



Office of the  
**CONSERVATION COMMISSION**

Town of Townsend,  
272 Main Street  
Townsend, Massachusetts 01469

**James Deroian, Co-Chairman**

**Veronica Kell, Clerk**

**John Hussey**

Leslie W. Gabrilkska,

*Conservation Agent*

**Emily Norton, Co-Chairman**

**Jennifer Pettit**

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**Minutes**  
**Selectmen’s Chambers**  
**Memorial Hall**  
**Wednesday, June 10, 2015 @ 7:00 P.M.**

**1.0 Preliminaries**

**1.1. Open Meeting** – Co-Chairman James Deroian opened the meeting at 7:06 pm

**1.2. Roll Call** – Co-Chairman James Deroian (JD), John Hussey (JH) and Christine Vitale (CV) were present. Veronica Kell (VK) arrived at 7:12 pm and Jennifer Pettit (JP) arrived at 7:10 pm. Conservation Agent Leslie Gabrilkska (LG) was present.

**1.3 Topics not reasonably anticipated by the Chair 48 hours in advance of the meeting**

**4.10 Notice from Town Clerk re: resignation notice from Co-Chairman Emily Norton**

**3.2 Bills payable: sign warrant to pay the invoice from Ducharme & Dillis for surveying services in the amount of \$600 from the 75 Barker Hill Rd escrow account**

CV motioned to add 4.10 and 3.2, seconded by JH, all in favor.

**1.4 Chair’s Report** – none. Comments given during the meeting. Also, see 4.9

**1.5 Administrator/Agent Report** –

35 Vinton Pond Road – LG reported that she had signed the Fluet’s Building Permit once Mr. Fluet added the deck to the plan, which was on the architectural drawings but not on the original plan, and initialed it. The Fluet’s now want to install an underground propane tank, a change that was also not on the original plan. LG asked if the Commission if they would allow a request from the Fluet’s to amend an Order of Conditions. JH motioned to allow Brian and Nichole Fluet to file to amend their Order of Conditions to include the installation of an underground propane tank, seconded by CV, all in favor.

230 Wallace Hill Road – LG discussed the homeowner’s proposed solar panel project, which is a ground mounted solar system. LG asked that they pull it as far away from the Bordering Vegetated Wetland as possible, but it will still have to be inside the 100 ft. buffer zone. JP said that the Commission would need to find out how the vegetation beneath the system would be treated. It could be vegetated or stone. JP suggested calling the Massachusetts Association of Conservation Commissions for their input on other systems that have been installed and what Commissions should look for. JD questioned why she recommended discussing it with the MACC.

The topography of the site slopes down from the road to the pond.

JD asked Michael Turgeon, Balsam Dr, for his thoughts on the proposed system. Mr. Turgeon responded that it would depend on how much vegetation and soil would be disturbed. The Commission should ask for construction details and how they will handle vegetation management. He said that having stone around the base would eliminate the need for vegetation management other than trimming, or they could use OMRI –listed herbicides if it is to remain vegetated.

LG reiterated that the homeowner should file an RDA so that the Commission would have the opportunity to review the project and discuss possible impacts to the wetland and the buffer zone. She will see if Judith Schmitz, DEP Central Region Circuit Rider, would be available to give a workshop here prior to the public meeting on the project since the Commission will be reviewing more ground mounted solar systems in the future. VK suggested that if Ms. Schmitz were unavailable, perhaps she could send information on the subject. JH motioned to require the applicant to file an RDA for the solar system project, seconded by VK, all in favor.

Cedar Circle – LG described the proposed garage. She had been contacted by the contractor to see if filing was necessary. After reviewing GIS and noting that there were wetlands near the site that are a tributary to Witch Brook, she recommended that the homeowner have a wetland scientist determine whether they would be in the buffer zone or Riverfront Area. The contractor contacted David E. Ross and Associates, whose wetland scientists walked the site and mapped it as Riverfront Area. If it is Riverfront Area, only a minimal area would be affected, and it is currently a portion of the paved driveway and lawn

LG concluded that she had advised the contractor that they did not need to file. Due to the steepness of the slope immediately behind the proposed work, she asked that they put up erosion controls.

She also updated the Commission on the Northeast Municipal Gas Pipeline Coalition meeting held on 6/8/15. She advised the Coalition that the Town of Townsend would sign on to the letter opposing the imposition of a tariff on individual utility bills to help pay for the proposed Northeast Direct Pipeline.

