

Conservation Commission Meeting Minutes February 19, 2015

Meeting opens at 7:14pm

Discussion:

1 Industrial Way Enforcement Order

Hearings:

7:14pm Tidd's Junkyard (GCC 2007-11; DEP# 161-0666) NOI (cont.)

Complete site remediation under Chapter 21E followed by construction of a 16-unit senior housing development with associated grading, roadway, septic system, utilities and storm water management structures with portions of the project being within 100' of Bordering Vegetated Wetlands

7:15pm Tidds Junkyards (GCC 2007-12; DEP# 161-0661) NOI (cont.)

Revision on plan to construct a 16-unit senior housing development, with associated grading, roadway, septic system, utilities and storm water management structures, portions of which are proposed within the Buffer Zone to BVW

Carl: Request from applicant to withdraw without prejudice. These hearings have been going since 2000 for the junkyard remediation and clean-up., 15 years.

Steve: I want to remind commissioners there's an existing Enforcement Order out there.

Carl: The withdrawal will not impact the EO. It's been out there since, 2000, and we've been operating under the EO since the first Order of Conditions was applied for 15 years ago. There were some serious violations right from the start, so we issued an EO. All of the clean-up and sampling that has been done, is under the EO.

Laura: Do we want to know how much they owe in fines?

Carl: I'd like an assessment of what the situation actually is. I know that we've given fines, they've paid fines, and we've forgiven fines.

Steve: I can give you a good assessment.

Laura: We feel that the clean-up of the actual site has been completed, according to the sampling they've conducted. We're happy with the proof they've submitted that the land they are donating is clean. I'm just wondering if we really need the fines hanging over them? Their next step is an NOI. Do we really have an enforcement order in place?

Carl: Yes. There's no harm in leaving the EO in place until they file for a new NOI.

Steve: The only reason I can see to keep the EO in place is because of lack of compliance and the issues we've had. So we would have more years of fines to hold over their heads.

Laura: Makes a motion to accept the request to withdraw without prejudice of Tidd's Junkyard (GCC 2007-11; DEP# 161-0666) NOI and for Tidd's Junkyard (GCC 2007-12; DEP# 161-0661) NOI.

Lillabeth: seconds the motion.

Motion carries unanimously.

Laura: That's exciting! That's a milestone!

Carl: That's probably one of the longest NOIs that's existed in this community. It's taken a long time for that clean up to occur. We're finally there.

Laura: That's terrific that that has actually been completed right next to our water dept. That's *really* important!

7:24pm 211 Pond Street GCC2014-24; DEP#161-0796) NOI – NEW

Residence under local jurisdictional enforcement order. Permit unapproved gravel parking area, remove unapproved gravel parking area surface within 55' of BVW and replace with native grasses, construct fence to delineate and protect buffer area within 50' of BVW, remove damaged Black Birch tree (due to health and safety concerns).

Applicant has requested a continuance.

Laura: Makes a motion to continue 211 Pond Street (GCC 2014-24; DEP# 161-0796) NOI to 3/19/15 @ 7pm

Lillabeth: seconds the motion.

Steve: Engineer was in last week, and has been in with some doodles, but his computer crashed, so he doesn't have any final drawings.

Motion carries unanimously.

Steve reads the bills.

Steve: Water bill for \$360, heads up on this one, the previous bill was over \$3000. What happened was there was a leak before that they didn't detect. They weren't reading it quarterly, so they basically picked it up after a year of leaking. So I talked to Lou in the Water Department, and they are going to read it quarterly. They are going to install another meter. The meter right now is at the road, so it has a 1000' run before it gets to the lodge. The leak has been fixed. We're going to have another meter installed at the lodge as well. The other thing I like about that is that we can check on it before some of these big events. Workshop in the Woods for 3 days, it's just one more piece of data that we can collect. The Water Department did abate

almost \$3000 worth of that bill, because it was a leak. It was scheduled to be done quarterly, but it wasn't being done. It's a town property.

