



# TOWN OF NORTHBOROUGH Conservation Commission

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Approved 10/17/16

## Conservation Commission Meeting Minutes June 13, 2016

**Members Present:** Greg Young, Diane Guldner, Todd Helwig, Wayne Baldelli, Maurice Tougas and Justin Dufresne

**Others Present:** Kale Kalloch-Getman, Conservation Agent; Jacquie Goring, Board Secretary; Kathy Joubert, Town Planner; John Goldrosen, Town Council; Richard Nysten, representative of 432 Whitney Street; Vito Colonna, Connorstone Engineering; Dan Wells, Goddard Consulting; Joustas Barcelos, representative of 1 Lyman Street; Santo Anza, owner of 432 Whitney Street; Brian Harris, resident of 416 Whitney Street, Mary Ann Hammon, resident of 20 Morse Circle; Steve Stone, resident of 152 Bartlett Street; Anne Backstrom, resident of 152 Bartlett Street; Bill Walter, resident of 16 Morse Circle; Greg Ward, resident of 47 Coolidge Circle; Igor Achkinazi, resident of 38 Coolidge Circle; John Herrmann, resident of 10 Newton Street; Robert Frank, resident of 420 Whitney Street; David Backus, resident of 58 Coolidge Circle; Donna Morris, resident of 58 Coolidge Circle; Anne Swinton, resident of 43 Coolidge Circle; Neil Swinton, resident of 43 Coolidge Circle; Joan Frank, resident of 420 Whitney Street; Jacqueline Wellman, resident of 67 Coolidge Circle; David Garlick, resident of 96 Coolidge Circle; E. Palmer, resident of 66 Coolidge Circle; Lisa Anza, resident of 25 Reservoir Street; Scott Wellman, resident of 67 Coolidge Circle; and Ian Gow, owner of 1 Lyman Street.

**Approval of Minutes:** Mr. Maurice Tougas motioned to approve the minutes of May 16, 2016 as amended. Mr. Todd Helwig seconded the motion and the vote was unanimously in favor of approval.

### **Request for Determination of Applicability, 432 Whitney Street, Map 15, Parcel 22**

- Applicant: Santo Anza
- Representative: Attorney Richard Nysten
- Request: Determine if wetland and associated Buffer Zone are subject to the Wetlands Protection Act and if work in the wetland and associated Buffer Zone are subject to the Wetlands Protection Act
- Jurisdiction: Buffer Zone of a Bordering Vegetated Wetland

Mr. Young stated the purpose of the Request for Determination of Applicability (RDA) filed by Santo Anza, SA Farm, for the property at 432 Whitney Street, is to confirm if the Conservation Commission has jurisdiction and to issue either a negative or positive determination.

Mr. Richard Nysten, representing SA Farm, was present. He stated the RDA was filed for maintenance and improvements of the roadway used to access the back of the property and the existing roadway is exempt from the Wetlands Protection Act (WPA) because maintenance and improvement of the roadway used since 2009 is an agricultural use. He added there has been no other use of the property and the exemption for filing is clear within the WPA regulations. Mr. Nysten informed the Commission that filing the RDA was done as a courtesy due to the controversy at 429 Whitney Street. He stated they

do not believe the Commission has jurisdiction, but are willing to discuss why the work is exempt. He stated Attorney John Goldrosen, representing the Town of Northborough, has done a comprehensive review and agrees the land is currently in agricultural use.

Mr. Nylén displayed a plan that included the subject property at 432 Whitney Street, the wetland line, the no-build zone and the 100' buffer. He stated all of the proposed road maintenance and improvements will be located outside of the wetlands and the no-build zone, and will be completed for the purposes of continued access to the rear of the property. He added that currently, there is material in that area that can be used for feed and storage that will be replaced with clean fill in the spring. The work will be conducted within the 100' buffer but is exempt because the road is an existing agricultural area.

Mr. Young stated the Commission and Mr. Goldrosen have done significant research on farms and exemptions, and found they are grey. He stated the intent of the exemption can be interpreted that farms in the early 1990s were exempt from the Wetlands Protection Act, but that doesn't apply to agricultural use beginning in 2009. Mr. Nylén disagreed with the interpretation. Mr. Young clarified that the preface states that agricultural use at the present time in 1991 and 1993 may be exempt but will not apply to future agricultural use. Mr. Nylén noted that before the WPA regulations were amended, there were limited exemptions for farms and the Farm Bureau fought for the agricultural exemptions to be expanded. He stated he was unaware of the section of the regulations cited by Mr. Young.

Mr. Goldrosen reiterated there are grey areas in the regulations regarding agricultural exemptions and noted he had researched judiciary hearings regarding the interpretation of the regulations, but was not able to find any similar cases. He stated that typically the issue with agricultural exemptions is that farming has stopped on a property for five years resulting in the loss of the agricultural exemption. Mr. Goldrosen added that a committee was created to work on revising the regulations after it was perceived that Conservation Commissions were being too hard on farmers, but the question regarding exemptions when farming started in 2009 is unclear. Mr. Tougas asked if the Commission is reviewing the request for improving the road after it has not been maintained over the last five years. Mr. Goldrosen clarified that if a roadway is maintained and the land is in agricultural use, the maintenance of the roadway is an agricultural improvement. Mr. Tougas also confirmed that work can be conducted on the property outside of the Commission's jurisdiction without approval from the Commission. Mr. Nylén noted they believe the proposed work will not harm the wetlands and will improve them. Mr. Goldrosen added that the regulations regarding improvements or maintenance, presently or primarily in agricultural use, is not lost after five years if land is left intentionally fallow.

