

Bolton Conservation Commission
Minutes of Meeting
March 1, 2005

PRESENT: Karen Augustine, Scott Duhaime, Ed Englemann, Bill Fateiger, Lori Stephenson, and administrator Carol Gumbart

1. Water Resource Protection District Bylaw Hearing Bill Fateiger opened the continued hearing on the Water Resource Protection District (WRPD) Bylaw. Larry Ducharme was present by invitation. Mr. Ducharme said that in the early WRPD Bylaw during the 1970's the WRPD was defined as the area beyond the resource area and that in 1998 the definition was changed so that the WRPD included the resource area and 25 feet beyond it. Mr. Ducharme said that during the mid 1980's he made an application under the WRPD, which was being administered by the Board of Selectmen and the Conservation Commission got excited about its implementation and started enforcing it. Mr. Ducharme said that the base map was made by Warren Colby, a former Commission member. Mr. Ducharme said that Mr. Colby used a USGS Map as the base and traced blue areas that indicated flooding. Mr. Ducharme said that in 1978 the Town decided to clean up its Bylaws and the WRPD ceased referencing a map. Mr. Ducharme said that he thought that zoning districts needed to be shown on a map. Mr. Fateiger confirmed that Districts need to be mapped. Carol Gumbart asked Mr. Ducharme if he is familiar with the Groundwater Protection Bylaw. Mr. Ducharme said that in the early 1980's the concerns was over underground storage tanks and the Bylaw was developed to protect groundwater from spills and leaks. Mr. Ducharme said that we should contact Bob Roemer about the intent of this Bylaw. Scott Duhaime said that the Board of Health has an action item in the Open Space and recreation Plan for rewriting the Groundwater Protection Bylaw.

Mr. Fateiger said that the Base Map is erroneous and that we need to change it regardless of any definition changes in the future. The Commission discussed with Mr. Ducharme the possibilities of using Mass GIS Overlays to develop the map. Mr. Ducharme asked if we can refer to a map or does it have to be on a base map. The Commission said that they would need to ask Town Counsel. After further discussion the Commission decided that they are not ready to commit to keeping the Bylaw and decided to postpone a request for a proposal to prepare a new base map. Ms. Gumbart will provide copies of the WRPD as drafted by Town Counsel to the Board of Health for a future discussion. Russell Karlstad, a planning board member, was in the audience for some of the discussion and recommended that Ms. Gumbart talk to the Town Planner about meeting with the Master Planning Committee on this subject. The hearing was continued to April 5, 2005 at 7:00 p.m.

2. Minutes A motion was made by Bill Fateiger to accept the minutes of February 15, 2005, as amended with email comments provided by Lori Stephenson and Scott Duhaime. Lori Stephenson seconded the motion. VOTE: Aye unanimous.

3. Upcoming Meetings The Commission reviewed the upcoming meetings listed on the agenda. The Commission also noted that the Massachusetts Association of Conservation Commission (MACC) Annual Meeting is on Saturday and the Bolton Conservation Trust's Annual meeting is on Sunday. Carol Gumbart distributed the brochure for the Mass Land Trust Meeting scheduled for March 19.

4. Balbaky, Teele Road ANRAD (1112-499) Bill Fateiger opened the continued public hearing on the Abbreviated Notice of Resource Area Protection (ANRAD). Mr. Fateiger said that the applicant has requested to continue the hearing. Chuck Caron was present to represent the applicant. Paul McManus was present as the Commission's Wetland Consultant. Interested parties were in attendance in the audience. Mr. Caron said that he conducted a site walk with the Commission back in November and that after the site walk the Commission decided to hire EcoTec to review the wetland delineation. Mr. Caron said that a handful of changes were made to the delineation and that the relocated flags have been surveyed on are shown on the revised plan. Mr. Caron said that the paid particular attention to an are in the Northwest corner of the property as there were a couple of spots that looked wet on the side of the hill. Mr. Caron said that they found water breaking our but that the areas did not qualify as wetlands and there were no hydric soils. Mr. Caron said that there was some wetland vegetation but the predominant plants were upland species. Mr. Caron said that that Mr. Fateiger went out to review the area with himself and Mr. McManus. Mr. Fateiger said that he thinks the hydrology is there at this time of the year because the groundwater is so high. Mr. McManus described the area as a slope with a shelf where the water table is high and breaking out probably due to a restrictive layer. Mr. McManus said the area had a lot of spicebush but that on this site the spicebush was not a good indicator of the vegetated wetland. Mr. McManus said that the areas warranted a careful look but that they found that they did not have hydric soils and that during the growing season he would not expect it to be wetland because the soils are not there. Mr. McManus said that one of the seeps areas had a dense population of poison ivy and that it weighed in as a wetland indicator but they needed three (3) more wetland species and did not find them. Tina Yelle, a resident of Teele Road asked if the poison ivy suppresses the other plant growth. Mr. McManus explained the rational that he went through in trying to determine if the area is a wetland. Mr. McManus said that he asked himself if there was a predominance of wetland vegetation and what was the likelihood that the area could support over 50 % wetland species. Mr. McManus said that the fact that they had poison ivy and could not find three additional wetland species made it seem implausible. Mr. McManus said that the Town Bylaw does not have a definition of a freshwater seep so he used the definition of a wetland. Mr. Caron said that they Bylaw is a wetland bylaw and since it doesn't define freshwater seep it the Commission should revert back to protecting wetlands. Russ Karlstad said that the intent of the Commission when the bylaw was written was to protect emerging wetlands. Carol Gumbart reviewed some of the definitions she found just doing a web search. Mr. Caron said that in other communities he has worked in, such as Lunenburg, the Commission finds that the area needs to meet wetland criteria. Ed Englemann said that since the Bylaw doesn't define it then the Commission should take the more conservative approach to defining the seep as a wetland. A brief discussion of the ANRAD process and its applicability to the Bylaw ensued.