Members of the Coalition also agreed to follow up on legislation protecting Article 97 properties. They also discussed sending a letter to the Federal Energy Regulatory Commission, asking that the scoping sessions be delayed. That request is based on the fact that a new location for the Fitchburg lateral was just announced, as well as the locations of the compressor stations.

VK announced that the Townsend Conservation Land Trust would be holding a town wide informational meeting on June 23<sup>rd</sup> in the Great Hall to inform people about the scoping session process and how to participate. She noted that State Representative Sheila Harrington would attend, as well as a representative from Congresswoman Tsongas' office. A representative from Northeast Energy Solutions (NEES), Pipeline Awareness Network for the Northeast (PlanNE) and a representative from the Nashua River Watershed Association will also be attending.

JD said that he reached out to Phil Chipman, Land Agent for Tennessee Gas Pipeline, to find out why the lateral had been changed. He noted that the McGovern's, who own the large farm field on West Meadow Rd, had substantial objection to it. Mr. Chipman was receptive and noted that Tennessee Gas had already changed the route several times. He was willing to take it along the wood line of JD's property, then along the pond to the toe of where the material is being removed on McGovern's field, then through the MA Division of Fisheries and Wildlife's (DFW) Wildlife Management Area. He feels that Tennessee Gas has met a lot of resistance from the MA DFW. The latest route now goes behind JD's, CV's, the Sellar's and additional properties on the west side of West Meadow Road, where there is an extremely steep ridge. VK commented that a similar ridge

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was on the Land Trust property that Tennessee Gas proposes to cross. JD and CV will meet with Mr. Chipman on Saturday, 6/13.

JP left the room at 7:30 and returned at 7:45 pm

**1.6 Review of Minutes (5/13/15, 5/27/15)** - 5/27/15 had not been completed, so was tabled. In response to JD's questions, LG discussed budgeting for the phragmites treatment in Ash Swamp for the next three years. If the Commission has to pay for the application license, it will cost \$900 in the first year, and less in the succeeding two years. Mr. Turgeon asked about the size of the areas, and cost, to be treated. JH motioned to approve the 5/13/15 minutes as read, seconded by JP, all in favor.

## **2.0 Hearings and Appointments**

### **2.1 7:30 Request for Determination of Applicability (TWB #2015-86)**

**Applicant: M & K Grandview Farm**

**Location: Lot 2, Townsend Hill Rd.**

**Project: to determine whether the construction of a single family house is subject to the Massachusetts Wetlands Protection Act and the Townsend Wetlands Bylaw**

JD reopened the meeting at 7:55 pm. The applicant's consultant, Ducharme and Dillis, had asked LG if they should be in attendance, and LG had advised them that it was not necessary. There were at least three different ANR plans issued within a couple of years, and Chris Guida, Wetland Scientist with Fieldstone Land Consultants had done a wetland delineation that was shown on all of the plans.

Originally M&K Grandview Farm has proposed keeping all of the work outside of the buffer zone with a revised wetland delineation. However, Mr. Dillis mentioned at the last meeting that the lawn would be extended in to the buffer zone, so filing would be necessary whether the original delineation or the revised delineation was confirmed. He had emailed a plan showing the location of the lawn, which LG showed to the Commission.

LG noted that she asked had asked for the BVW delineation sheets at the last meeting for the areas in question. Ducharme and Dillis did not give provide them, but she and Brandon Ducharme went out to the site to look at the area that was no longer included in the delineation. They reviewed the soils, and LG concurred that they were definitively upland.

When Mr. Ducharme delineated the wetland in December 2014, there was very little herbaceous vegetation. They looked at the vegetation on the disturbed site, as there was a lot of invasive vegetation - bittersweet, burning bush and multiflora rose, as well as a lot of poison ivy. Vegetation observed was White ash, poison ivy, sensitive fern, and Virginia creeper. She noted that Ducharme and Dillis did not list poison ivy on the delineation sheets that had been initially provided.

LG noted that looking back towards the road to the south, there was a rise in the topography, which may be what caused the difference in the soils in the area under question. She did ask Mr. Ducharme to move wetland flag #A2 out about 5 feet, and he concurred. She suggested issuing a Negative #3 with the following conditions: The erosion controls/limit of work and clearing shall be survey located, installed and inspected by the Conservation Commission or its Agent prior to beginning work. LG discussed the reasoning for survey locating the erosion control/limit of work line.