Mr. Young read the letter submitted by Mr. Goldrosen regarding the 1991 amendment to the WPA and agricultural use, as well as the 1993 agricultural exemption that states the agricultural exemption is limited to ongoing work at the present time in or near wetlands and new impacts are subject to review by the Commission. Mr. Nylén noted when Mr. Anza bought the property in 2009 the property had a difficult terrain and was used for agricultural purposes including grazing and pasturing of animals. He stated there will be no activity within the Commission's jurisdiction and will be limited to using the road to get from one point to the other. In addition, Mr. Anza has been using the road and clearing it for more than five years and is entitled to the exemption. Mr. Nylén continued, stating he agreed with Mr. Goldrosen that if a property is not used for agriculture for 5 years the exemption is lost and noted that the property is designated under Chapter 61A. Mr. Young stated the Commission clarified that Chapter 61A is a tax code designation and does not have any bearing on the Commission's jurisdiction. Mr. Nylén responded that, to achieve Chapter 61A status, it must be proven to the Assessor that the primary use of the property is for agriculture and he feels comfortable that the designation covers the property as

exempt from the WPA. Mr. Young disagreed and noted he does not believe enrollment in Chapter 61A entitles the property to WPA exemptions.

Ms. Kalloch-Getman requested clarification regarding the filing of the RDA and noted that it included filling and a retaining wall, which differed from the plan and proposal presented at the hearing. Mr. Nysten clarified that the plan displayed at the hearing included only roadway improvements and is the only work that is being requested by the Applicant. He noted the other work submitted with the original RDA is outside the Commission's jurisdiction. Ms. Kalloch-Getman stated the RDA submittal and the plan presented at the hearing, are completely different. She added the activities included in the original RDA submitted are not the requested activities. Ms. Kalloch-Getman noted that she had not seen the plans presented prior to the hearing. She read the work description from the RDA submitted on May 4, 2016, which included leveling off and terracing the area so it is suitable for animal food or housing. Ms. Kalloch-Getman noted that she also requested additional information and it was not provided. Mr. Nysten noted again that the plan presented is the work being requested for review by the Commission. He explained that when he submitted that RDA he didn't have the plan showing where the buffer zone was, and the plan he has now shows an area outside their jurisdiction on which the work would be performed within 100 feet. Ms. Kalloch-Getman stated what was requested is in the plan submitted with the RDA. She passed around the topographic plan from the RDA and emails with red lines marking out significant portions of the entire property. She stated this plan is brand new to her; it was never referenced or seen by her. Mr. Nysten replied the wetland line was on there, but the Commission doesn't have jurisdiction anyway. Ms. Kalloch-Getman stated Mr. Nysten told her he would bring in multiple copies of the plan and Mr. Nysten responded they are the plans he has tonight. Ms. Kalloch-Getman stated for the record that the plans Mr. Nysten has tonight are completely different.

Mr. Baldelli stated there are two plans, one outside their jurisdiction, and the other coming before them for an upgrade of the cart path. The RDA plan says a retaining wall is proposed. Mr. Nysten stated that right now they don't need one. Mr. Baldelli stated the RDA plan includes a proposed retaining wall that will require fill and that would require a permit. Mr. Young stated it is not an NOI, and the question is if it is exempt or not. Mr. Baldelli stated that per the Wetlands Bylaw, the wall is a structure within the 30-foot buffer. Mr. Young noted there is no plan for that. Mr. Baldelli stated he is curious as to why there are two plans and two different proposals. Mr. Nysten reiterated they didn't have the buffer zone line identified when he filed the RDA and they are not looking for that now. Mr. Baldelli suggested they disregard the original application. Mr. Dufresne stated even if the plan does not include a retaining wall, an NOI is required for fill up to 15 feet. Mr. Young explained that if they are exempt, they can do a lot of work without the commission's approval. Mr. Helwig stated he doesn't think Mr. Anza is entitled to an exemption, although Mr. Anza thinks he is and has created his own exemption. Mr. Nysten stated the regulations from 30 years ago indicate the use as proposed is entitled to exemption. In RFA regulations as of 1996, an exemption for the use is nowhere to be found. He stated this seems at odds with other land use and the farming constituency is losing farms in mass. Just because people may not like the work that goes on at the site, they did it the right way. Mr. Helwig disagreed, stating the Applicant can't show up one day and say the use is exempt. Mr. Nysten responded that is not fair to say because the agricultural use has been going on there since 2009.