Mr. McManus said that with respect to the streams on the site the applicant mapped one stream as perennial and the other stream was considered intermittent. Mr. McManus said that he agreed with the applicant. Mr. McManus said that he ran the stream stats program for them combined and that the watershed was .36 square miles, which is under the .5 square miles considered necessary for a perennial stream. Mr. McManus said that he raised in his report the issue of delineating the Riverfront Area since the applicant did not flag the Mean Annual High Water (MAHW) line. Mr. McManus said that the stream was located by survey and he felt that the top of bank was well defined and that is was coincident with the MAHW line. Mr. Fateiger said that he concurred with the delineation of the top of bank as MAHW.

The conversation returned to whether the seep areas were jurisdictional. Mr. Caron said that while they did see some mottling the color matrix was bright. Mr. McManus said that the mottling suggests a fluctuating water table. Karen Augustine said that a seep needs to be a

resource with functions for us to protect it. Scott Duhaime said that we should identify it as a resource area and later determine its purpose. Ms. Augustine said that she felt we should only protect resources that serve a purpose. Mr. Englemann said that without the wetland characteristics there and the term seep being undefined that we should not define these areas as resource areas. Lori Stephenson said that she agrees with Mr. McManus's conclusions.

Mr. McManus said that he included with his report a copy of the FEMA Flood map that shows that no flood zones have been mapped in this area. Mr. McManus said that this is not conclusive that the area has not floodplain but that that nothing is mapped. Mr. McManus said that in his opinion based on the watershed and topography it is unlikely that any flooding would occur beyond the wetland boundaries. Carol Gumbart pointed out that the plans show a Floodplain District in Stow. Mr. Caron said that it is both a wetland and floodplain district and is not necessarily floodplain.

A motion was made by Bill Fateiger to approve the Bordering vegetated Wetland Lines as shown on the revised plans and the Riverfront Area. Mr. Fateiger said that no finding is made with respect to Bordering Land Subject to Flooding (BLSF) and that no finding is made with respect to Land Under Water (LUW) and Bank internal to the BVW. Mr. Fateiger said that the Water Resource Protection District (WRPD) is shown inaccurate on the revised plan. Ed Englemann seconded the motion. VOTE: Four (4) yeas and one (1) nay. The motion carries.

