

## **STURBRIDGE CONSERVATION COMMISSION**

### **Meeting Minutes for Thursday, September 27, 2007**

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#### **7:00PM – OPEN MEETING**

##### **Members Present:**

Dave Barnicle (DB) Chairman, Donna Grehl (DG), Dave Mitchell (DM), Ed Goodwin (EG), Frank Damiano (FD) at 7:04PM.

Kelly Kippenberger (KK), Conservation Agent

Laura Hunter, Minutes

#### **Discussion of Public Lands Advisory Committee (PLAC) and Leadmine Mountain Property**

##### **Discussion Begins at 7:01PM**

**Present:** D. Favreau, D. LaFranchise, B. Muir, P. McGarrah, D. Aho, W. Palmer

##### **Discussion:**

- D. Favreau introduces members of PLAC and Conservation Commission introduces themselves.
- D. Favreau submits document outlining PLAC achievements and recommendations and reads from several bullet points.
- D. Favreau discusses Leadmine Mountain Property signage and shows a sample of the proposed signs with “Town of Sturbridge” printed on them.
- PLAC members and Commission discuss issues with upcoming hunting season and not having the area properly marked with posted signs. D. Favreau states the Leadmine Mountain property has deeded restrictions for hunting but the area does not have adequate signage.
- D. Favreau reads from E-mail regarding hunting on Leadmine Mountain property and states there will need to be a distinction made between areas where hunting is allowed and areas where hunting is prohibited.
- EG states hunting is allowed unless posted otherwise and describes the “Ballard” property.
- KK states the Ballard property is a 72-acre parcel at 127A Stallion Hill Road. She adds there is another 96-acre parcel located at 197 Leadmine Road.
- D. Favreau states he would like to have the signs posted on both parcels. KK states that the PLAC should be researching the parcels owned by the Town/Commission and determining the use of each parcel
- D. Favreau states the boundaries of the property abutting Old Sturbridge Village (OSV) has been determined with GPS but nothing has been marked by OSV.
- B. Muir states the “Heins” property has posted signs reading “NO TRESPASSING, NO HUNTING, and NO FISHING”.
- D. Favreau states the signage is a priority. B. Muir states that not all the property owned by the Town has the same restrictions. D. Favreau suggests the signs are posted on all Town owned properties and include the land use and any restrictions.
- DB questions signs being posted on public lands that share a boundary with the OSV piece. D. LaFranchise states the signs will not be posted on OSV property. DB states the signs should be visible from public lands as people approach OSV property.
- D. Favreau would like to establish a group to post the signs.
- DB discusses issues on the Ballard property with snowmobiles. D. Aho states the Ballard property cannot be accessed. DB and DM state the DPW has installed a road a few years back that washed out. D. Aho states there is no access to the parcel without the use of motorized vehicles. KK recalls signage off Leadmine Road with hiking access.
- D. Favreau mentions that the well site should have a sign that states “NO ATV’s, etc”. B. Muir states there are ATV on that land all the time and it is a problem
- PLAC and Board discuss abutter properties and signage.

- D. Favreau resumes reading from recommendation document regarding public introduction of PLAC. DB states he submitted an article to the Southbridge News that was never published.
- D. LaFranchise states there are two new publications in Sturbridge. DB states they could submit two articles; one introducing the PLAC and one describing the newly established trails.
- D. Favreau describes posting of hunting location on website for Department of Fisheries and Wildlife. He adds there is a parking area at the 197 Leadmine Road property created by the DPW.
- DM questions if the parking area can accommodate two or more cars. D. LaFranchise states more than two cars. DM asks if there is a boulder blocking the roadway. P. McGarrah states the boulder was moved back.
- D. Favreau resumes discussion of signs and states there were several unforeseen delays in posting the signs due to approval and then specific requirements for nails as determined by the Tree Warden.
- KK states the PLAC was established as an advisory committee to the Conservation Commission to provide recommendation and is in no way responsible for carrying out all the tasks required on Town owned Conservation land. If certain tasks need labor, the PLAC is not responsible for doing labor. Organization of volunteers etc. can be done.
- D. Favreau goes over the accomplishments of the PLAC and discusses surveying public land via GPS before marking boundaries.
- EG asks if orange flags have been used on site. D. Aho states the boundaries are currently marked with painted stakes.
- D. Favreau describes unfinished “promises” made by the Town Administrator and the Conservation Commission.
- PLAC and Commission discuss the Leadmine Mountain property as it is the largest parcel owned by the Town; establishing and opening trails was aggressively pursued but proposals submitted to the Town Administrator for informational kiosks has not been addressed. D. Favreau states T. Chamberland offered an old sign from the Army Corps of Engineers (ACOE) for posting trail information, maps, and rules.
- KK states the kiosk, and rules posted off Leadmine Road are for the Leadmine Mountain (OSV) property.
- D. LaFranchise states he requested maps of all Town owned parcels and never received it. KK responds that she supplied smaller maps (in draft form) but can provide the PLAC with a larger map if necessary. She researched all the parcels owned by the Town and controlled by the Conservation Commission and can provide this information to the PLAC.
- DM states each property owned by the Town will have its own set of rules. He adds that with a larger map each area can be looked at individually and signed appropriately.
- D. Favreau questions who will be responsible for posting the signs and clearing the area for the signs and states the signs will need to be purchased. He adds the PLAC can put together a group of people to post the signs. D. LaFranchise states the PLAC is an advisory and a working committee.
- DB asks if there are any objections to establishing boundaries by GPS and posting the agreed upon signage. He states each parcel will be looked at individually to determine proper land use.
- DM questions tree trimming and swathing a path for posting signage.
- D. Favreau states the signs must be visible from all vantage points and all locations. DB states a little “tree trimming” is acceptable.
- EG questions the purpose of posting the signs. D. Favreau responds “liability”. EG asks him to explain. D. Favreau responds the Town could be held liable for anything accidental that happens on public land unless the property has been posted.
- B. Muir states there needs to be some resolution to property issues with multiple land uses on adjacent properties.
- DG questions if OSV has been contacted regarding signage. KK states she will contact OSV.
- EG states OSV needs to post the property as private property with no hunting, etc.
- DM suggests KK provide a map to OSV with GPS coordinates of the northern boundary.
- DB states the PLAC has the Commission’s approval to post boundary signs.