Lillabeth: Makes a motion to pay the bills as read by Steve (our agent).

Laura: Seconds the motion.

Motion passes unanimously.

7:30pm 175 Central Street (GCC 2014-25; DEP# 161-0797) NOI –NEW
Septic system replacement and repair of existing building.

Applicant requests a continuation.

Steve: At the last meeting there was a handful of things that were talked about: Replace culvert with more appropriate sized pipes, replace septic system. There's a fairly hefty sized list and they needed some time to decide whether it was fiscally viable, and engineering-wise, when you change culvert sizes, you need to make sure that it will not adversely affect downstream properties. That being said there are some really big flooding issues there.

Laura: Makes a motion to continue 175 Central Street (GCC 2014-25; DEP#161-0797) NOI to 3/19/15 at 7:15pm.

Lillabeth: Seconds the motion.

Motion carries unanimously.

Steve: Camp Manager has requested to be reappointed on as Camp Manager. I requested that he come in to meet with the commissioners, but I haven't heard back.

Carl: It's really a meet and greet so he can get to know the commissioners and vice versa. Also to see if we can help him in any way.

Laura: I think he's doing a beautiful job. The camp looks great.

I'd like to make a motion to reappoint Don Anderson to the position of Camp Manager at Camp Denison.

Lillabeth: Second's the motion.

Carl: Is that a position for a year?

Steve: Yes, we're giving him a year and a little, since the position is supposed to start in July.

Motion carries unanimously.

Enforcement Order discussion for Carlton Way

Steve: The commission issued an Enforcement Order on Carlton Way at the last meeting. Lenny Mirra came in to discuss with me what was going on. A lot of the Enforcement Order is getting in control of the site so that we could evaluate what's going on. After looking at the documentation they had and some of the paperwork and the discussion, I can confidently say that there was no direct impact to wetland fill that occurred. We're letting the enforcement order ride until the spring to delineate where the wetland is. I'm honestly less concerned about the wetland fill because it's a good distance away from the wetlands.

They were supposed to do some road improvements that never happened. When I went out there my truck almost got stuck in one of the puddles. It was honesty hard to tell where the wetland stopped and the road began. The soil fill, I don't believe was put in the wetlands. The access is really mucked up. Their intention is to improve the roadway enough to get out there, move any soil that's in the buffer and level it out.

Their history was to clear the site and build an office building. They cleared it, stumped it, and sifted the soil, and took it off site. They then had soil from another site to bring it up to grade for the NOI that was filed 10+ years ago. They decided not to go forward with this project. They want to level out the land and sell it.

Carl: I would like to remind everyone to take a look at the Open Space & Recreation Plan. If you want to see anything added or offer comments, they would appreciate it. We need to sign-off on this and approve it. What are our goals for the future?

Laura: We have to have it in place so we can apply for State grants to be able to buy land.

Lillabeth: At the last meeting we were talking about things we would like to see, it would be nice if some of that was in there, about trees, and things like that.

Steve: The best place for that might be a tree bylaw.

Laura: The big difference between the last Open Space Plan and this one is that the last one the emphasis was on passive recreation, hiking and snowshoeing. This plan is more focused on active recreation like sports fields and playgrounds.

Lillabeth: In some of the towns they are allowing: town woodlots, town orchards, or town grazing lots, is there anything like that in there?

Laura: I don't think so...

Tree harvesting discussion. Talked a lot about a "well managed forest", being a healthy, beautiful thing.

7:45pm 304 Central Street (GCC 2014-26; DEP# 161-0798) NOI –NEW

Construction of a 38' x 58' barn.

Bill Manuel, Wetlands and Land Management
Brian Cassidy, atty representing Mr. James Motzkin (not in attendance)

Brian: Mr. Chairman, as I look around the room, we had two other members at the last hearing and we have a new member tonight. I'm wondering if we should continue until we have the opportunity to have a full panel present.