In response to a question from Ms. Guldner, Mr. Nysten stated livestock (horses and cattle) connected to the use on 429 Whitney Street grazed for 6-7 months of the year, from 2009 through the present. Ms. Guldner disagreed, stating there has been no consistent on-going use of grazing for horses or cows, then or now, and if it was a farm, there would be animals there and feed. Mr. Anza stated he rotated animals based on vegetation a couple weeks at a time across the street for rotating of pasture. Mr. Baldelli asked if the fenced-off area keeps the animals out of the wetlands. Mr. Anza stated the entire

property was fenced in 2009, with cows and calves in the lower meadow. He stated as they developed it with more livestock, they ran the fencing all the way down, from the industrial park through Beaver Pond along I-290. There's evidence the fence has been there. Mr. Baldelli noted there was a small amount of fence in the front before. Mr. Anza agreed, stating the catch pins are still there for calving and inoculation. Three sections of fence are there to rotate, based on vegetation. It's the same thing as farming tomatoes – they're there one day and then mowed under the next.

Mr. Goldrosen stated Mr. Nylen's cover letter spoke about terracing for future structures, but that's not what is being proposed outside the buffer. Mr. Nylen said it is clear on the plan the work is outside the buffer. Mr. Goldrosen asked Mr. Nylen that, if it is agricultural, given the benefit of a doubt, what is the extent of work to maintain the agricultural use. Mr. Nylen clarified the location of the driveway, which is within the buffer zone, and showed the 100-foot buffer. Mr. Goldrosen asked if this work is under the scope of maintenance and improvement of the roadway. Mr. Nylen stated repair of roadways for land in agricultural use is an exemption. Their proposal to push this area up closer to the wetland will naturalize it, and it will be further away from the no-touch zone of the wetland than the current conditions. It will be the same general width going out to the rear of the property. Their purpose is to move it further away from the wetland and use clean fill to bring it to elevation. Mr. Anza stated the existing road built by the Army Corps of Engineers has two culverts which require maintenance. Moving out of the wetlands and the buffer allows him to move the roadway 50-60 feet from the wetlands. He noted staff have seen the culverts during site visit, and it's all ribboned-off where the new roadway is going.

Ms. Joubert stated staff who attended the site visit were not allowed access anywhere near there. There were two locations where they were close enough to see two area flags. Mr. Anza disagreed with her, stating she and Mr. Litchfield were out there two months ago. Ms. Joubert responded Mr. Anza submitted the RDA and staff was basically denied access to the site.

Mr. Young stated one comment in the document references normal maintenance and does not include filling or smoothing. Mr. Nylen stated the regulations don't address it. Mr. Young referred to Section 10.04(b)(3) which covers normal maintenance, repair or replacement of an existing livestock crossing stating there is nothing about filling in b3. Referring to the publication "Farming in Wetland Resource Areas: A Guide to Agriculture and the Massachusetts Wetlands Protection Act", Mr. Young stated the language in the regulations trump the guide. Mr. Goldrosen stated there are DEP cases that indicate the guide does not have the same force as the regulations, but is considered as long as it is not inconsistent with the regulations. He stated even if the RDA is not entitled to a Negative 3 determination, it doesn't mean work cannot be done; just that it needs a Notice of Intent and might be entitled to limited project status due to some agricultural activities.

Neil Swinton, 43 Coolidge Circle and Igor Achkinazi, 38 Coolidge Circle, expressed concern about the raising of the level of the roadway, if it is determined the project is agricultural maintenance. Mr. Swinton stated it sounds like a filling operation. Mr. Nylen responded a repair is a repair, and they are entitled to a repair. They would expect an Enforcement Order from the Conservation Commission if it wasn't allowed.

Jackie Wellman, 67 Coolidge Circle, was concerned that the road will be moved closer to the train tracks, as it will also be closer to the homes in that area.

Bob Frank, 420 Whitney Street, expressed concern about what is being brought onto the site by the 25 tractor-trailer trucks that come to the site per day, with 150-200 cubic yards of material. He stated the material coming in is debris, trash bags, roots, and other nasty stuff, and when it's unloaded, steam

comes out. These trucks come to the site 3 an hour. He stated he doesn't know what the Conservation Commission considers fill vs trash. Mr. Nylen replied there are lots of different farms that are not like the Midwest. Mr. Frank stated there are bags of trash and leaves, that are not black dirt, from Woburn, Massachusetts, that has a history of their own issues, and it all smells awful. Mr. Young replied he empathizes with his concerns but it is not a discussion for tonight's meeting. He noted he saw steam at the site visit. Mr. Anza stated grass and weeds come in hot like any silage. He noted DEP and DAR, among others, looked at it and nutritionists said it's feed.

Ms. Joubert stated she did not understand why what is before the board is to bring in fill to create a roadway. Mr. Anza replied they need it to move the road closer to the tracks. Mr. Nylen stated it's for repair of the roadway. Ms. Joubert asked what they plan to bring in and how much will be brought in. Mr. Anza stated in the spring they will determine how much is needed to get the trucks back there.