**PUBLIC HEARING**

**NOI Continued from 4/19/07: DEP 300-678 for 186 single family house and reclassification of a stream at 186 New Boston Road. Green Hill Engineering representing J. Boutiette.**

**DB opens public hearing at 7:43PM**

**Discussion:**

- DB asks if there is a representative present for 186 New Boston Road.
- KK states the hearing has been continued since April and the NOI was filed two years ago with many outstanding issues. She states she wrote a memo dated 9/24/07 recommending to the Board that a vote is taken to close the hearing and require a new NOI to be filed including Riverfront Area and address all other outstanding concerns. She received consent from the Applicant's representative to close the hearing and a new NOI will be filed as he wishes to work out the Natural Heritage issues and then re-"perc".
- KK states she will issue a letter closing the hearing.
- DM asks if they are withdrawing the existing NOI.
- DB agrees that the public hearing should close—they hearings have been continued for too long. He questions if the Board should issue a denial since the NOI has not been withdrawn.
- KK states the Board can vote to close the hearing and that she will talk to the representative about withdrawing the NOI. If they do not agree to withdraw the NOI without prejudice, then the Commission should issue a denial
- DM states he would like to close the public hearing and defer to October 11 for discussion on a denial.
- DM motions to close the public hearing and not accept any new information under the MA Wetland Protection Act and the Town of Sturbridge Wetland Bylaw. This project does not have enough information submitted to the Commission to make a determination if the interests under the MA Wetland Protection Act and the Town of Sturbridge Wetland Bylaw are being protected.
- DG seconds motion. VOTE: 5/0 in favor.

***Hearing closed and discussion continued to October 11, 2007 at 7:55pm.***

**PUBLIC HEARING**

**NOI Continued from 8/30/07: DEP 300-751 for a proposed garage, parking area, and driveway at 25 South Shore Drive. Jalbert Engineering, Inc. representing P. Mimeault.**

**DB opens public hearing at 7:51PM**

**Present: D. Roberts and L. Jalbert of Jalbert Engineering, Inc.**

**P. and R. Mimeault, property owners.**

**G. and M. Allard, abutters.**

**E. Krochmalnyckyj, abutter.**

**\*\*D. Grehl recuses herself.**

**Discussion:**

- KK states revised plans were submitted that include a cross section, inventory of trees to be removed, and cut and fill amounts. Also, information was submitted to Natural Heritage, so the Commission cannot close the hearing until clearance is given. KK adds Members visited the site on 9/25/07 and have the following concerns: steep grade of the access, control of runoff and water seepage, change in topography and hydrology, and stabilization of work zone throughout construction. Additionally, the DPW has several concerns voiced through the ZBA process.
- KK states she agrees with all of the DPW concerns and feels that most of them are directly related to concerns of the Commission. She feels as though the operation and maintenance plan is very general and lacking details

and is surprised that no consideration was given for the roadway drainage problems, as everyone is aware of the water problems on South Shore Drive.

- DB states that it is being looking into if DG has to recuse herself since she is a member of the Lake Association.
- D. Roberts states he has not received a copy of the memo sent to the Zoning Board from the DPW.
- KK questions if the applicants have had a hearing with Zoning. D. Roberts responds yes and states they have required a special permit.
- KK reads from the memo sent to Zoning by the DPW dated 9/5/07. She adds she assumed the applicant's representative received a copy of the memo. She then reviews the plans and photos with the Board.
- KK describes the area of the project as creating a "bowl" with the proposed garage "sitting in the bowl". She adds she has many concerns with the construction beginning with tree removal.
- DB states they are taking a wedge out of the slope. He adds the plan provides all the protection for the applicant and nothing for the road or the lake. He expresses concern with the hill being stable once the cover is removed.
- DB directs a question to the abutters and asks if their view to the lake will improve with the tree cutting. G. Allard responds it will improve only if the roofline is not in the way.
- D. Roberts reviews the plans with the Board and describes the use of a retaining wall to reduce disturbance. He adds the garage is centered on the lot and discusses "perc" tests done at the abutter's property resulting in no water present. G. Allard states that may not be the case with the starting point being lower.
- D. Roberts states more testing can be done at the request of the Commission and describes the proposed drainage system.
- DB questions the French drain around the garage. D. Roberts states the drains will go to a leaching catch basin with an operating maintenance plan. KK states the plan standard and that the owner may have more maintenance than what is described. D. Roberts responds they will have two large basins roughly 6-feet deep with 2-feet of stone surrounding them which will provide substantial storage. KK asks about the water on the driveway. D. Roberts responds there is nothing more than can be done with the water.
- DM suggests adding a berm.
- D. Roberts states the DPW concern is for the driveway outside of the parking area. FD asks if it will be gravel. D. Roberts responds that it will be paved. FD questions the common area of the street that will be significantly altered and reminds the applicant's representative that this is "land that doesn't belong to you". D. Roberts explains that the applicant has the right to do it to gain access to his property.
- FD expresses concern with creating a "bowl", digging a channel, and altering "common use" land (area of the right-of-way). D. Roberts explains the grades and the structures and states changing the grade will put the proposed structure in the abutter's view of the lake. He adds the structure was centered on the lot with a 10% slope to accommodate all parties concerned.
- KK states she is concerned with water entering South Shore Drive which is already problematic and adds this project does not make the situation better. She states there is a perennial stream nearby with a lot of sediment present—it appears to be South Shore Drive depositing the sediment.
- EG questions the boulder retaining wall. D. Roberts states the retaining wall is at maximum 4-feet high to retain the soil. KK asks if there will be a lining. D. Roberts replies yes and states it is a standard retaining wall.
- D. Roberts asks G. Allard what was used on his retaining wall. G. Allard states there was "geotech" fabric used behind his wall. D. Roberts states the Mimeault wall will be a 4-foot wall slightly canted.
- EG asks about stabilization and questions the DPW encroachment concern. He asks D. Roberts what changes would be made to address those issues. D. Roberts responds if the walls were to be moved back, the disturbance would be immense in order to maintain the contour.
- EG questions the construction sequence and timing. D. Roberts details the construction sequence as stated on the plans. KK questions the discrepancies between the description D. Roberts provided of the sequencing and the language used on the plans. She adds the sequencing needs more in depth steps and suggests adding staging.