Carl: It's your choice.

Steve: We're missing one, and John can catch up by watching the minutes. I'll have to look into finding out if Rachel could vote. She was here for the entire meeting, but she wasn't a commissioner yet.

Laura: Makes a motion to continue 304 Central Street (GCC 2014-26; DEP#161-0798) NOI to March 19th at 7:30pm.

Lillabeth: Seconds the motion.

Motion carries unanimously.

Short recess.

8:01pm 11 Ordway Street (GCC 2014-27; DEP# 161-0799) NOI -NEW
Septic System Upgrade & grading

Steve: Septic plan is as far away from the wetlands as possible, replacing a leach pit.

Lillabeth: Makes a motion to approve the NOI for 11 Ordway Street (GCC 2014-27; DEP#161-0799) - NOI.

Laura: Seconds the motion.

Motion carries unanimously.

MACC (Massachusetts Association for Conservation Commissioners) conference is this weekend. They have some really good workshops for new commissioners. Their focus this year is on climate change and what affect that will have on maintaining open space as well as storm water regs (regulations).

Steve: If you decide to go, the Commission pays for the fees. You many need to pay up front and we can reimburse you.

Steve: The tree bylaw, do you want me to look into it?

Lillabeth: I think you should look into that. I think that's something very valuable that's missing in this town.

Steve: I can look at several towns and bring examples of other towns bylaws.

Steve: Budget season is up again. Nothing has really changed from last year. It's the Conservation Commission budget. If you are interested in our budget, or any other town budget, it's next Saturday. If any commissioners want to get involved in any other committees, it's a good time to think about it.

8:11pm 340 North Street (GCC 2015-01; DEP# 161-07) NOI -NEW

Tree cutting

Emery Boose, applicant

Nancy MacGuire, representative of applicant (daughter)

Dan Canonica, DEPConinca Tree Company

Steve: Identified trees that had been cut down, and what trees they were looking to cut down. Some trees were in the 50' no cut/no disturb; most were in the Conservation Commission's jurisdiction (100' from BVW). At that time there were a couple of more trees that were overhanging the house, and I gave them the okay to cut down those trees, after that, I basically put a stop to all work, no more tree cutting. I wrote up an Enforcement Order. They provided the plan you see. The applicant is an ex-engineer, so while it's not a stamped engineered plan, it's pretty close. I reviewed the plan, the commissioners have to realize that it's not to the inch, but I feel comfortable with it.

Originally going to include 5 more trees, through the process have decided to remove them from the plan.

Carl: What was the intent here?

Nancy: There were several very, tall trees overhanging the house. My father was worried about the house and his well-being in the house.

Laura: Some of these trees are very close to the house. What kind of trees were they?

Nancy: a double oak (70') overhanging house, and the rest were pine.(60-100')

Carl: We have a jurisdiction of 100' from the wetlands. So you need to file before us, but if there's an emergency situation, you can call Steve and he can authorize that, and then you can file for paperwork.

Laura: Have you cut down all the trees you needed to cut down?

Emery: At this point, I'm willing to quit now and think about it. I wouldn't have done what we did if I had known this law exists. The trees are all on high ground, they are not down by the wetlands.

Steve: There is a small group of trees within the 50' buffer, that I asked them not to cut down. They were healthy trees and were only 20' from the wetlands.

Lillabeth: When was the house built?

Emery: The house was built in 1945. I moved in in 1955. Some of those trees weighed 15,000-16,000 lbs.

Steve: This is after the fact, so it's more paperwork. I justified taking down the oak overhanging the green house. And the double oak was hanging over the house.

Lillabeth: How long was the greenhouse there?

Emery: There was a greenhouse there originally. It was first a swimming pool, then converted to a greenhouse. When this one fell down, I rebuilt it to my specifications probably in the 1970s.