5. Caless, 21 Nourse Road (112-501) NOI Bill Fateiger opened the public hearing on a Notice of Intent. Craig Martin of Ducharme and Wheeler, Inc., were present with Linda Caless the applicant. Mr. Martin said that the Notice of Intent (NOI) is for a replacement septic system and building addition. Mr. Martin reviewed the plan noting that it was revised from the plan submitted with the NOI. Mr. Martin said that 99% of the lot is with the wetland buffer zone. Mr. Martin said that the septic system has failed and that the owners are pumping it weekly. Mr. Martin said that the proposed system is Title V compliant and that it meets the 5-foot off set to groundwater but that it does not meet other the Board of Health regulations. Mr. Martin said that the proposed system is within existing lawn. Scott Duhaime noted that the system would be a 6-foot mound. Mr. Martin said that the above ground pool would be relocated. Carol Gumbart asked if they had considered alternatives for the proposed addition. Mr. Martin said that they slid it back and forth to keep off sets from the septic system but they did not look for alternative locations. Ms. Caless said that the addition is approximately 40 feet by 35 feet and is within existing lawn. Mr. Martin calculated that to be about 1200 square feet. Mr. Martin said that they would construct the new septic system first so that access through the existing driveway through where the proposed addition is can be utilized. Mr. Martin said that they would probably stockpile material in the location of the proposed addition too. Mr. Martin said that the septic plan is being reviewed by Bill Brookings and that they are in the process of scheduling a hearing with the Board of Health. Mr. Martin said that the existing house is a 4-bedroom dwelling but that the failed system was designed as a 5-bedroom system and that the Board of Health will allow them to replace it with a five- bedroom system. Mr. Martin said that the FEMA Floodplain elevation is below the Bordering Vegetated Wetland (BVW) line. Ms. Gumbart asked where the pool would be relocated. Ms. Caless said that it would go where the old septic leach field is located in the yard. Ed Englemann asked the Commission how we handle the addition within the bylaw. Carol Gumbart said that the Bylaw requires the applicant to consider alternatives that would minimize or have less impact and then to consider mitigation for any impact. Karen Augustine said that the addition is in the lawn. The Commission agreed to conduct a site visit on March 14, 2005. The hearing was continued to March 15, 2005 at 8:00 p.m. .

6. TEC Associates, for CSX Railroad (RDA) Bill Fateiger opened a continued public meeting on a Request for Determination of Applicability filed by TEC Associates, on behalf of CSX Railroad. Mr. Fateiger said that he and Amy Wilson conducted a site visit with a representative of TEC Associates, last Monday morning. Mr. Fateiger said that the flags on the tracks were covered in snow but that the obvious wetland was in Berlin and not Bolton. A motion was made by Bill Fateiger, seconded by Scott Duhaime to issue a Negative 5 Determination of Applicability noting the exceptions from the Wetlands Protection Act 10.03 (6)(b) and 10.58 (6)(a). VOTE: Aye, unanimous.

Note – Bill Fateiger left the meeting for a brief period to attend the Advisory Committee meeting.

7. K&L Holding, Hudson Road (112-444) & WRPD Scott Duhaime opened the continued hearings to consider new information on a Notice of Intent and Special Permit application under the Water Resource Protection District Bylaw. Carol Gumbart read a letter to the Commission from Stan Gordon of First Colony Development Company, Inc., stating that they would like the Commission to continue the hearing to March 15, 2005. The letter further stated that they do not expect to have revised plans until March 11, 2005. The hearing was continued to March 15, 2005, at 8:15 p.m.

8. Open Space and Recreation Plan The Commission discussed the comments received by the Metropolitan Association Planning Council (MAPC). The Commission prepared some initial responses to their comments. Carol Gumbart agreed to try and obtain a checklist for the 504 Self Evaluation. Ms. Gumbart also agreed to chase down the letters of support that we need for the final approval.

Bill Fateiger returned from the Advisory Committee meeting.

9. Annual Town Meeting Article Bill Fateiger said that he discussed the article submitted by the Commission to change the general Bylaws to provide the fine for violation the Wetland Bylaw with the Advisory Committee. Mr. Fateiger said that the Advisory Committee was interested in the fine being set at \$300 since the only other one that comes close to this is the \$100 fine for putting snow on a public way. The Commission agreed that they should prepare a Frequently Asked Questions (FAQ) document prior to Town Meeting.

10. Beaver Pipe Purchase Carol Gumbart said that the price for acquiring the additional beaver pipes needed behind Main Street is about \$400. Ms. Gumbart asked the Commission if she should go forward with the purchase. The Commission confirmed that she should.

11. Forest Cutting Carol Gumbart said that today she received comments from Town Counsel on whether forest cutting is an exempt activity under the Bylaw and how it applies under the Wetlands Protection Act. Ms. Gumbart will distribute Town Counsel's email to the Commission for discussion at the next meeting.

12. Stephenson Land Acquisition Carol Gumbart said that the Stephenson's would like to close the purchase as soon as possible. Ms. Gumbart said that the Board of Selectmen will sign the Purchase and Sale Agreement on Thursday March 3rd but it will not be final until the expiration of the 30-day notice of the purchase in the Central register. Ms. Gumbart said that the 30 days end on March 18 and that if the Town Treasurer can bond the acquisition by then they could close by the end of the month.

Respectfully submitted,

Carol A. Gumbart
Conservation Administrator