

WAYLAND CONSERVATION COMMISSION

Minutes, Thursday, March 20, 2014 7:32 - 10:33PM

Location: Senior Center, Town Building, 41 Cochituate Road, Wayland, MA

Present: Commissioners: Roger Backman, Bob Goldsmith, Sherre Greenbaum, Barbara Howell, Betty Salzberg (7:35pm), John Sullivan (7:45 – 9:45pm), Chairman: Andy Irwin (7:35pm), Conservation Administrator: Brian Monahan

Minutes: Andrea Upham

R.Backman opened the meeting at 7:32 PM noting that a quorum was present.

1. 7:32 pm – Citizens Time

David Hill, Orchard Lane, approached the Commission to speak about an agenda item concerning the landfill access. The Commission noted that comments on specific agenda items being covered during the meeting are normally not taken during Citizens Time but, rather, await the timing of the actual agenda item. Mr. Hill noted his inability to remain for that item and was allowed to proceed. Mr. Hill told the Commission he is interested in the status of the landfill access and the Army Corps of Engineers and noted he has been in email communication with Karen Adams of the Army Corps of Engineers regarding permit and permit requirements. Mr. Hill said he questions whether the Army Corps permit will expire when the temporary road is no longer required for access to the almost closed landfill. Mr. Hill's second question and summary were provided in a handout to the Commission for their future response.

2. Minutes – February 27, 2014

Motion to approve the February 27, 2014 Minutes as edited; Seconded 6-0

3. 7:35 pm – Continued Public Hearing, David Hanlon, Applicant, 30 Lakeshore Drive, DEP File No. 322-818: Notice of Intent filed pursuant to the Wetlands Protection Act, G.L. ch. 131 s. 40 and an application filed pursuant to Wayland's Wetlands and Water Resources Protection Bylaw, Chapter 194, filed by David Hanlon. The applicant is proposing a replacement septic system and garage and kitchen addition within 100 feet of Dudley Pond at 30 Lakeshore Drive, Wayland, shown on Assessor's Map 43C, Parcels 50A & 49.

Bob Drake, Drake Associates, and David Hanlon, Applicant, were present for the discussion. A.Irwin addressed concerns about delineation of the property and encroachments of the larger piece of land owned by the Town – land under Dudley Pond - as discussed at the last hearing. A.Irwin explained that advice of Town Counsel when a decision is rendered is to include a condition regarding a step requiring determination of the court of competent jurisdiction that the applicant owns the land included in the lot area on the plans. S.Greenbaum asked if the Commission can make a decision based on the proposed lot area or if the question on lot area would limit our ability to make a decision. A.Irwin noted that is a separate determination but the Commission does have concern that the decision on lot size be resolved. A.Irwin noted that on the matter of wetland setbacks, those lines don't move with property lines. A.Irwin asked S.Greenbaum what in particular she was concerned about, and S.Greenbaum noted concern as to whether stormwater compliance and impervious surface are affected by lot size. A.Irwin said he sees no effect of lot size on the proposed amount of impervious and stormwater management and Mr. Drake noted agreement. A.Irwin noted that limits on the percentage of lot coverage with impervious under the Aquifer Protection Bylaw are not enforced by Conservation. S.Greenbaum suggested the Commission add a finding noting no impact to those critical issues.

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A.Irwin reiterated that based on advice of Town Counsel we want a more specific determination from the proper authority. Mr. Drake commented that the ZBA said they are no closer to the rear lot line (which is the pond). On the issue of lot area, Mr. Drake stated that he has been working on a plan for property lines and it was recorded at the Registry of Deeds that day. Mr. Drake summarized his research and findings noting that no filling in of Dudley Pond was visible. Mr. Drake explained that over time the road has shifted and commented that pond lines match up to the 1914 plan. When the aqueduct was constructed the pond line may have receded as there is more land/depth from the street to the pond line. Mr. Drake noted that the Plan in 1982 (Farnsworth) was used in the initial investigation and that five years ago a certified plot plan was done to retrace and that indicated 125 feet of depth and greater than the 1914 plan. A.Irwin noted that based on the Town being the owner of land under Dudley Pond, and therefore an abutter, answers are needed as to where the boundary is – what is the limit of the Town's piece, and what is the limit of Mr. Hanlon's piece.