- D. Roberts states the property owner is handling the tree removal. KK states that is something the Commission needs to know when the plans are presented.
- FD expresses his concerns on the plan. He states he is concerned about the boulder wall as it could potentially fail. He does like the proposed drainage system and the perforated pipe but is very concerned with the 1,500 cubic yards of cut that will significantly alter the area. He states that the plan seems to hinge on altering and then paving land that technically doesn't belong to the applicant. He states he does not feel the area is better off with a paved driveway sitting at a 10% slope.
- DM questions why berm is not shown on the plan and states if it is to be added it will need to be on the plans. D. Roberts states the goal of this plan was to show tree information and the cross-section. DM instructs D. Roberts to add the berm on the plan for it to be considered.
- DB expresses his concerns for construction within the 200-foot buffer of the lake. He feels the problems with the road are being exacerbated, not addressed and this will lead to further degradation of the road. He states that during the site visit he witnessed "huge" plumes of sedimentation in the nearby stream.
- KK asks if the retaining wall is considered structural. D. Roberts responds no. DB asks if the back of the wall will be against soil. D. Roberts states yes and adds the trees will be cut but the roots will be left in place until ground is excavated for construction.
- DB questions if the proposed 1500 cubic yards of material will be removed from the site immediately or if there are plans for stockpiling. FD asks how long it would take to remove that much material. KK states stabilization is the key.
- P. Mimeault asks if it is better to remove the material quickly or not. FD responds it should be removed immediately (no stock piling) and that would need to be stated on the plans as currently there is no mention of it.
- D. Roberts comments that any erosion on the site would go first to the applicant's house before getting to the stream.
- P. Mimeault asks the Commission who was on the site visit and states there have been improvements made since the first hearing and since the DPW memo was drafted. DB states the applicant can ask the DPW to reconsider.
- D. Roberts states the driveway side slopes are being addressed.
- P. Mimeault states the leach basins will take care of everything at the crown of the driveway. DB states he would like DPW comments on the preferred location of the pits.
- DM questions cross-section of the boulder retaining wall—he would like a detail to be added to the plan.
- P. Mimeault states the 100-feet of road in front of the property is in good condition and will remain in good condition. He adds they are meeting the nominal compliance to access his property through the Right of Way. He continues that the "bowl" is not in the Right of Way but on his property. He explains that the property is a grandfathered lot and he feels the structure was put as close to the road and at the lowest point possible.
- FD states there are other ways to access the property than a driveway perpendicular to the road.
- D. Roberts states he feels the concern is that the proposed structure is too close to the lake, but in fact it is further away from the lake. He adds that moving it closer would cause more disturbance in the 200-foot buffer zone. P. Mimeault adds the useable space is at the back of the lot and outside the 200-foot buffer zone.
- DB asks abutters for their comments.
- G. Allard explains the project will create a steep bank around cut for the driveway and the proposed boulder retaining wall at a 3:1 slope will never hold. He questions what will be cleared on the property. D. Roberts responds it will be cleared to the limit of construction.
- G. Allard states he feels the slope of the proposed roof could be changed and mentions a fence used to hide stored items on the property. He states he feels this is a rather big project just for a garage.
- E. Krochmalnyckyj states she is concerned with lot coverage. She feels it is reasonable to want to build on the property but adds the three stall, two story garage seems excessive on this already difficult lot. She adds some concerns would be alleviated with a smaller structure.
- DB states he understands the lot is difficult, but the Commission's limitation is with the Wetlands Protection Act (WPA).

- E. Krochmalnycky asks about the fence. P. Mimeault states he can remove the fence. E. Krochmalnycky states she feels the thumbprint for the structure just seems too big for this lot.
- D. Roberts offers comments on the slope concern and states the slope is 2:1 with an erosion control blanket and seed. He adds a 3:1 slope would cause more excavation. He also adds it is not a two story structure but a garage with a loft area.
- FD questions the pitch of the roof. D. Roberts responds 12%.
- R. Mimeault states they tried to accommodate the neighbors by placing the structure in the lowest point. If they had put it on the top of the hill, it would not have been best for the neighborhood.
- FD asks what action items are to be addressed for the next hearing.
- D. Roberts presents photos of proposed garage.
- P. Mimeault states he does not want to do anything he does not have to do and questions the paving in the Right of Way. D. Roberts states paving is the best way to stabilize. L. Jalbert states that as the driveway is the access point to the property, Town regulations state the access point must be paved from traveled way to property line. He adds the driveway is at the 10% median threshold.