JP motioned to issue Negative #3, with the above-referenced condition, seconded by VK, all in favor.

JD motioned to close the meeting, seconded by JH, all in favor.

## **3.0 Work Session**

**3.1 Executive Session for the purposes of discussing strategy with respect to litigation** –The Commission discussed tabling the Executive Session until July 8, 2015. See 4.9

**3.2 Bills payable: sign warrant to pay the invoice from Ducharme & Dillis for surveying services in the amount of \$600 from the 75 Barker Hill Rd escrow account** – JH asked the Commissioners if they were familiar with this bill. The four points asked to be surveyed located according to the original plan were located, and the house was found to be 50'7" from the wetland. Ducharme and Dillis submitted a plan of the four points. VK noted that the Commission asked for the wetlands to be marked, not the well. The plan confirmed the second plan submitted by Mr. Kennelly

JD asked how the matter could be avoided in the future. VK reviewed the reason for having a surveyor confirm the points requested by the Commission. The first plan that was submitted by the developer showed the house within 50 ft of the wetland, and then a revised plan was submitted by the same representative, showing it more than 50 ft. from the wetland. Mr. Turgeon suggested just measuring from the staked line and using a tape to measure it if the wetland flags were still there. VK said that that was what the Commission asked them to do, noting that the flags were no longer there. The wetland flags were then staked by the representative who submitted two different plans. She said that the Commission can't avoid an engineer coming in with an inaccurate plan, and that if the house is shown in a different location than what was approved, then Commission has no choice but to have a third party survey locate the wetlands and house. VK noted that the stakes were gone. There was a discrepancy, and it was perfectly reasonable to do what we requested. The engineer should look at it before they bring it in. JD agreed with what the Commission required.

#### **4.0 Correspondence**

**4.1 BOS Memo: Appointments for FY16** – tabled, as none of the current Commissioners' terms were due to expire on June 30, 2015.

**4.2 Copy of letter via Town Clerk from Karen Hill, Gardner, MA to Townsend Conservation Commission under MA Public Records Request** – JH asked about the dates on the letters, noting that they are time sensitive. LG said that the Commission has to respond in 10 days. Karen Hill, Gardner, MA, said that she called the Secretary of State's office, and was told that the Commission had to give a yes or no within 10 days.

This correspondence from Karen Hill requested all of the incoming and outgoing emails for the Conservation Agent, Leslie Gabriliska, for the time period starting January 1, 2011 to present, omitting any correspondence from Kopelman and Paige. She made the same request to the Town of Townsend in April, and was provided with a cost estimate so that the town could proceed with the request. That letter from the Selectmen did not include a cost estimate for Town Counsel to review redacted information. Ms. Hill has appealed the fee to the Public Records Division of the Secretary of the Commonwealth's office. This correspondence differs only in that Ms. Hill has addressed this request to the Conservation Commission instead of the Selectmen, and has suggested that an uninterested party be allowed to review and redact information, and suggested that Carolyn Smart (town employee/Selectman), the Town Clerk's office or the Information Technology Department review and redact sensitive information. She also requested an index of all redacted items.

The Commission discussed the issue of sensitive information. LG reported that Town Counsel will review the material. JD asked Ms. Hill whether she was appealing the amount of money, and what language she was looking for, and she stated she was appealing both. CV expressed concerns about confidential information that could put the Commission at risk for a lawsuit. VK noted that the cost estimate was reasonable compared to articles in the Boston Globe and public records requests. CV noted that LG was paid at an hourly rate and that w VK also noted that the state did not have systems set up to easily sort and release emails. JD said it was not a decision that the Commission

could make. CV motioned to defer the matter of Karen Hill to the Board of Selectmen and Town Counsel, seconded by VK, all in favor.