Mr. Drake said he will be happy to meet with Mark Lanza and would invite Alf Berry and Jay Abelli to report to Town Counsel on the entire process and see if any questions remain. Mr. Drake confirmed that the boundary lines are as he noted on the plan. A.Irwin read aloud the Mark Lanza excerpt concerning the recommended condition: "Before exercising any rights under this order/permit, the applicant shall obtain from court of competent jurisdiction and provide to the Conservation Commission a final judicial declaration that s/he/they own the land which is not included in the lot area as described in the deed(s) and plan(s) for the subject property which were recorded with the Middlesex South Registry of Deeds prior to the filing of his/her/their notice of intent and application for a wetlands permit." Mr. Hanlon asked if this includes the lot he bought from the Town last year as there were no issues of boundary lines expressed to him during that transaction. Mr. Hanlon added that he is pumping his septic every two weeks and is trying to improve the situation. Mr. Hanlon noted that many neighbors went forward with projects and didn't have to go to Land Court in order to proceed. A.Irwin indicated that the timing for resolution of this issue is a decision that should be made by the Commission and suggested that, where the application has already been made and the tank is being pumped, the timing would be before a Certificate of Compliance was issued on the project. B.Monahan noted that a difference of 2000 square feet is not always an issue as it is here. A.Irwin noted that they are free to discuss the matter further with Town Counsel to see if he changes course.

Molly Upton, Bayfield Road, noted that at the last hearing the Commission had required a registered plan and should have it and noted that even at 9700 square feet, the impervious cover is 22% and a registered plan should be required. Mr. Drake presented to A.Irwin the plan that was filed with the Registry of Deeds this date, March 20, 2014. Mr. Hanlon noted that in any case they are reducing impervious area. A.Irwin noted that any issue that might result in a reduction of impervious surface could be dealt with as amendment from an issued decision, whereas any need to add impervious surface would mean a new application. A.Irwin again noted that they are free to meet with Town Counsel in an attempt to show that his recommendation is no longer necessary to include the condition, and the Commission can close the hearing now and move forward.

Kevin Poulsen, 22 Pine Ridge Road, referred to A.Irwin's wording that the Commission is interested "as an abutter" and asked for clarification. A.Irwin explained that the Town owns Dudley Pond which is the reason for that reference. Mr. Poulsen wondered if any abutter is free to go to Land Court for such a determination or just the Commission. A.Irwin responded that an abutter could go to Town Counsel or go to Land Court for decision.

Mr. Drake said he is confident that if he meets with Town Counsel along with Alf Berry and Jay Abelli that Mr. Lanza will be satisfied and the Land Court will not be necessary. Mr. Drake commented that

Motion to issue a Negative Determination w/conditions under the Wetlands Protection Act; Seconded 7-0

Motion to issue a Permit w/conditions under the Chapter 194 Bylaw; Seconded 7-0

5. **8:35 pm – Discussion with K. Upham, “Oh Deer”**

Kurt Upham, Oh Deer, was present for the discussion. Mr. Upham introduced himself as the President of Oh Deer, Inc., a business that sprays a 25B solution on trees, plants, shrubs and provides tick/mosquito control. Mr. Upham acknowledged pumping water out of Mill Pond. A.Irwin explained the Wetlands Protection Act and that to dewater a wetland is to alter it, and there are additional issues noting that there should be no backflow and even the application of herbicides for a pond requires permits. A.Irwin suggested that Mr. Upham can use the water from the Town connection but the same backflow issue would exist and a mechanism similar to that used with an irrigation system would be needed. Mr. Upham referred to a “check valve” and A.Irwin said the Town’s Plumbing Department would need to approve. When asked how much water was recently being used by Mr. Upham, he said 1000 gallons a day. A.Irwin said he could get a private well installation permit. Mr. Upham handed out MSDF sheets. A.Irwin reported that within 100 feet of wetlands and 200 feet of perennial streams homeowners cannot apply herbicides/pesticides. Mr. Upham explained that the pesticide he utilizes does not require a license. A.Irwin cautioned for him to beware that the product could perhaps still cause fish kill given the biodegradable component and commented that the issues of human safety vs. environmental safety differ. The Commission advised Mr. Upham that he is prohibited from pumping and using water from Mill Pond for his purposes.

6. **8:50 pm Request for Certificate of Compliance [310 CMR 10.05 (9)]**

a. Wayland Commons; DEP File No. 322-624

Vito Colonna of Sullivan Connors and Brian Card of Brendon Homes were present. A.Irwin summarized that inspections were to be conducted when BMPs were installed and were not done, and the issue at hand is how we resolve that the BMPs installed are properly functioning. Mr. Colonna provided a list of inspections along with a disc and photos. Mr. Colonna noted that John Burrows was on site when subsurface systems were inspected and the infiltration system used the plan in place and the design was per stormwater management. B.Monahan noted that the Commission could ask that he attest to the condition. Mr. Colonna noted that the elevations are on the as-built plan. A.Irwin confirmed with Mr. Colonna and Mr. Card that the Commission will expect them to make the necessary arrangements.