Anne Swinton, 43 Coolidge Circle, was concerned as to how far they will be shifting the path. She stated moving the driveway is different than maintaining a driveway or street, which requires asphalt and that sort of thing. Mr. Nylen stated maintenance or repair is the same thing. Now the road is in the no-disturb area and moving it away from the wetland is maintenance or repair of a roadway. He stated what they are proposing is considered improvement and maintenance. At her request, Mr. Anza showed her where the roadway is now and described the location right up against the flag, almost on the roadway. He noted there are 2 culverts joining water from the industrial parking lot that charges into the wetland and discharges to the main wetland.

Regarding a previous question from Ms. Joubert as to what is being addressed at the meeting, Ms. Kalloch-Getman stated the specific request in the letter filed with the RDA states "in order to improve the agricultural activities, SA farms will bring in fill in order to level off or terrace the site designated more suitable for animal housing" and that is what the commission is reviewing tonight. Mr. Nylen stated the plan before the commission tonight does not show terracing or putting buildings up.

Scott Wellman, 66 Coolidge Circle, was concerned that not all members of the commission were able to go to the site visit, but are asked to rule on something that is not on the plan in front of them. What they are ruling on today is not what the Applicant has requested. The Applicant is not being specific on fill, and the commission's job is not just how much fill and how many feet it is from the buffer. Their job is to protect the wetlands. It's the amount of fill that will be brought in that is relevant and needs to be put in writing. Mr. Anza requested 65,000 cubic yards of fill, and then in testimony said it was 90,000 cubic yards. He stated Mr. Anza will tell people anything they want to hear, so it needs to be in writing. The buffer needs to be protected. Mr. Anza has done this in Webster, Mattapan and Boston, and needs to be held responsible with a bond.

Ms. Kalloch-Getman stated during their site visit, they were not allowed to view the wetland delineation. She stated Mr. Anza said he is bringing in half a million tons of fill. Mr. Nylen stated Mr. Anza is certainly not using half a million tons of fill for the roadway.

Nejad Ahrabi, 2 Scott Lane, asked the commission if there are any regulations being broken by having the animals on the property. Mr. Anza stated he meets the requirement of 5 acres of land. Mr. Tougas agreed.

Mr. Ahrabi stated Mr. Anza needs to prove it's a working farm generating income or livelihood. He stated he respects that the state is fighting for farms to make money off the use of the land and questioned if this site is meeting income that would justify it's a farm. Mr. Tougas stated a 61A

classification needs to generate \$50 plus \$5 per acres. For the WPA, he suggested it would be the definition of agriculture, not 61A real estate tax law. I would suggest 128A would be the definition of ag, not 61A real estate tax law. 128A defines farming broader than 61A. Maybe council can if there is a dollar amount, when defines a farm its \$1,000 in sales, hobby. Mr. Ahrabi asked Mr. Anza if he makes his living farming land. Mr. Anza stated he makes money farming the land, have farm plates, is insured as a farm, and the state of Massachusetts is satisfied. Mr. Tougas noted it is difficult to get farm plates. He stated they wanted clarification as to the agricultural use from DAR or DEP attorneys, and of the two attorneys, one said yes it is and one said no it's not. He stated there are 150 head of beef on there now, 300 goats and 1,000 birds. Mr. Anza stated there are no tomatoes or Christmas Street, but 2 full-time employees, and it's a farm.

Brian Harris, 416 Whitney Street, stated he has never seen animals right across the road. Mr. Anza has misrepresented the truth to the Town before.

Jim Shore, 34 Coolidge Circle, expressed concern about the fill and if it is needed for agricultural use; about the number of trees that have been cleared; about the stench that will come from the fill; and about the distance the road will be moving toward the train tracks. He noted at one point in the past, there were animals crossing the street and in people's yards and he does not think that is responsible farming. He stated he saw cows on top of a mound of something on 429 Whitney Street today, and they didn't seem to mind if the area was flat or not. He questioned what is considered agricultural use and if fill is needed, and stated the commission is accountable to protect the wetlands, the town and the neighbors. Mr. Young responded they have discussed the agricultural use a lot tonight, and whether the timing of the farm in 2009 makes it exempt or not. He noted the railroad tracks are out of the commission's jurisdiction.

Mr. Harris expressed concerned with what Mr. Anza could do on the property if the commission issues a negative determination; if the determination would apply to the entire parcel of land. He stated building the road is the only scope of discussion tonight and he asked if it would give Mr. Anza a free rein to work within the jurisdiction on the property. Mr. Young replied Mr. Anza could only work outside the 100-foot buffer zone. If he has an agricultural exemption, Mr. Anza can do a lot of things without the commission getting involved. Mr. Harris suggested the decision must take into account potential future use.

Scott Wellman, 67 Coolidge Circle, stated it is part of the job of the commission to protect the wetlands beyond if it's an agricultural exemption. Mr. Young agreed. Mr. Wellman was concerned about the amount of fill and noted the brook on 429 Whitney Street no longer has trout. Before the farm there was trout and the farm, there is no trout. He stated it sounds like the commission is looking narrowly at something potentially significant to the wetlands. Mr. Young stated they can only address the request that is before them tonight. Mr. Wellman and Ms. Kalloch-Getman stated it's not the same request. Mr. Helwig told Mr. Wellman he could appeal their decision just like Mr. Anza could. Mr. Tougas stated if fill is brought in it can't be moved within the resource area. If he was to move it into the wetland area, it would not be allowed. He can fill in the uplands but once it's in the resource area, it's a problem. Mr. Wellman stated if he is exempt, and his next step is to do what he wants in a resource area, the town will not be allowed on the property, and an enforcement order would be hard to enforce, again.