- 4.3 Copy of letter via Town Clerk from Karen Hill, Gardner, MA to Townsend Conservation Commission under MA Public Records Request – held on May 27, 2015 and were not addressed, but will be addressed.** – This request is for a copy of the Americans with Disabilities Act compliance section of the application for the FY13 EOEEA LAND grant that was awarded in September/October 2013. LG stated that she has already responded to Ms. Hill on this matter. She provided her response for the Commission’s review.
- 4.4 Copy of letter via Town Clerk from Karen Hill, Gardner, MA to Townsend Conservation Commission under MA Public Records Request- CV motioned to defer the matter to the Board of Selectmen** - This request is for a copy of the two letters provided to the Commission at the April 24, 2015 meeting, as referenced by the minutes, in response to the Open Meeting Law complaint from Karen Hill. LG has already responded to Ms. Hill on this matter. She provided her response for the Commission’s review.
- 4.5 Copy of letter via Town Clerk from Karen Hill, Gardner, MA to Townsend Conservation Commission/Land Use under MA Public Records Request.** - This letter is the same as 4.2, with the exception that it requests the emails from Land Use Coordinator and former Conservation Commission Chairman. CV motioned to defer the matter to the Board of Selectmen and Town Counsel, seconded by VK, all in favor.
- 4.6 Copy of response from Commonwealth of MA, Office of the Attorney General to Karen Hill, Gardner, MA re: complaint filed with the Townsend Conservation Commission** – This letter is in response to Karen Hill’s complaint, stating that they will review her complaint and will notify her of their determination following their review.
- 4.7 Planning Board Special Permit: Locke Brook Run OSMD** – The permit will expire on October 15, 2017.
- 4.8 Approved Forest Cutting Plan: Townsend Conservation Land Trust, Old Meetinghouse Rd.-** LG reported that she realized that there was a stone wall that would be temporarily removed for the Land Trust logging operation, and also for the proposed Conservation Commission’s logging. She called Town Counsel to confirm whether the Commission and Land Trust would need to file with the Planning Board under the Scenic Road Act. Town Counsel confirmed that premise. LG said it would cost \$150 to file. She emailed Eric Radlof, the town’s forester on this project to advise him. Either LG could handle the filing or Mr. Radlof could do it. LG said that all but numbered roads in town are on Scenic Roads, and taking stone walls or trees down in the right of way are subject to the Scenic Road Act.

The Commission also discussed whether the violation of the Jonathan Lane logging operation was a violation of the Scenic Road Act. LG said that under a Forest Cutting Plan, there are certain constraints about cutting along a Scenic Road that loggers must meet. LG will handle the filing.

- 4.9 Copy of Superseding Order of Conditions: Karen Hill, Lot 3, Boutelle Road** – LG confirmed that MaryAnn DiPinto issued the Superseding Order of Conditions, approving the work under the Wetlands Protection Act. Discussion continued about why the Commission did not receive it, with LG noting that DEP had the wrong email address for LG.

The Commission discussed whether they wanted to talk about the Superseding Order and whether to take any action to appeal it. LG advised the Commission that if they wanted to discuss the decision, and whether or not to appeal it, they would need to go in to Executive Session as the applicant/property owner, Karen Hill, and her agent, Michael Turgeon, were in the audience. She said that if they chose to do so, since an Executive Session was already on the agenda, they could motion to go in to Executive Session and return to open meeting only to adjourn, or they could motion to go in to Executive Session and return to the open meeting to continue with the agenda items, such as discussing what time to start future meetings.

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JH motioned that the meetings after tonight start at 7:30 pm. It was not on the agenda. JD said that since he was now chairman, and he asked the board to work with him to delay opening meetings until 7:30 due to his work schedule. LG said it could be put on next week's agenda, or he could put it under the Chair's report. VK suggested finish the agenda in the order listed, and then take it up under Chair's Report.

JD said that he wanted to go in to Executive Session. At 8:55 pm, VK motioned to go into Executive Session to discuss 4.9 for the purposes of discussing strategy with respect to litigation, and then to return to the open meeting to continue the agenda items, seconded by CV, JD – yes, JH – yes, CV – yes, VK – yes, JP – yes, all in favor. The tape recorder was turned off.

At 11:02, JH motioned to adjourn from Executive Session and return to the open meeting, seconded by VK, with JH – yes, VK – yes, JP – yes, CV – yes, JD – yes.

**4.10 Notice from Town Clerk re: resignation notice from Co-Chairman Emily Norton** – The Commission read Co-Chairman's Emily Norton's resignation notice with regret.

**5.0 Items for discussion at the next meeting**

**6.0 Advertisements and Conferences**

**7.0 Next meeting – June 24, 2015 at 7:00 pm**

**8.0 Adjournment** – JH motioned to adjourn at 11:07 pm., seconded by JP, all in favor.

Minutes respectfully submitted by Leslie W. Gabriliska