

Minutes of the Conservation Commission  
December 10, 2007

- Present: CP: Christopher Picone, Chairman LD: Lorraine DeSouza  
MH: Michael Horgan LC: Lori Capone, Conservation Agent
- 7:30 PM CP opened the Meeting under the Wetlands Protection Act, M.G.L. Ch 131 Sect. 40, and in accordance with the Ashburnham Wetlands Protection Act.
- 7:31 PM CP opened the Notice of Intent Hearing for Ronald Setevdemio for 205 Hastings Road for the proposed construction of a sewage disposal system upgrade: portions of which are located within the buffer zone. Sean Hale of David E. Ross Associates presented the project to the Commission, who was also present. CP asked if there were any abutters present to speak for or against this application: there were none present. The Presby system is proposed 57 feet from the wetland, which is located at the toe of a steep slope. Grading for the system is proposed within 25 feet of the wetland. This location was chosen to eliminate the need for a pump system and would require minimal tree clearing. Mr. Hale informed the Commission that he talked to DEP this afternoon and Gary Dulmaine issued him a number without any comments. The Board of Health has already approved the septic design. CP requested haybales, straw bales if available, in addition to the proposed silt fence, for erosion control. The existing septic tank will be pumped, crushed and filled but the existing leach field will remain in place. LC stated that she has not had time to review the wetland delineation but was comfortable with the Commission closing the Hearing and issuing a decision pending this review.  
CP: Motion to close the Hearing  
MH: Seconded the Motion  
Motion carried unanimously 3-0  
CP: Motion to issue an Order of Conditions per plan and discussion pending LC's approval of the wetland delineation.  
MH: Seconded Motion  
Motion carried unanimously 3-0
- 7:45 PM CP opened the Notice of Intent Hearing for the Lower Naukeag Association for a proposed drawdown of Lower Naukeag Lake for the treatment of nuisance aquatic weed last continued from November 26, 2007.
- CP asked if there were any abutters present to speak for or against this application. Abutters present were: Don and Judy Bastarache: 39 Lower Lake Road, Walter Sussbauer: 343 Lake Road, Robert King: 46 Page Avenue, Paul DeMeo: 37 Lower Lake Road, David Levanti: 10 Lower Lake Road, Keith Bauer: 6 Brideau Road, Kerry Richards: 6 Brideau Road, Natalie and Kevin Learned: 12 Wyman Road, Hunter Gelinias: 8 Bass Cove Row, Barbara and David Brown: 230 Sherbert Road, Glenn Niinimaki: 99 Bachman Road, John Lee: 66 Saari Camp Road, Tom Smolinsky: 176 Sherbert Road, James Duffy: 6 Wyman Road, David Duffy: 6 Wyman Road, and Leo Collette Jr.: 194 Lake Road.

Steven Slocum informed the Board that he has spoken with Aquatic Control Technologies who will help assist the Association with a monitoring program. LD stated that the last time Aquatic Control was in front of the Commission they appeared uncooperative and wanted assurance that the requested information would be provided. Mr. Slocum was supposed to provide the Commission with a flow rate for the lake under normal conditions; this information was not provided. LD requested coordination with other lakes and requested Mr. Slocum to calculate the daily drop rate during the drawdown. CP suggested a draft data monitoring sheet to make it easy for the Association to provide the requested information to the Commission. LD provided Mr. Slocum with a print out of cost of monitoring equipment and data collection options. Dissolved Oxygen was discussed. The Commission requested a reading during the summer and one at the height of the drawdown.

The Commission allowed Mr. Sussbauer to present his concerns to the Commission. Mr. Sussbauer presented many pictures to the Commission showing the effects of a four foot drawdown. Mr. Sussbauer's concerns included impacts on beavers and other wildlife, reduction in extent of bordering vegetated wetlands in response to the drawdown, and erosion exacerbating nutrient loading in the lake. Mr. Sussbauer informed the Commission that he has filed with the Natural Heritage Program for two endangered species sitings: American Bittern and Wood Turtle. The Commission requested LC contact the Natural Heritage Program in relation to these submittals.

Mr. Slocum commented that the fact that endangered species exist in and around the lake proves that the historical drawdowns have not had a negative impact on the resource areas.