John Herrmann, 10 Newton Street, asked Mr. Young if the commission will be voting on what Ms. Kalloch-Getman has presented or what Mr. Nysten has presented. Mr. Young responded they will be voting on both. Mr. Tougas stated they have to determine if the activity is an agricultural activity because the RDA is for an activity and it's the activity that would be exempt. Mr. Nysten stated the repair of the roadway is an activity to make improvements of land in agricultural use. Mr. Tougas noted they

have in writing what Ms. Kalloch-Getman read from the RDA, which states they proposed to bring in fill to level off more suitable area for animal housing, etc. Mr. Nylen stated that's not the activity he requested. Mr. Tougas asked if the commission could vote on that legally if they don't have a written request. Mr. Goldrosen stated with a Notice of Intent, they would need to reference a plan. If the land is in agricultural use, normal maintenance, and the work is shown on the plan, he suggested the commission could approve the revised plan as submitted.

Mr. Dufresne noted the DPW had to file with the commission to move Hudson Street twenty feet. Moving this road is not maintenance. It could be maintained or improved, but moving it is not exempt for the Town or MassDOT, or agriculture.

Mr. Baldelli stated there are no references on the maps and he doesn't know what they're doing there. Ms. Guldner stated she doesn't see how they could vote on it since they don't have accurate plans. There are two different reference points and two different questions before them and they need this to be crystal clear. Mr. Helwig stated the only thing before them is the RDA.

Mr. Helwig motioned to issue a positive determination on the basis that the proposed activity is not exempt. Mr. Baldelli seconded the motion and the vote was five in favor, with Mr. Tougas abstaining due to a lack of information.

**Notice of Intent, 77 Maple Lane, Map 65 , Parcel 43 , DEP file# not yet issued**

- Applicant: Thomas and Bonnie Ryan
- Representative: Frank Bicchieri
- Request: Addition to a single family home and septic system upgrade
- Jurisdiction: Buffer Zone to a Freshwater Wetland and Bordering Land Subject to Flooding

Ms. Kalloch-Getman explained this project has been postponed to the July meeting due to plan changes.

**Notice of Intent, 388 Crawford Street, Map 7, Parcel 38 , DEP file# not yet issued**

- Applicant: On-Time Construction, Inc.
- Representative: Connorstone Engineering
- Request: Septic System Repair
- Jurisdiction: Buffer Zone to a Freshwater Wetland, Riverfront Area

Ms. Kalloch-Getman explained this project has been postponed to the July meeting due to plan changes. Vito Colonna, Connorstone Engineering, was in attendance and wanted to present the project. Ms. Kalloch-Getman stated the Notice of Intent (NOI) submitted was missing significant information and she told this to Mr. Colonna several times. In addition to submitting an incorrect filing fee, the expansion of the septic system has changed and now is proposed to serve a 3-bedroom home in a River Front Area (RFA), which requires far greater restrictions than those required for what was originally presented to her. Mr. Colonna asked the board if he could present the original submittal. Ms. Kalloch-Getman responded there is data missing and there is not adequate information for what the Applicant wants to do. Mr. Helwig suggested Mr. Colonna figure it out what data he needs to submit. Ms. Kalloch-Getman noted the abutters do not need to be notified if the house is not going to be demolished, which the Board of Health thinks is going to happen. The hearing was continued to the July meeting.

**Abbreviated Notice of Resource Area Delineation continued, 1 Lyman Street, Map 66 , Parcel 9,10,11, DEP file# 247-1112**

- Applicant: Ian Gow
- Representative: Scott Goddard, Goddard Consulting LLC
- Request: Confirmation of Boundary of Bordering Vegetated Wetland, Bordering land Subject to Flooding, Confirmation of USGS perennial stream designation change.
- Jurisdiction: Freshwater Wetland, Riverfront Area, Bank, Bordering Land Subject to Flooding.

Ms. Kalloch-Getman explained the Applicant has requested peer review but did not pay the consultant's fee. The Department of Environmental Protection (DEP) comments regarding stormwater management have not yet been addressed. The Applicant needs a Variance from the Zoning Board of Appeals for a change of use. The Design Review Committee reviewed the project last week, was not in favor of it and will continue their review pending review by other boards and commissions. The Groundwater Advisory Committee will be reviewing the project next week.

Ian Gow, Applicant; Dan Wells, Goddard Consulting; and Joustas Barcelos, representative of 1 Lyman Street, were present. Mr. Wells explained he filed the ANRAD on behalf of the Applicant.

Mr. Young explained the Applicant came before the commission a few months ago with an Abbreviated Notice of Resource Area Delineation (ANRAD). The Commission held a site visit and came away with differing opinions regarding the wetland line. A discussion was held at the next meeting regarding a peer review of the project and subsequently Ms. Kalloch-Getman received two email messages from the Applicant requesting it be done quickly. She stated she had advised Vito Colonna, Connorstone Engineering, that questions addressed by the ANRAD are the same as those addressed by the NOI, and filing both is unusual. In addition, the \$2000 filing fee is an unnecessary expense for the Applicant.