***Hearing continued to October 18, 2007 at 7:30PM pending revised plans and additional information.***

**PUBLIC HEARING**

**NOI: DEP 300-752 for proposed shed construction (already initiated) at 119 River Road. Proposed by Alan Curboy.**

**DB opens public hearing at 8:50PM.**

**Present: A. Curboy and J. Miller, property owners.**

**Submittal: Newspaper ad; abutter return receipt cards submitted on 8/31/07.**

**Discussion:**

- KK states this is the first hearing on project and the NOI was filed as a result of a notice of violation for the shed being built within 200-feet of a wetland without a permit. She states the shed construction has been on hold and the applicant would like to complete the construction of the shed. Natural Heritage noted through email correspondence (dated 3/19/07) that the work is out of the mapped area. Footing work is complete, framing needs to be finished and stone is proposed around the perimeter.
- KK states Board members visited the property on 9/25/07. She adds she has no issues with the project but more erosion controls need to be added. Property does abut the Quinebaug River (more than 200-feet away) and an ACOE flood easement.
- KK reviews photos with the Board.
- DB states he visited the site and has no major concerns.
- KK states it is a working farm and there is a need for more erosion controls.
- DG questions what property they own. A. Curboy describes the scope of the property he owns. DG asks about livestock. A. Curboy states he would eventually like to harvest hay from the property.
- DG questions a pump seen on the site visit. A. Curboy states it sits on top of the sewer cover and is not functional.
- DB suggests the Commission lift the cease and desist order and approve the project.
- DG motions to close the public hearing and issue an Order of Conditions under the MA Wetland Protection Act and the Town of Sturbridge Wetland Bylaw. The Order of Conditions approves the project presented and will have Special Conditions as deemed necessary by the Conservation Agent.
- DM seconds motion.
- KK states the permit will be signed on October 11. DB adds they will have three years in which to complete the proposed work. **VOTE: 4/0/1 (DM abstains) in favor.**

***Hearing closed and Approval Order of Conditions to be issued.***

**PUBLIC HEARING**

**RDA: SCC 07-27 for platform deck installed without proper permits at 200 Lake Road. Presented by Michael and Nancy Flynn.**

**DB opens public hearing at 8:57PM.**

**Present: N. Flynn, property owner.**

**Submittal: Newspaper ad; abutter return receipt cards submitted on 9/5/07.**

**Discussion:**

- KK states this is the first hearing on project and the RDA was filed at the request of the Conservation Commission. She states a platform deck was built on the lake; no excavation was done and no trees were removed. The applicant proposes to remove a portion of the deck and install plantings.
- KK states she recommends the Commission issue a negative determination and grant a waiver from the 25-ft buffer for the following reasons; 1) minimal impact (no excavation and no tree removal); 2) size of deck was reduced; 3) plantings are proposed; and 4) property owner is now aware and did respond in a timely manner. She adds Natural Heritage granted clearance in a letter dated 9/19/07.
- KK reviews sketches with the Board.
- DB asks if there are any abutters present. (No response)
- FD questions how the deck has been reduced. DM states the proposed reduction is shown on the sketch.
- KK questions the proposed plantings. N. Flynn states she will plant low bush blueberry in the area of the deck removal.
- KK recommends adding a timeframe for the deck reduction and plantings. N. Flynn states this is not a good time for planting in this zone.
- DM makes a motion to close the public hearing and issue a Negative Determination under the MA Wetland Protection Act and the Town of Sturbridge Wetland Bylaw. The Negative Determination shall state that work can be done without filing Notice of Intent but with conditions stating the deck reduction must be done by December 1, 2007, plantings must be done by June 1, 2008 and any other conditions deemed necessary by the Conservation Agent.
- EG seconds motion.
- DG states she is concerned with the precedent this project will set. She believes that many other people will want to do the same thing and decks like this will have a cumulative effect on the Lake.

**VOTE: 2/2/1 (EG abstains; DG/FD opposed) tie vote (motion does not pass)**

- DB states the Board will continue the hearing until October 11 to allow time for EG to visit the site.

***Hearing continued to October 11, 2007 at 8:00PM.***

**PUBLIC HEARING**

**RDA: SCC 07-28 for proposed garage and house addition at 32 Farquhar Road. Jalbert Engineering, Inc. representing Jason Knott.**

**DB opens the public hearing at 9:03PM.**

**Present: D. Roberts of Jalbert Engineering, Inc.**

**J. Knott, property owner.**

**Submittal: Newspaper ad; abutter return receipt cards.**

**Discussion:**

- KK states this is the first hearing on project and work includes construction of a garage and repaving of the driveway within the 200-foot buffer zone to a wetland across the street. She adds Board members visited the

site on 9/25/07. As minimal tree clearing will occur, she has no issues with the project and recommends a negative determination be granted.

- KK states that this is for a determination only as the work is within the 200-foot buffer zone. She reviews the plans with the Board and points out three trees that are to be removed. She adds there is a wetland across the street but the land is flat and she does not anticipate any issues or impacts to the wetland. KK reviews photographs with the Board members
- FD makes a motion to close the public hearing and issue a Negative Determination under the MA Wetland Protection Act and the Town of Sturbridge Wetland Bylaw. The Negative Determination shall state that work can be done without filing Notice of Intent and with conditions deemed necessary by the Conservation Agent.
- DM seconds the motion and states he did visit the property.

**VOTE: 5/0 in favor of a negative determination.**

- D. Roberts states he will need the determination in order to obtain a building permit. KK responds that she will let the building inspector know of the ruling.