Carl: Just so you're aware we can fine both the homeowners and the tree company \$300/day of fines. You as a business, should apprise your clients that they need to check with the town before cutting any trees down.

Laura: This is differs town by town.

Steve: At this point, we can't close it out, because the DEP doesn't have a number or any comments yet.

Laura: Makes a motion to continue 340 North Street (GCC 2015-01; DEP#161-) NOI to March 19, 2015 at 7:40pm.

Lillabeth seconds the motion.

Motion to continue is approved unanimously.

Discussion:

1 Industrial Way Enforcement Order

Paul Marchionda, Engineer

Chip Nylen, Attorney for the owner

Chip: We want to restore the wetlands that were altered. There was a dispute about where the wetland line was. Gillian came to conclusions as to where the hydric soils were, but not where the actual wetland boundary was. We have a 1996 plan as to where the wetland line was accepted. We would like to come to an agreement as to where the wetlands are, and then go forward and agree on a way we can operate our facility with a submission.

4 Prong approach:

1. Restore all of the wetlands that were altered
2. Move the wall to a safe distance that will protect the wetlands
3. put a wall on the other side of the property
4. put in Storm Water Management

We would like to have a wall. 1) It's a like a no build/no disturb line that nothing gets by. 2) Good neighbors, mitigates sound impact. We think it helps environmentally as well as socially.

Paul: Existing conditions: Black line delineated wetlands from 1996. Red line is the existing wall. Orange is wetlands that was delineated in 1996, which is not wet today. Blue area was not wetlands in 1996, but is wetlands today.

Carl: That's why as you know, wetland lines are only good for 3 years, because they wetland line is always doing something.

Proposal: Blue areas stay the same, green area was wetlands in 1996 and is the area we would like to restore to wetlands. Build a new structural wall that wouldn't topple over if someone hit the wall by error. We are proposing to swing it around and tie it into the tree-line so it protects the whole area.

Carl: So are you proposing the block wall stay where it is?

Paul: No, it would be removed. The new wall would be 15' further into the yard. Steven suggested putting the blocks 2 blocks high on the western edge so nothing will spill into the wetlands on the other side. (a physical barrier)

Paul: The proposed wall would be 25' on the south end from the replicated wetland, and 15' from the existing wall Northern end. We're not digging next to the wetlands, we're digging the footing for the reinforced wall at the same time we are putting in a replicated wetland.

Rachel: That's still in the 50'.

Steve: So it's probably about 5' at the closest point from the proposed wetland.

Paul: It's more like 10', it looks small on that plan.

Chip: We think that there's a value to having that wall there in terms of protecting that wetland. There was a suggestion that maybe we should build the wetland right up to the wall.

Carl: The question is more, "How far it should be away..." I'm not opposed to some kind of barrier, but I don't like to see a lot of things in the buffer.

Chip: The issue is, “Is there a wall or isn’t there one?” If we go back to the 50’ or 75’ setback, we may not be able to have a wall at all, which we don’t think is beneficial at all in terms of the sedimentation that could get in as well as for an air quality standpoint.

Paul: We think a physical barrier makes so much more sense than just a silt fence. We could restore another 3000-4000’ sq. ft. of wetlands right up to the wall if you want us to. In lieu of sloping it. The wall serves a good function.

Chip: What we’ve seen is in the past several years, the wetland seems healthy. The wall hasn’t had a negative impact on the wetlands.

Carl: I don’t disagree that it may be a reasonably healthy wetland, but if you’re doing it quantitatively you have to look at it from ideal conditions. “How healthy would the wetland be if there was no operation there?” It’s all relative, to how healthy would it be?

Chip: When you have operations like this generally you have free-standing sediment and here you don’t have that, that’s why I think it’s very important. If we added that, in addition to the wetland that’s restored, we could call it mitigation, it would be substantial, it would be a couple of thousand feet of new wetlands.

Lillabeth: Can you explain how you are going to do this without damaging the wetlands? The potential for damage seems huge in this whole construction project.