Mr. Young stated five companies were contacted to bid on the peer review, two companies responded and Ms. Kalloch-Getman selected the company with the lowest bid. She noted a representative of Goddard Consulting attended the first meeting.

Mr. Wells stated he did the delineation and it's relevant for him to be involved in the peer review process. He stated he was never involved in the site walk, but he knows Ms. Kalloch-Getman and commissioners visited the site. He noted in most cases, the wetland scientist would be there to review the work and he never got that opportunity. He stated its never an exact science and is willing to concede that, had he reviewed it with the commission, there would have been modifications. He asked for the opportunity to do the review and work out issues with Ms. Kalloch-Getman and the commission, rather than having Mr. Gow spend money on the peer review.

Ms. Kalloch-Getman stated the commission discussed peer review when the NOI was submitted in May. After visiting the site, she and other commissioners presented concerns that the delineation was 90 feet off in a significant area. The commission then discussed it and thought the peer review was reasonable in order to get an adequate review of the resource area impacts of the project. Ms. Kalloch-Getman stated she then received emails from Mr. Colonna, hired the consultant with the knowledge of the Applicant and the Applicant's representatives, and they agreed to it. After ten days, the Applicant indicated he did not want a peer review and declined to pay the consultant's fee. Ms. Kalloch-Getman explained this situation put the project in the category to deny the project based on a lack of information.



Mr. Gow stated he is trying to appeal the issuance of a peer review order to get due process. No one has had a chance to have a site visit with Goddard Consulting. Mr. Helwig reminded Mr. Gow that he had agreed to the peer review. Mr. Gow responded Mr. Colonna agreed to it in his absence and it was an unfortunate engineering glitch.

In response to a question from Mr. Helwig, Kathy Joubert, Town Planner, explained the Applicant has requested a continuance of the public hearing for his Application to the June 28<sup>th</sup> Zoning Board of Appeals meeting.

It was determined by the Commission that the project could not be approved at this meeting because of the disagreement regarding the wetland line. Mr. Wells asked the Commission to give Goddard Consulting a chance to review the wetland line. Mr. Young responded Goddard Consulting had a chance to walk the site with them and did not. He stated he thinks the line is off by a lot and suggested the commission could continue the hearing or deny the Application. If they denied it, the Applicant could refile.

Mr. Baldelli stated he wants to give the Applicant the benefit of the doubt, but it is up to the commission and it would be within their right to deny it. He stated it makes no sense to delay it.

Mr. Gow responded another delay is immaterial and would like a chance for another walk-through. He stated the issue is so big, there must be a misunderstanding. Ms. Kalloch-Getman referred to Mr. Wells' map and pointed out the area of the site visit. She stated she, Mr. Young and Mr. Beals believe this area was all flooded, saturated and filled with debris, and had been mowed; and she is not going to change her point of view that another site visit would not change it. She identified areas on the map with landscaping piles that are 5-feet to 7-feet high. Mr. Gow suggested the piles may be 1-foot high and Ms. Kalloch-Getman responded the piles are of some size, the wetlands have been filled and mowed, and she found saturated soils flooded and hydric. She showed the area she believes is wetland and is unusually large, and stated the delineation is not just a couple of feet off.

Mr. Wells stated Ms. Kalloch-Getman requested all supplemental information on River Front Area stream statistics and offered to walk the board through it. Ms. Kalloch-Getman stated she provided copies to the Commission. Mr. Young stated the delineation might be off by 100 feet and they need to nail that down.

Mr. Gow stated he would appreciate another opportunity for a site visit.

Mr. Helwig motioned to continue their discussion to their July meeting, which will include peer review.

Mr. Wells stated the delineation was done almost two years ago and it's possible some isolated features have changed. He would like the opportunity to walk the site with Ms. Kalloch-Getman and if they don't agree, there would be no point but to hire the peer reviewer. Mr. Dufresne stated Ms. Kalloch-Getman is not going to change her mind. They have already reviewed the line and he questioned what good it would do to go back out there and end up where they are now. Mr. Wells asked Ms. Kalloch-Getman if there is an upland between what she was seeing and if that is the case, they could delineate that. Mr. Dufresne stated he spotted shots of berm in there and the contours don't indicate that. He asked Ms. Kalloch-Getman if she noticed that. She responded she works for all of them but has limited time, feels she has spent a significant amount of time on it, and is comfortable with what she found.

Mr. Gow asked Ms. Kalloch-Getman if she could let them know what she disagrees with. Mr. Baldelli stated they had the chance to have representatives on the site. Mr. Colonna stated Scott Goddard was told to go to another site and it was the wrong site. The timing on the schedule was mixed up somehow. Mr. Wells asked if they could limit it to one hour, as he just wants a chance to review it. Mr. Gow asked if they could do a partial peer review. Mr. Young stated he is not familiar with that. Mr. Wells stated if this is intermittent, they could restrict it to a 10 flags section and limit the peer review scope just to that to save money on peer review costs. Ms. Kalloch-Getman stated they have received the peer review estimated costs and can break them down separately if it will be helpful, including wetland delineation, surveying, attendance at meetings, etc. Mr. Wells responded he can avoid a couple of those items and asked for the opportunity to do so.

