be open in the evenings. Marcus stated we did get comments from DEP and are requesting the hearing be continued and will respond to DEP comment at the next meeting.

Phil Henry, Civil Design Group, stated there are 31 parking spaces of which 7 are adjacent to the building and the remainder are over the porous asphalt along the periphery of the parcel. The topography

slopes west to east so does stormwater with a little flow to the south. Rooftop drainage goes directly into an infiltration basin, pavement runoff that doesn't infiltrate through porous pavement drains to pretreatment areas then to a bioretention swale where most of it will infiltrate but there is an overflow. It's not an easy site for stormwater, there is high groundwater and wetlands. They tried to infiltrate as much as possible, there is 9,000 square feet of bioretention area for infiltration. Angus asked if the documents show where test pits were done. Henry said yes locations are on the plans and test pit data is tabulated in the report.

Andy Bohn, Landscape Architect, stated the restaurant site is similar to the residential site in that the idea is to restore wetland and buffer zone areas currently cleared for ag use. There are some more manicured/lawn areas near the buildings but with a focus on native vegetation. There is an invasive species management plan, invasives will be removed as part of the restoration. Healey asked how much of the development is in the 30' setback. Bohn showed on the overhead map the setback lines. Allen asked where the dumpster would be and said it looks like a good restaurant for the students living in the apartments. Healey stated some of the parking and the stormwater features are inside the 25 & 30 ft setbacks. Marcus stated all the parking within the setback is pervious. Healey stated it's a lot of cars which bring dripping oil, exhaust, etc. Henry stated there is pre-treatment required, they have included gravel and grass areas for the parking sheet flow to go through for treatment prior to entering the bioretention basin. Healey said that would be great if it was all located outside the 30' setback. Angus said applicant needs to investigate alternative locations for the stormwater features for our next meeting. Marcus pointed out on the overhead map all the areas of buffer zone that will be restored from farm fields to healthy buffer zone. Bohn added there is currently 14,000 square ft of ag use in the 25' setback, they are proposing 12,500 of restoration.

Michael Pill asked to see the 75' and 100' buffer lines. Henry showed him on the overhead map. Pill pointed out that two of the building corners go into 75' buffer without asking for a waiver. Angus stated you don't need a waiver under the bylaw to impede on buffer zones. She added work in the buffer zones is considered impact to the resource area (but that is rebuttable), so then you look at the buffer zone performance standard which directs you to meet the performance standards previously discussed in the bylaw under whatever resource area is being impacted.

**Healey moved and Allen seconded. Commission VOTED (4-0-0)** to continue the public hearing to November 8th at 8:30pm.

Angus asked if the Commission wants a peer review of the NOI looking at mitigation and compliance with regulations. Willson recommends only having a peer review done of the stormwater and having any questions regarding regulations answered by Town Counsel.

Pill suggests hiring a hydrologist for stormwater and a hydrogeologist for groundwater. Angus said the standard we must meet is the MA Stormwater Standards which a PE could do. Pill said, yes the current stormwater report meets the MA Stormwater Standards but those are a farce, and under the local bylaw the Commission has the authority to look at reality with climate change and meet a higher standard. He added you could require some groundwater monitoring, the "frimter" method.

Rob Cusner stated that as part of this project the bike path will be reconstructed, he wonders how that fits into this application. Reidy responded that that work will be in a separate NOI because that land is owned by the Town and the work will be done by the Town DPW. Angus said all three NOIs will have to comply.



Ziomek asked if the Commission has ever hired someone to review stormwater? Angus stated they've never hired a hydrogeologist, they have been hired by applicants. Ziomek stated there have been other complicated projects such as the rail trail and we've never hired a hydrogeologist. Henry stated the test pits were dug by a professional engineer and witnessed by the Town Engineer. Pill said that's a single methodology and there are more than one. Angus said let's start with having a third party review by an engineer who could provide advice on the need for additional review.

**Healey moved and Allen seconded. Commission VOTED (4-0-0)** to hire a PE to do a peer review of the stormwater report and plans.

**Miscellaneous Untimed Items:**

- Emergency Certification - Hickory Ridge Golf Course

Willson stated there was a beaver dam in the Fort River at Hickory Ridge Golf Course. The dam was causing significant erosion on the northern bank. She issued an Emergency Cert to breach the dam.

**Allen moved and Healey seconded. Commission VOTED (4-0-0)** to ratify the Emergency Certification

- Request for Certificate of Compliance - Jere I. & Josette Hochman for 365 Leverett Rd.

Willson stated this house is part of a 9 lot subdivision on the east side of Leverett Rd. The Order of Conditions was for the entire subdivision. A partial COC was previously issued for some of the other lots but this lot was not included. Willson conducted a site visit and shared photos on the overhead. Willson said the house location was in accordance with the OOCs and she recommended the Commission issue a partial COC.

**Clark moved and Healey seconded. Commission VOTED (4-0-0)** to issue a partial Certificate of Compliance for 365 Leverett Rd.

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

**Adjournment**

**Voted** unanimously to adjourn the open meeting at 10:20 PM.