*Hearing closed and Negative Determination to be issued.*

### **PUBLIC HEARING**

**RDA: SCC 07-29 for proposed property improvements including a building addition and parking area at 709 Main Street (Route 20). Jalbert Engineering, Inc. representing G & F Industries.**

**DB opens public hearing at 9:06PM.**

**Present: D. Roberts and L. Jalbert of Jalbert Engineering, Inc.**

**J. and J. Argetis of G & F Industries.**

**Submittal: Newspaper ad; abutter return receipt cards.**

### **Discussion:**

- KK states this is the first hearing on project and work includes construction of a building on an existing concrete pad, installing a new catch basin to drain to an existing detention pond, and re-grading a slope to include an Emergency Access Road. She states there was a site visit on 9/25/07. KK explains this is for a determination only as all work is within the 200-foot buffer zone to a wetland, however, the grading and access road is below the contour for the ACOE flood easement—the Commission may want consent from the ACOE in writing. Stormwater calculations were done and KK would like to get the comments of the DPW Director for stormwater review.
- KK states she has no issues as long as the stormwater calculations are fine. Natural Heritage letter was received 9/21/07 and stated that the project will not adversely affect the species provided the appropriate erosion control measures are installed.
- KK reviews the plans and photos with the Board.
- DB states there is scant flow in the detention basin. D. Roberts states there are four leaching catch basins above the detention basin to catch all the water.
- DB states KK feels strongly about awaiting DPW input on the project.
- DG questions paving the Emergency Access Road. D. Roberts states it will be 4-inches of gravel under 2-inches of loam and will support a fire truck. DB questions who will be responsible for maintenance on the access road. J. Argetis states they will maintain the road.
- DG asks if the building is to be used as storage. J. Argetis explains it will be used as warehouse space and is the final project in rebuilding from the 2001 fire.
- D. Roberts reads from and submits letter received from ACOE. He respectfully requests the determination so the project can move to site plan review.



- KK states she is hesitant about issuing a determination without DPW input that may impact the plans. D. Roberts responds the applicants would be required to come back before the Commission in the event the plans did change.
- DB states he is not comfortable approving a plan without DPW stormwater review.
- L. Jalbert states they will submit a request for DPW review tomorrow.

*Hearing continued to October 11, 2007 at 8:10PM.*

**PUBLIC HEARING**

**AMENDMENT: DEP 300-727 for proposed draw down of Big Alum Lake. Lycott Environmental representing Big Alum Lake Association.**

**DB opens public hearing at 9:17PM.**

**Present: L. Lyman of Lycott Environmental**

**T. Chase of the Big Alum Lake Association**

**C. Moran of the Cedar Lake Association**

**G. Abrams of the Cedar Lake Association**

**Submittal: Newspaper ad; abutter return receipt cards.**

**Discussion:**

- KK states this is the first hearing on project. In a letter dated 8/24/07 to the Division of Fisheries and Wildlife, Lycott Environmental is requesting the Big Alum Draw Down of 30-inches to start 10/15/07 (obtained around 11/15/07) and close the dam on 12/31/07. She states she received a letter dated 9/12/07 from Lycott with a request that the Commission allow the draw down, amend the current Order of Conditions to include the draw down, and to amend Condition Numbers 33 and 34. She adds a letter from Natural Heritage was received today and it is unclear of how to proceed and the Commission is still waiting for comments from the Division of Fisheries and Wildlife.
- KK states the amendment would be to the existing Order of Conditions for herbicide treatment on Big Alum Lake.
- KK states she contacted Natural Heritage requesting information and she received information on stream crossings. She plans to send a letter via email to Natural Heritage and R. Hartley for clarification. She adds Natural Heritage is requesting a MESA review which may not be necessary as this is an amendment to an existing Order of Conditions that already received clearance.
- L. Lyman remarks that the Commission may then ask for a new filing with a new filing fee and another full Notice of Intent (NOI). He states the Commission requested an amendment to the existing Order of Conditions and is asking the Commission to vote on approving that amendment. He states the site has been reviewed already for the herbicide treatment.
- KK asks if L. Lyman has received comments from R. Hartley. L. Lyman responds that he spoke with R. Hartley and it was indicated that comments from R. Hartley were being passed along to Natural Heritage. KK states that the Commission should not vote until the Div of Fisheries & Wildlife have submitted comments.
- DM asks if there is any public record of this conversation. L. Lyman responds no.
- L. Lyman restates that he has gone along with the recommendation for an Amendment and is now asking for approval to amend the Order of Conditions.
- DM states from earlier discussions it was clear that no other lake management would be considered until the herbicide treatment was addressed. He comments on the letter from L. Lyman and asks about the areas around the lake that will be exposed due to the draw down. He states there is no concrete evidence that a draw down has been beneficial for the lake's fish and wildlife and he feels the reasoning of the request is that "it has always been done so why change it" is not sufficient to grant the drawdown of the lake. He states that regulations have changed and the draw down procedures are now subject to review.
- DG agrees that just because it's been going on for generations isn't enough of a reason to allow the draw down and asks if the draw down is used for weed management or for beachfront cleanup. She asks L. Lyman if he

has read "GEIR". L. Lyman responds "I wrote it." DM states Mr. Lyman was a contributor to "GEIR" as were several other lake management professionals.