Mr. Helwig motioned to continue the hearing, Ms. Guldner seconded the motion. Mr. Young asked if they vote not to continue, would it be a denial. The members responded the commission can continue it or deny it. Ms. Joubert asked if it would be helpful for Ms. Kalloch-Getman to go back out there. Mr. Helwig responded it seems like reasonable minds could prevail if she goes back out there. The peer review is still on the table. Mr. Tougas asked if it is adequate to do the wetland line delineation for the peer review. Ms. Kalloch-Getman replied it would be. Mr. Baldelli stated they could specify one section of that if the Applicant is willing. Mr. Dufresne suggested having the peer review consultant do a review in the field, not Ms. Kalloch-Getman, and then the Applicant could come back in July for the results. Mr. Tougas suggested it be reflagged. Mr. Dufresne stated if the Applicant doesn't agree, either reflag it or deny the ANRAD. Mr. Wells stated he would like to go to the site with Ms. Kalloch-Getman only, as there is a chance she would agree with him. Ms. Kalloch-Getman responded there is no chance she would show him where the flags should be. They are so far off it's almost unheard of. If it was 5-10 feet off, there wouldn't have to be a peer review, however we all concur there is a significant difference, so much so, a peer review was discussed. The Applicant was advised not to pay \$2,000 for an ANRAD but they chose to pay for something they didn't need to do. The cost of the original company chosen for the peer review was \$2300, but due to a conflict of interest between Patrick Garner and Scott Goddard, another company was chosen to do the peer review for \$4300. She noted she had the opportunity to follow up on that two weeks ago.

Mr. Gow stated he thought they had asked for a compromise rather than a conflict of interest. Ms. Kalloch-Getman responded she sent six emails to him but were ignored. Mr. Gow stated he didn't ignore them, but sent a letter indicated he wanted to discuss the peer review cost and review of the delineation. Mr. Wells asked if Mr. Gow could change the peer reviewer and if the commission could review it. Ms. Joubert stated the peer reviewer has been notified and typically, it is the town's position to accept the least expensive bid. Mr. Gow stated he believes Mr. Garner has an issue with Mr. Goddard, and asked if Mr. Garner was notified of that. Ms. Kalloch-Getman responded he was notified that the fee was not paid in 10 days. She stated Mr. Gow could appeal on the grounds that there is a conflict of interest, which is in the bylaw. She stated it is not about if they like each other or not. She noted Mr. Gow declined to appeal to the Board of Selectmen and the process has been clear and above board all along. Mr. Gow stated he has paid to have a wetland scientist go out and make delineations which Ms. Kalloch-Getman is finding wrong. He questioned if she is a wetland scientist or qualified to make that determination. Mr. Young stated it was not just Ms. Kalloch-Getman who walked the site and all those who were there were walking in water.

Mr. Helwig motioned to deny the ANRAD for 1 Lyman Street, Mr. Baldelli seconded the motion and the vote was unanimously in favor of the motion.

Mr. Helwig suggested sending a letter to the Zoning Board of Appeals to notify them that the hearing for the Notice of Intent has been continued due to the issue of the peer review. He stated they should also let the ZBA know the Applicant still owes the Conservation Commission money, as they did not submit the correct filing fee. Mr. Dufresne added ZBA should know of the discrepancy regarding the wetland line. Mr. Baldelli reminded the board they already asked Ms. Kalloch-Getman to send a letter to the ZBA suggesting the proposed use should not be approved due to its location in Groundwater Protection Overlay District Area 1. Ms. Kalloch-Getman stated she doesn't think she sent that letter to the ZBA, but will do it.

Ms. Joubert stated the project has been going on for months and the Applicant still hasn't provided all the information required for the Groundwater Advisory Committee, ZBA or the commission. The Design Review Committee met with the Applicant and will continue their review when the Applicant has finished with the other boards.

### **CERTIFICATES OF COMPLIANCE**

On a motion from Mr. Tougas and seconded by Ms. Guldner, the Commission voted in favor of issuing Certificates of Compliance for:

#### **50 Ridge Road , Map 82, Parcel 4, DEP file # 247-715**

- Request made by: Theresa Capobianco, Esq.
- Final Order Issued to: Stoneridge Development, Inc.

#### **57 Oak Avenue, Map 76, Parcel 21, DEP file# 247-1098**

- Request made by: Samuel Richesson
- Final Order issued to: Samuel Richesson

#### **105 Howard , Map 45, Parcel 3C, DEP file# 247-715**

- Request made by: St. Pierre and St. Pierre P.C.
- Representative: John Grenier
- Final Order issued to: First Venture Trust

#### **237 Whitney Street , Map 36 , Parcel 50 , DEP file # 247- 1108**

- Request made by: Kate McCarron and Craig Gugger
- Final Order issued to Craig Gugger and Kate McCarron

#### **Request for Certificate of Compliance for 86 Maple Street, Map 52, Parcel 130, DEP File #247-1077**

Ms. Kalloch-Getman stated this request will be reviewed at the July meeting.