Paul: We’ll protect the wetlands with silt fence and silt socks. We’ll dig down 4’ down below the wetlands grade, for the wall footing and back-fill with wetlands material and have all the area behind the wall become wetlands.

Carl: We typically have a 3 year monitoring window to make sure it’s operating properly.

Lillabeth: What is the fill that’s in there now and when was it filled?

Paul: I still can’t figure out when it was filled and who filled it? It’s filled with topsoil, not rocks and bricks or debris.

Lillabeth: What is the plant material in that area now?

Paul: It’s a flat area then a 2:1 slope that’s just grass.

Lillabeth: Grass wouldn’t be there naturally.

Steve: The answer is because it was recently planted. You’re only hearing one side, my opinion is that this area was recently filled. It may have been a creep, and most of it may have been done 30 years ago, but this was recently filled.

Paul: The grass, must have been put in to prevent erosion. It was done before I got involved in November at 2013.

Lillabeth: The reason for my question was to see if we could establish a planting on the existing slope, put in a tree line or a dense shrub border that can take wet feet to prevent the siltation into the wetland better than a masonry wall which would drastically change the pH, rather than go in with big equipment

Steve: Per the regulations I think it's very important to restore the wetlands to where they were. I agree 100% with your point, I think we should have some uplands, not a rock wall with wetlands lapping up against it. An upland planted with upland vegetation is much more of a natural system, than a retaining wall. The rock wall is great to keep the vehicles and activity away from the wetlands. But I think it should be further from the wetlands. My doodles show where the wall is now and where it should be at 75'. You can land somewhere in-between. I think 50' is a compromise, any closer than that I think you may set a bad precedent. The commission should pay attention to what the buffer is going to be.

Carl: I would like to see the replication and the wall at 50'.

Chip: I can say if its 50' we won't have a wall there so, we would just deal with the restoration of the wetland, and then have a conventional buffer.

Carl: If you don't put a wall there, you should put in granite bounds to keep the activity and the tailing pile out of the buffer.

Chip: I think we have public reasons and environmental reasons to have a lesser setback than the 75' and we would be willing to put that in writing. If we can show just cause for the wall being as close as we would like to put it, the precedence goes away.

Carl: We can only rule on the environmental issues. We can't rule on noise per se.

Chip: There's a presumption that the buffer zone protects the wetlands, that's what we're looking to do, we're enhancing that protection with a wall.

Steve: To overcome that presumption you have to prove that there's no detrimental activity with this plan. There's a presumption that you need a 50' buffer to protect the resources.

Laura: I really appreciate that you are restoring the wetlands 100%. I think it would be better to restore it to the 1996 line and leave that little bit of upland between there and the wall. I do believe that wall provides a siltation benefit. When we look at these waivers, we always look at public benefit, so the noise is a consideration. We've had this whole room filled with people who were very unhappy about the noise.

Carl: Have we quantified the noise level? How many decibels on the A scale are we talking?

Paul: No, but the noise complaints have dropped off the face of the earth since the installation of the wall.

Steve: This has not solved the noise problem. If the rock crusher is operating, they get 10x more calls.

The 1996 topo, shows no soil there and no soil proposed to be added. The 1996 plan that was never closed out, they never complied with it. The original permit was for activity nowhere near this area. The soil was put in after 1996, this is a violation of the Order of Conditions. The Commission could write an Enforcement Order saying to “put it back to the way it was approved”, would mean removal of 100% of the soil, and then come back from there. I think a wall at the 50’ wetland line is a huge compromise. The whole point is to hold up previous decisions. The 1996 plan showed existing conditions.

Laura: I think the replication by digging out the fill, and extending the wetland will function better than digging a new hole over there.

Carl: So just to reiterate the 1996 plan there was no activity at all?