Tom Smolinsky of 176 Sherbert Road commented that Mr. Sussbauer's first was concerned with the smell associated with the drawdown, then the affects on wildlife, and now beavers. Mr. Smolinsky expressed his concern with the build up of organic matter if the drawdown is not allowed because it enables the residents to rake leaves out of the lake which would otherwise exacerbate nutrient loading. Mr. Smolinsky also requested that the landowners be allowed to work on their retaining walls because if they collapse, more nutrients would be introduced into the lake. Mr. Smolinsky reads a letter from September 26, 1947 which he felt proved the Associations right to drawdown the lake.

Don Bastarache of 39 Lower Lake Road stated that he felt the beavers were causing erosion problems due to the trees they remove and informed the Commission that the Association is looking to hiring a trapper and removing the lodge so the Commission should not take the impacts on the beavers into consideration.

Paul DeMeo of 37 Lower Lake Road asked the Commission to look at the amount of tax payers in the room pleading to allow a drawdown and cautioned the Commission that the Association would prevail if this was taken to Court because their Deed authorizes this work. CP explained that the Commission makes their decision based on upholding the Wetlands Protection Act, not what the majority of the people in the room want.

LD explained that she has been the only member present since the beginning of this situation and informed the abutters that the 1947 document was prior to the Wetlands Protection Act and has no bearing on the decision process which is to uphold the eight interests of the Act. LD further explained that property maintenance is not one of the interests of the Act. Mr. Sussbauer was pivotal in making the Commission aware of the impacts associated with drawdown. LD expressed her concern with making a decision based on what people did 60 years ago and wants to provide reliable data for future Commissions to make informed decisions. LD expressed her concern that the lake and its associated bordering vegetated wetlands are a result of an unnatural act, i.e. a dam, and is encouraged to see the Lake Association's willingness to cooperate with data collection to provide evidence of the effectiveness and/or impacts associated with the drawdown process.

CP stated that he would like to continue the Hearing to set specific parameters for monitoring and requested time to review all input presented tonight. Mr. Slocum stated that he just wanted to do what's best for the lake and does not believe that chemical control is beneficial to the system and agreed to a continuance.

Hunter Gelinas of 8 Bass Cove Row requested the Commission to make a consensus. The Commission explained that they could not make a consensus until after they close the Hearing and if they were to close the Hearing, they would only have 21 days to work out all the details.

CP: Motion to continue the Hearing to January 14, 2008 at 7:45PM  
MH: Seconded Motion  
Motion carried unanimously 3-0

8:45(9:00) PMCP opened the Notice of Intent Hearing for Alan Drouin of 80 Winding Cove Road for the proposed construction of a new single family house and in-ground swimming pool within the buffer zone and riverfront area, continued from November, 26 2007. CP asked if there were any abutters present to speak for or against this application: there were none present. LC explained that the riverfront calculations and Alternatives Analysis was submitted but reflects 78 Winding Cove Road, not 80 Winding Cove Road. LC has spoken with the applicant's engineer who assured the information submitted reflects 80 Winding Cove Road and will send a revised letter.

CP: Motion to close the Hearing  
LD: Seconded Motion  
Motion carried unanimously 3-0

CP: Motion to issue an Order of Conditions per plan and discussion pending submittal of the corrected information.  
LD: Seconded Motion  
Motion carried unanimously 3-0

9:00(9:05) PM CP opened the Notice of Intent Hearing for Habitat for Humanity for 203 Sherbert Road for the proposed construction of a new single family house within the buffer zone last continued from November 26, 2007. CP asked if there were any abutters present to speak for or against this application: there were none present. LC explained that the applicant has requested a continuance because the applicant has still failed to submit the requested information regarding the location of the floodplain and the land conveyance has not been completed yet.

CP: Motion to continue to Hearing to January 14, 2007 at 8:15PM

LD: Seconded the Motion

Motion carried unanimously 3-0

9:05(9:08) PM CP opened the Notice of Intent Hearing for Sylvia Lamb of Lot 3 Brook Road for proposed site grading associated with the construction of a single family house and septic system within the buffer zone, last continued from November 26, 2007. CP asked if there were any abutters present to speak for or against this application: there were none present. Chris MacKenzie of Whitman & Bingham presented the project to the Commission for the applicant, who was not present. Mr. MacKenzie had ordered historical USGS maps which haven't come in yet but presented a revised plan showing the riverfront area with the best available data. The Commission agreed that the information provided, more accurately reflected the resource areas and considered accepting the revised delineation and conditioning the project such that there would be no impact to the riverfront area.