- L. Lyman states in a meeting held in May 2006 the Commission requested a new NOI. He adds that there were comments from the Board that the draw down was not for weed management but so that lake residents could clean up walls and lakefront areas. He adds the minutes of the May meeting do not reflect that information.
- DM asks the Commission if anyone recalls that conversation. FD states the conduct of the applicant's representative is making him uncomfortable. He does not appreciate how is speaking to the Board members and the Agent.
- L. Lyman states he is displeased with the Conservation Commission's role in Lake Management.
- T. Chase states that one year ago information on the draw down process was requested but nothing came of it. She adds she emailed KK requesting the meeting date and was told the process of draw down had been discussed amongst the Commission only.
- DM states that an overall comprehensive lake management plan is in the best interest of the lakes and "history" is not a good enough standard to go by. He continues that the Conservation Commission is not coming up with new processes but are trying to adhere to state guidelines. He adds that Sturbridge needs a documented process for draw down and he is looking for the optimal solution to allow property owners the chance to clean up the walls and beach areas without impacting the wildlife that use the water resource. He states that just because there have been no documented disasters or record fish kills from previous draw down, is not a not compelling enough reason to believe the current draw down procedures are a benefit to the lake.
- C. Moran states that draw down is not just to allow residents to fix the walls but to protect the walls from deterioration. He adds that he spoke with R. Hartley and was told that with 3,000 lakes in Massachusetts, everyone sends letters requesting draw down is a lot of paperwork and he usually gives it to Natural Heritage for approval.
- KK states they would like joint information from R. Hartley and the Division of Fisheries and Wildlife reviewing the draw down process.
- DM states that the recent comments from R. Hartley were not approval, just confirmation that the resources are stretched.
- C. Moran states he has always sent a letter-requesting draw down from the Selectman and was always told to "go ahead as usual". He adds Mother Nature won't wait.
- FD states the Commission is not looking for additional paperwork and adds this is an opportunity to improve the process. He states it is not sound reasoning to assume the process is acceptable just because it has always been done that way.
- T. Chase states they have not progressed further than they were last year.
- DM asks if there is any documentation citing historical draw down procedures. L. Lyman states he has documented the historical draw down. DM requests he specify the historical procedure.
- L. Lyman states the draw down typically starts after Labor Day and is drained 2-3 inches per day until the end of October; the lakes remain down until the end of January when the plug is replaced and "hopefully the lake fills quickly". He then discusses other local water bodies and their draw down practice and adds there have been funded studies done on draw down. DM states the study was from 1985. L. Lyman concurs the study was done in 1984 or 1985.
- DM states the Commission needs a determination from the Department of Fisheries and Wildlife.
- KK states if the Commission had received a response from the Department of Fisheries and Wildlife, the requested amendments would have been issued tonight.
- L. Lyman states he does not see the reasoning for not issuing a negative determination for this fall and require amendment for next year.
- DM states a negative determination is not applicable and the Commission is still waiting for comments from Natural Heritage.
- KK states an Amendment was filed for the draw down, not a Request for Determination of Applicability (RDA).
- G. Abrams states he would like to gather information during the draw down this year.

- DM questions if information is currently available. L. Lyman responds there is information provided by the state some number of years ago.
- DB states the Board is not suggesting there be no draw down. L. Lyman questions if it will be allowed to happen if the Board doesn't hear from Natural Heritage. EG questions if the Board can override. KK adds that the Commission cannot override Natural Heritage, it is mapped habitat under their jurisdiction.
- C. Moran asks if the Board can agree to make decision by October 11 if there has been no response by Natural Heritage. He adds that the lakes will need to draw down or the damage "would be astronomical".
- KK states there was information circulated last year about getting input from Natural Heritage on Lake Drawdown.
- L. Lyman states he was only notified two months ago that an Amendment was required.
- DB suggests the hearings be postponed to October 11, 2007 pending comments from the Department of Fisheries and Wildlife and Natural Heritage. He adds that if the Commission has not received anything, a determination will be made based on the information provided. He states the Commission is looking for guidance from the state and they have just not received it.
- DM discusses Condition #33 and #34 and asks that L. Lyman define "contact individual".
- KK states that when the Order of Conditions is amended, the Conditions can state what information is needed.
- L. Lyman addresses the audience regarding Condition #33 and #34 with respect to resident monitoring of fish kills post herbicide treatment.
- DM questions Condition #34 and the mixing of chemicals.
- L. Lyman again addresses the audience regarding Condition #34 and mixing herbicides outside 100-feet from the shoreline. He explains the process for mixing the chemicals and states safeguards are in place for preventing hazardous chemicals from being spilled.
- DM suggests L. Lyman provide the language for amending Condition #33 and #34. He also requests that L. Lyman provide the Commission with a map showing the draw down of the Cedar Lake.

*Hearing continued to October 11, 2007 at 8:30PM pending a response from NHESP.*

## **PUBLIC HEARING**

**AMENDMENT: DEP 300-726 for proposed Draw Down of Cedar Lake. Lycott Environmental representing Cedar Lake Association.**

**DB opens public hearing at 10:01PM.**

**Present: L. Lyman of Lycott Environmental**

**T. Chase of the Big Alum Lake Association**

**C. Moran of the Cedar Lake Association**

**G. Abrams of the Cedar Lake Association**

**Submittal: Newspaper ad; abutter return receipt cards.**

## **Discussion:**

- DB states that the time for the meeting to start has passed and the information relevant to Cedar Lake has been discussed during the Big Alum Lake hearing, the information in the meetings can be combined.
- KK states this is the first hearing on the project which is similar to the Big Alum Lake Amendment but proposed to draw down Cedar Lake 56-inches beginning 10/27/07; the complete draw down to be obtained by 11/15/07; and the dam closed on 1/15/08.
- DB asks G. Abrams if the information from the Big Alum Lake hearing is sufficient to cover the issues for Cedar Lake.
- G. Abrams states that it is acceptable for Cedar Lake pending a response from Natural Heritage.
- DM states the requested extent of the draw down is proposed at 56-inches which exceeds the guidelines and he would like that investigated further.
- L. Lyman states prior to the next hearing he will provide a bathymetric map for the lake exposure with a 56-inch draw down.

- DG directs her comments to the audience and states the Lake Associations are really the best advocates for themselves and if they don't request information from the state it will not be provided to them.