Steve: My interpretation and everyone I’ve shown this plan to agree that when you show proposed topo lines are solid and bold, they merge into faded out, dotted topo lines. What the plan shows in this area we’re talking about is no darkened topo lines, indicating no activity. They bought the land when it was cleared.

Paul: The Company has been here since 1996.

Steve: The Order of Conditions, was never closed out. We should really be looking at an as built and going from there, not going the other direction. What is being proposed is keeping the fill in the 50’ buffer keeping the grade at 80’ but removing the fill in the former wetlands.

Carl: If we pull the fill out and restore the wetlands, and put in a buffer, that’s a huge compromise as it is.

Paul: My client has put a lot of time and effort into coming up with a plan. He’s spent a lot of money to rectify the situation and he wants to work with the commission. We just can’t meet all the current standards.

Carl: We have to restore that wetlands.

Laura: They’ve agreed to restore the wetland, how much of the upland will be restored?

Steve: It really comes down to where the wall will be.

Laura: We still think the wall is too close. This is not benign material that they have up in that yard, I would like to keep it out of the wetland.

Carl: I feel there should be some kind of line of demarcation to keep activities and storm water runoff out of the resource area. Even if you try to restore the uplands with these kind of activities

in close proximity to a resource area you're going to have runoff unless you have some kind of barrier there.

Laura: I do think the wall is important.

Lillabeth: He started in 1996, and his business expanded. Can he shrink the business here, move the crusher to another site and make his neighbors happy?

Paul: The crusher is only there for 4-5 days at a time.

Lillabeth: It seems to me that he's outgrown his site. Can he set up his noisy, portion to another site?

Carl: Set backs were established all over the state before 2003 on a case by case basis. The regulations were codified in 2003 making it easier, but set backs were established long before that. We had a 100' jurisdiction, we would look at the project and give it a number for the setback, based on the risk to the resource area. I'm willing to come in from 75'.

Lillabeth: You're saying the only movable place on this plan are the wetlands, it seems to me that the piles aren't static things. Move your piles.

Steve: The piles on the original 1996 plan were to the left and below the building. That was supposed to be the storage area for the bulk of the materials. A 20' wide driveway was approved, now they are saying that the big parking lot and the big turnaround area, they need it, but that was never approved. To Lillabeth's point, that area to park, they could move it over there.

Laura: My question is, "It seems to me that if we ask him to move the wall back to 50' he will not be able to conduct his business, would I be right?"

Chip: We will conduct the business, but there won't be a wall.

Laura: So what can we do, if it goes back to the 50' buffer and there is no wall, how can we protect the wetlands from the solvent runoff, the material runoff?

Steve: Remove all the fill, restore the wetland, and build a vegetated berm off the 50'.

Paul: If we can't agree on a location for a wall, we'll remove the wall. We'll replicate the wetland, but we're still going to work where we are now.

Chip: If he could do 50' he would, but he can't do that. We're trying to deal with the provisions.

Carl: This is an enforcement action, there's negotiation to a point, but...Let's see if we can't take that last step and finish it off. We're trying to protect the wetland. We just need to find out what your final placement of the wall.

Paul: My client has a multi-million dollar investment, he's got a business here.

Carl: Running a business, we all have to comply with the law. If I want to operate a business in Massachusetts, I have many laws I have to comply with, I can't just say, "They're inconvenient".

Laura: Are we clear that we're happy with everything except for the placement of the wall?

Steve: I think it's the wall, but also the associated grade up to the wall.

Lillabeth: Has the owner considered putting a parking lot in the narrow part of the site, and make that big, wide open area a place for piles? That may alleviate a lot of the issues. Ask him to think about it.

Chip: We would like to meet with you again in March. What time?

Steve: The last hearing is at 7:40pm. Let's touch base ahead and if some of the hearings are dropping off, I'll let you know.

Lillabeth: Makes a motion to close the meeting.

Rachel: Seconds the motion.

Motion passes unanimously.

Meeting closed at 10:01pm.