CP: Motion to close the Hearing

MH: Seconded the Motion

Motion carried unanimously 3-0

CP: Motion to issue an Order of Conditions per plan and discussion contingent upon the fact that there is no alteration of the riverfront area proposed to accomplish this project

MH: Seconded the Motion

Motion carried unanimously 3-0

9:10 PM CP opened the Notice of Intent Hearing for Todd Griffin of 75 West Shore Drive for the proposed addition and septic system repair with associated grading and driveway alterations located within the buffer zone, last continued November 26, 2007. CP asked if there were any abutters present to speak for or against this application: there were none present. LC informed the Commission that the applicant has requested another continuance.

CP: Motion to continue the Hearing to January 14, 2007 at 8:45 PM.

MH: Seconded the Motion

Motion carried unanimously 3-0

9:15 PM CP opened the Notice of Intent Hearing for William and Sheryl Hornak of Lot 3 Young Road for the proposed construction of a single family house, subsurface disposal system and well, within the buffer zone, last continued from November 26, 2007. CP asked if

there were any abutters present to speak for or against this application: there were none present. LC explained that we had continued the last Hearing for the erosion controls to be revised on the plan and to allow DEP to finish their review of the project. LC informed the Commission that there are no more outstanding issue relevant to this project.

CP: Motion to close the Hearing

MH: Seconded the Motion

Motion carried unanimously 3-0

CP: Motion to issue an Order of Conditions per plan and discussion

MH: Seconded the Motion

Motion carried unanimously 3-0

9:20 PM

CP opened the Notice of Intent Hearing for San Ken Homes for 30 River Styx Road for the proposed construction of a common driveway and related site grading within the buffer zone, last continued from November 26, 2007. Chuck Caron of Caron Environmental and Chris MacKenzie of Whitman & Bingham presented the project to the Commission for the applicant, who was not present. At the last meeting, the Commission had requested the project to be redesigned to minimize impacts to the riverfront area as the information submitted by the applicant to overcome the presumption of the status of the perennial stream did not meet the requirements of the Act. The plans had not been revised as such and Mr. MacKenzie and Mr. Caron requested the Commission accept the submitted information regarding the status of the stream sufficient to find the stream as intermittent. LC informed the Commission and the applicant's representatives of her discussions with DEP who stated that the information submitted for October 1, 2007 could not be accepted and therefore the applicant has not provided evidence of the stream being dry four consecutive days within a non-drought period. Mr. Caron contended that the project did not fall under the River's Protection Act and questioned the legality of DEP's Drought Advisory determination. Mr. Caron thought there may have been a past filing that determined the streams status. LD could not remember ever determining this stream as intermittent. Mr. MacKenzie requested a continuance so he could confer with this client.

CP: Motion to continue the Hearing to January 14, 2007 at 8:30 PM

MH: Seconded the Motion

Motion carried unanimously 3-0

### **Other Business:**

1. Gary Howland, representing the Ashburnham Conservation Trust, submitted an invoice from Mount Grace Land Conservation Trust for work they performed to help acquire the Russell Hill Property seeking a vote of the Commission to pay the invoice. Mr. Howland explained that the original quote was for \$6,100.00 but when he received the bill it was for \$20,628.58. Mr. Howland negotiated the bill down to \$18,000.00 and got Mount Grace to agree to split the bill three ways between Mount Grace, the Ashburnham Land Trust, and the Ashburnham Conservation Commission. Mr. Howland requested the Commission to vote to expend \$6,000.00 which would then be taken to the Board of Selectmen for their approval. LD asserted

that the Commission could expend their money without approval from the Board of Selectmen. CP requested that LC look into how much money the Town had expended on interest for the Bond to purchase this land. Gary asked for the Commission to support him at the Selectmen's meeting. The Commission agreed.