*Hearing continued to October 11, 2007 at 8:35PM pending a response from NHESP.*

**10:09 PM OTHER BUSINESS**

**1. Extension Request for 96 Fairview Park Road, DEP 300-518**

**Present: K. Rabbitt**

**Discussion:**

- KK states this is a request for a one-year extension.
- DB inquires as to the reason behind the extension request.
- K. Rabbitt states the market has slowed. He adds there has been no change to the plan and is asking for one year to allow the market to come back and the house to be built.
- EG motions to grant a one-year extension to the existing Order of Conditions.
- FD seconds motion. **VOTE: 5/0 in favor of granting a one-year extension**

**2. R. Lyon for 246 Fiske Hill Road, DEP 300-677**

**Present: R. Lyon, property owner.**

**C. Silvestri, abutter.**

**A. Szumalis, abutter.**

**Discussion:**

- R. Lyon reiterates his financial situation that he spoke of at the last meeting. He states his lender will foreclose on the property if the project does not move forward. He states that his lender will accept a letter from the Commission detailing the work that needs to be done on site.
- KK states that when she and R. Lyon spoke on the phone he indicated the lender wanted to see work done on the proposed house, not just general work on the property.
- R. Lyon states he told the bank it was unlikely he would be given permission to work on the house but he feels if he could show some activity on the site and accomplish some milestones before November 23<sup>rd</sup>, the bank may extend the loan. He proposes to complete the retaining wall, culvert one, loam and seed.
- DG questions if R. Lyon will need to show that work on the house will begin by a certain date. R. Lyon responds that a formal timeline will need to be presented to the bank.
- FD asks the applicant if he is asking the Commission to change anything or just put it in writing.
- DB and KK discuss outstanding work as culvert one, the retaining wall, loam and seed, and remediation.
- R. Lyon states he would like to ask permission from the Commission to pour the foundation for the proposed house. He states he is concerned with the time of year and leaving the site excavated without the poured foundation.
- DB asks R. Lyon if a letter detailing the expected milestones would be sufficient to receive the funding to actually complete the work.
- R. Lyon states his lender needs to see the foundation in.
- DM questions if R. Lyon has the resources to complete the list of milestones within the timeframe.
- EG states he is concerned with the foundation becoming a distraction from the other work that needs to be done.
- DB states he also has reservations with the foundation. R. Lyon admits he was overzealous with the foundation and created his own situation.
- FD questions the likelihood of the bank funding retroactively to accomplish the improvements the Board has requested. R. Lyon replies that the money will be for moving the project forward and states the foundation will go in simultaneously with the retaining wall and everything else.
- DB questions whether the foundation can be done with the culvert in its current condition. R. Lyon states the pipes will be corrected before the trucks come in to pour the foundation.

- KK states the driveway clearing width is not correct. DB states remediation has been proposed.
- KK states the site stability is of the utmost importance moving into the winter months and the freezing/thawing cycles.
- DG questions if the applicant is asking for the foundation and the septic system. R. Lyon responds he only would like to work on the foundation first while also digging for the retaining wall, fixing the culvert and working on the remediation before the winter.
- DM suggests creating a punch list of items that need to be complete before the foundation can be addressed before the foundation knowing a foundation can take up to a week.
- EG states the punch list will include repairing culvert one, building the retaining wall, providing an as built on the driveway with loam and seed and remediation.
- KK inquires if the tar has been removed. R. Lyon responds yes.
- FD inquires if the Commission is voting on the action items. KK states that it is being discussed and suggests a deadline of November 1, 2007.
- C. Silvestri states he submitted a lengthy letter to the Commission outlining his concerns and he does not feel the Commission has addressed those concerns, particularly with the drainage.
- DM states he has read the letter and the loam and the retaining wall will aid in stabilizing the site and adds that drainage is still uncertain.
- KK states there is a swale at culvert one that will need to be constructed. DB states that it is part of the retaining wall.
- A. Szumalis questions how the tar was removed. R. Lyon describes how the tar was removed by hand and states if any material is remaining, it will be revealed when the culvert is excavated.
- KK questions the erosion control monitor daily reports. DB states he is not in favor of an erosion control monitor and would like to see the resources used to complete the action items. He adds the Commission can monitor the site.
- C. Silvestri questions if the concerns in his letter will be addressed. DM states the Commission is not required to address abutter concerns. C. Silvestri states he expressed concerns with the driveway and feels those concerns were not addressed and there was no penalty.
- KK states the penalty was the site being shut down for three months and the only work being done is determined by the Commission.
- DB states the concerns in the letter have been addressed; the majority of the letter focused on the tar in the driveway, which the property owner stated was removed. He adds the focus on the site needs to be stabilization.
- C. Silvestri states he feels the property owner's short sightedness has led to problems the abutters are dealing with.
- DM states the Commission can only address the owner and if the property were to be sold, the process would begin again.
- DB states R. Lyon has not "dodged" the Commission but was forthcoming and has made attempts to address the issues raised.
- KK states the Enforcement Order is still in place and the Commission is allowing work to be done on the culvert, the retaining wall, and loam and seed for the area.
- DB states everything will be detailed in a letter for presentation to R. Lyon's lender.
- DM motions to accept the Agent's recommendations and submit a letter to the property owner detailing what needs to be done by Nov. 1, 2007. FD seconds the motion.

**VOTE: 5/0 to submit letter**

**3. Update on Highlands Enforcement Order, DEP 300-466**

**Present: T. Moss, property owner.**

**Discussion:**

- KK states she reviewed the sediment boundary on 9/19/07 and requested more sediment be removed than what had originally been marked. She adds that photos were submitted today showing the sediment being removed from the wetland. Sediment was also removed from the detention basin. She

states she has not visited the site to see if the sediment removal is complete. The Enforcement Order remains in effect until the Commission votes to release it.