**81 Maple Lane:** Ms. Kalloch-Getman stated a drywell is going to be installed either today or tomorrow. The area has been stripped and restored, and the owner, Yao Zhang, wanted to put together a plan for shrubs. She hired someone to do a plan, but the company she hired put in different plantings. Ms. Kalloch-Getman stated she met with Ms. Zhang and the company that did the work, and asked why they didn't do the work as proposed on the original plan she reviewed and approved. The company is going to make some revisions and will talk to her about it so they can come to an agreement and get the work done. Also, Ms. Zhang had asked to remove the erosion controls and Ms. Kalloch-Getman asked her to replace them and repair some of them.

**Earthwork Board Representative Reappointment:** Mr. Tougas motioned to reappoint Anthony Pini as their representative to the Earthwork Board, Ms. Guldner seconded the motion and the vote was unanimously in favor of the reappointment.

**Lincoln Street School:** Ms. Kalloch-Getman stated Representative Phil Palumbo were going to send her documentation of their review of the substrate and she hasn't seen it. Mr. Young noted there is green stuff in the basin. Mr. Dufresne stated the original ones are greening up, linear and haven't filled in. When they were there before, they said they will fill it in and the bottom of the basin will not be seen. Ms. Kalloch-Getman stated they are required to review the drainage characteristic of the area and she has asked them for it but they have declined to provide it. There is suitable substrate for drainage if they are not pulling material out and replanting. Mr. Young stated they need to know the status; that at least something is growing.

**442 West Main Street, Jay Christopher Salon:** Ms. Kalloch-Getman reported there is still a tree in the fire pond on the corner of Crawford Street and Main Street. She stated the owner of the property said he was going to be pulling out the material that had fallen into the fire pond. Mr. Young asked her to follow up on the status of this.

**394 Davis Street:** Mr. Young noted the price has dropped on the property at 394 Davis Street, but it's still on the market. Ms. Kalloch-Getman stated she has been trying to contact the owner by email and asked the commission if she should send him an enforcement order. She noted the owner cannot sell the house without a Certificate of Compliance. She stated unless the members change their mind, she will keep trying to meet with him. She replied to him at one point, but hasn't heard back from him. Mr. Dufresne stated they were in there, put in the barrier and are going to muck it more. Ms. Guldner stated she would leave it. Ms. Kalloch-Getman stated 99% of the time, she is for leaving it alone, but in this area, there is a significant depth of silt. Vegetation is coming up. But there is so much wetland area so close to the house she is concerned about additional volume and flooding in the future.

Mr. Helwig suggested they wait until a request for a Certificate of Compliance has been submitted and then decide. Mr. Young agreed. Mr. Baldelli stated he has concerns about setting a precedent the longer it goes on. Ms. Kalloch-Getman suggested she could issue a cease and desist letter for further work on property until the commission visits the site.

**Summer Meeting Schedule:** It was determined that Mr. Tougas, will not be at the July 11<sup>th</sup> meeting; Mr. Baldelli was not sure; and Mr. Young, Mr. Dufresne, Ms. Guldner and Mr. Helwig plan to be there. Ms. Kalloch-Getman added 0 Church, 432 Whitney Street and 1 Lyman Street will be on that agenda.

Ms. Joubert noted she talked to the Town Administrator, John Coderre, regarding 432 Whitney Street and he would like Ms. Kalloch-Getman to draft the positive determination, which he will review.

Mr. Young asked if Mr. Anza could keep working if they issued a positive determination for 432 Whitney Street. Ms. Joubert stated they are trying to identify the material being brought in with the probation officer and have several emails about testing the material or feed. Mr. Dufresne asked if the Earthworks Board would be involved. Ms. Joubert responded the use is exempt as haylage animals were observed eating it. Ms. Kalloch-Getman displayed photos of the site. Mr. Young questioned whether or not the board could issue a cease and desist order. Ms. Joubert responded she will talk to Mr. Coderre about it. Mr. Young noted there are animals in the wetlands. Ms. Guldner suggested the commission could ask Mr. Anza to keep them out of there.

**Jacque Goring, Board Secretary:** Ms. Kalloch-Getman informed the members that this is Ms. Goring's last meeting with them, as she will be working more hours at her position in the town of Stow at the beginning of FY2017.

**Central Mass Mosquito Control:** Ms. Kalloch-Getman reported Central Mass Mosquito Control is maintaining a drainage ditch in a pond and placing side cast spoils in thin veneer in the wetland at 133 Church Street. She is hoping to talk to them regarding the thin veneer as to where it's going to go and that it really disturbed a lot of area. She left it with them that they would do a limited information site visit and asked the members to let her know if they wanted to attend.

Mr. Helwig motioned to adjourn the meeting, Ms. Guldner sectioned the motion and the vote was unanimously in favor of adjourning the meeting at 9:50 pm.

Respectively submitted,

Jacquie Goring  
Board Secretary

Debbie Grampietro  
Administrative Assistant