CP: Motion to authorize the expenditure of \$6,000.00 from the Conservation Fund for the payment of staff time utilized from Mount Grace for the acquisition of Russell Hill.

MH: Seconded the Motion

Motion carried 2-1 (LD abstained)

2. Gary Howland, representing the Ashburnham Conservation Trust, addressed the Commission regarding the Packard Hill Project which abuts the Town's drinking supply. Mr. Howland inquired as to whether the Commission would be willing to apply for a Drinking Water Supply Grant to acquire a Conservation Restriction on this property. The Ashburnham Conservation Trust may be approached to pay the appraised value of the property with a Conservation Restriction to be held by the Town or State. This Grant requires a 50% match. The Ashburnham Conservation Trust will do fund raising but may be proposing the Town put forward a Proposition 2½ Override. Mr. Howland will need to speak with the Board of Selectmen on this matter but is seeking the Commission's support to have LC work with the Ashburnham Conservation Trust to secure funds.

LD: Motion to pursue the Drinking Water Supply Grant, or any other Grant, for the protection of the land associated with the Packard Hill Project.

CP: Seconded the Motion

Motion carried unanimously 3-0

3. LC directed the Commission to some relevant articles in this month's MACC bulletin.
4. LC disseminated a Forestry Management Plan for the Wright's Property on Ashby Road.
5. LC informed the Commission that she is in receipt of a Request for Determination of Applicability for Lot 1D on Stowell Road, DEP #92-656. LC has walked the site and it appears to be in compliance with the Order of Conditions.  
LD: Motion to issue a Certificate of Compliance for Lot 1D Stowell Road.  
CP: Seconded the Motion  
Motion carried unanimously 3-0
6. LC informed the Commission that she is in receipt of a Request for a Certificate of Compliance for 28 Hay Road, DEP #92-699. The As-Built depicts the site is in compliance with the Order of Conditions. Due to the snow cover, LC could not substantiate the existence of grass but showed pictures of the site from the Planning Board from back in November showing substantial grass growth. There was much discussion. LD abstained with prejudice.  
CP: Motion to issue a Certificate of Compliance based on LC's review of the As-Built Plan and photos taken by the Planning Board  
MH: Seconded the Motion  
Motion carried 2-1 (LD abstained)

7. LC informed the Commission that she is in receipt of a request for a three year Extension to the Order of Conditions for 93 Williams Road.  
CP: Motion to issue a three year Extension to the Order of Conditions  
LD: Seconded the Motion  
Motion carried unanimously 3-0
  
8. LC informed the Commission that the homeowner at 9 Sunset Isle Drive has requested permission to remove one tree located 20 feet from Sunset Lake which is in danger of damaging the existing house. Six to eight additional saplings will have to be removed to get to the tree that needs to be removed. The tree will be taken down in sections and the stumps shall be ground down. The topography is flat.  
CP: Motion to issue a Determination of Negligible Impact for the proposed tree removal at 9 Sunset Isle Drive.  
LD: Seconded the Motion  
Motion carried unanimously 3-0
  
9. LC informed the Commission that Mr. McCarty has requested a continuance of the Notice of Intent Hearing for Virginia McNiff on Williams Road. The Appeal of the Zoning Board of Appeals denial has not begun. They have requested a continuance till April of 2008.  
MH: Motion to continue the Notice of Intent Hearing for Virginia McNiff of Williams Road with the parameters set forth in April of 2007 with the stipulation that this will be the last continuance allowed unless new information is submitted.  
CP: Seconded the Motion  
Motion carried unanimously 3-0
  
10. LC informed the Commission that it appears that she may be entering into a contract with the Conway School of Landscape Design to assist her in updating the Open Space and Recreation Plan. Monies had been appropriated at Town Meeting.
  
11. The Commission signed the following DEP Forms: Orders of Conditions for 64 Winding Cove Road, Lot 3 Young Road, and 80 Winding Cove Road; Certificates of Compliance for Lot 1D Stowell Road, and 28 Hay Road; and, Extension Permits for 93 Williams Road and 7 Forest Lane.

CP: Motion to adjourn  
MH: Seconded the Motion  
Motion carried unanimously 3-0

Meeting adjourned at 10:50 PM  
Respectfully submitted by Lori Capone, Conservation Agent