- KK states the applicant has also requested a one-year extension, the Order of Conditions expired on 9/6/07.
- KK reviews the evaluation of the sediment removal with the Board.
- DM inquires the depth of the deepest area affected. T. Moss states it was only about ½ of an inch.
- KK reviews photos of the site with the Board.
- DB asks the Board if anyone has questions on the extension request. EG states he has no problem with the extension. DM also states he has no issues.
- DB asks the applicant where the sediment originated. T. Moss states it originated at the driveway of one lot—it entered the drainage system and then entered the wetland. He adds S. Hein recommended the seeding be put down after the first frost so it will come up in the spring.
- EG motions to extend the Order of Conditions for one year.
- DM seconds motion.

**VOTE: 5/0 to extend Order of Condition for one year.**

- EG motions to lift Enforcement Order.
- FD seconds motion.

**VOTE: 5/0 in favor of releasing Enforcement Order.**

- DB suggests seeding after October 15<sup>th</sup> and asks that the Commission be notified when that is done.

**4. 479 Main Street Paving: SCC 06-23**

**Discussion:**

- KK states this is a gravel area in front of the garage and not the driveway to the apartment. She states she has no issues with the request.
- DM asks how many square feet. KK reviews the plans from the negative determination with the Board.
- DM suggests that the letter permit clearly state what area can be paved.
- DB states rain water will move around to the back of the building and into the Quinebaug canal which is an improvement.

**Consensus of Board to issue a Letter Permit.**

**5. Tree Removal at 294 Clarke Road Ext: SCC 07-26**

**Discussion:**

- KK states the trees need to be marked and she has no determination. She adds the trees were not marked at the site visit.
- DB states he spoke with B. Caron regarding marking the trees and was told Brian's mother did not want to mark the trees. He adds the trees are not coming down until January and they are clearly dead. He feels once the dead trees are removed, the adjacent trees will be able to grow better.
- Members agree that the trees need to be marked for a site visit.

**6. Planting Plan for Tree Removal at 19 Long Avenue: SCC 07-07**

**Discussion:**

- KK states the planting plan consists of two hemlocks approximately 2-3 feet tall.
- KK states she received notice the tree removal was complete and received a planting plan as requested by the Commission.
- KK reviews the planting plan with the Board and reads from the letter submitted by the property owner.

- DG questions if hemlock trees are the best choice. DB speaks to the practicality of planting hemlock trees.

**Consensus of Board to accept planting plan as submitted.**

**7. 31 Bennetts Road Planting Plan Inspection**

**Present: S. Betts**

**Discussion:**

- KK states the plants look great and the only outstanding issue is that a flared end/rip rap was not installed. She is not sure if this is something the Commission wants to require. She states if not, the property owner's lawyer, E. Neal is looking for a Certificate of Compliance.
- KK reviews the planting plan with the Board.
- S. Betts states he does not think the property owner is aware that a flared end is required.
- DM question if the flared end is needed or if there is enough flow off the system to merit a rip-rap.
- DB states the rip-rap will help dissipate the water.
- DM suggests a rip-rap at both ends. DB states the rodent guard will need maintenance.
- DM states that a Certificate of Compliance cannot be issued until the Commission knows the plants will live through the winter

**8. Update on 135 Main Street Construction, Maple Hill: DEP 300-668**

**Discussion:**

- KK states she has been receiving updates from EcoTec and reads from an update dated 7/19/07 from Scott Morrison. She states they are routing the roof run off into the replication area and want to change the planting list. KK reads the recommendation for the change in the planting list.
- DM and DB discuss the diameter of the proposed plantings and plant types.
- DB asks KK if she agrees with the planting plan.
- DM asks who prepared the planting plan. KK responds Jalbert Engineering, Inc.
- DM states he wants to make sure the plants are successful.

**9. Update on WalMart & Hobbs Brook Plaza**

**Discussion:**

- KK states WalMart is a separate parcel from Hobbs Brook Plaza which is owned by Kimco Realty. She states she sent a letter regarding the trash on site and the water quality testing. She states she has received a response from Kimco Realty and the site is being maintained. She adds that WalMart is not as responsive as Kimco
- KK states there is an issue with the detention basin being divided by the property line.
- DM inquires as to whether the water testing was part of the Order of Conditions.
- KK states the last documentation was from 1999.
- DB would like to see the water quality testing results from when the Order of Conditions was issued to present day.

**10. Discussion of Televised Meetings, Memo dated 9/18/07**

**Present: T. Creamer**

**Discussion:**

- KK states she received a memo from the Town Administrator dated 9/18/07 describing the Mullen Rule and "transcript". She states the "transcript" is not just a written summary but a verbatim recording of the meetings.
- DM states he has no problem with televised meetings and expresses a concern with the exhibits not being available for public scrutiny.
- T. Creamer states presentations to the Planning Board are often not available for the public to see.
- DM states the Planning Board is more formal.

- DG states televised meeting have the potential to be more positive and she hopes it does not discourage abutters from participating.
- FD states he is concerned with the formality discrepancy of how the Commission conducts meetings.
- DB states the Mullen Rule would require meetings be reviewed if a member is absent.
- DG states anyone reviewing it would need to set aside five hours to watch the video.
- T. Creamer states the Board member would only have to watch the portion of the meeting pertaining to the hearing they are voting on.
- FD questions the need for minutes. KK states minutes will still be taken.

**11. Site Visits**

- **200 Lake Road – EG**
- **G & F Industries – EG/DM**

**MEETING ADJOURNED AT 11:35PM**