Motion to table discussion until the April 10, 2014 meeting; Seconded 5-0

Wayland Town Center; DEP File No. 322-701

A.Irwin summarized that questions were raised about BMPs, the Conservation Restriction is not yet in place, the plan from Griffin highlighting differences between the as-built drainage vs. proposed drainage is being reviewed by D.Faist, which all seem to be issues requiring resolution. B.Goldsmith noted that he went through all conditions and sees significant areas of non-compliance which he had summarized in a handout which was provided by him to the Commission. B.Goldsmith expressed that a major issue is the drainage line. A.Irwin commented that if it didn’t add impervious surface, then they were allowed to phase the work. B.Monahan noted question as to whether the original design of the basin considered the impervious surface of the municipal pad. A.Irwin noted the need for what impervious area was accounted for so we know what the basin is capable of for allocation of drainage. B.Goldsmith commented that roof runoff is handled separately and if the drain line is not there, the municipal pad is incapable of

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being developed. A.Irwin asked for confirmation of an action item. B.Monahan noted the need to ascertain what impervious surface was included from the municipal pad to basins in the original plan. B.Goldsmith commented that the as-built plan doesn't have the drainage line on it. A.Irwin told the Commission that a working meeting is in order with the issue at hand to ensure that the aggregate of what is fed to that basin does not exceed the design. A.Irwin noted that the stormwater basin limit is the Commission's concern; a check of the original approved plans is needed to confirm how much impervious surface was allowed, and Basin 2 and Basin 3 will not exceed that number. A.Irwin said there is also a need to make sure the Order of Conditions extends to all properties and to determine if the municipal agreement allowed the Town to access drainage installed and at what allocation.

Motion to accept offer for extension of Certificate of Compliance Request from Applicant received today and defer vote for 21 days; Seconded 7-0

- b. Wayland Town Center Off-site Improvements: DEP File No. 322-744

Motion to deny Request for Certificate of Compliance due to nonconformance of as-built plan with the design plan as further outlined by D.Faist in his 2/24/14 letter to the Commission; Seconded 7-0

7. 9:40 p.m. – Request for Performance Guarantee or Other 53G Funds

- a. Wayland Town Center; DEP File No. 322-701

Motion to accept offer for extension request from Applicant for 45 days for review of Request for Performance Guarantee; Seconded 7-0

- b. Twenty Wayland Off-site Improvements; DEP File No. 322-744

Motion to deny request for return of performance guarantee based on noncompliance; Seconded 7-0

- c. 14 Valley View Drive; DEP File No. 322-783

Motion to approve the release of the Performance Guarantee less \$150 for late inspection reporting; Seconded 6-0

Motion to approve the release of the Performance Guarantee to Contractor; Seconded 6-0

- d. 21 French Avenue; DEP File No. 322-807

Motion to approve the release of the Performance Guarantee less \$150 for late inspection reporting; Seconded 6-0

- e. 8 Lundy Lane; DEP File No. 322-777

Motion to approve the release of the Performance Guarantee less \$150 for late inspection reporting; Seconded 6-0

8. Other

- a. NStar R.O.W. Notice

B.Monahan reported that the Board of Public Works had a long and thorough hearing to discuss details of cutting procedures, noting that this matter is separate from herbicide application. B.Monahan noted that he needs to communicate to NStar to make NHESP resource areas clearly defined on their maps within the deadline.

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- b. Landfill Transfer Station Access Roadway
A.Irwin summarized that the Army Corps letter contained a condition that all temporary fill should be removed in their entirety.

- c. Discussion of Warrant Articles with Conservation Impact and/or involvement

A.Irwin reported that Forty Acre Drive currently has no negotiated agreement with the property owner.

Motion to pass over Article 22 of the Annual Town Meeting on the basis that there is no negotiated agreement for the property; Seconded 6-0

Discussion ensued on the need for a strategy for the article for the access roadway. A.Irwin commented that the Commission might take a position against River's Edge based on concern that if the roadway goes away and there is a need to move the transfer station, the proposed River's Edge location would be a better place than any other option. Discussion ensued as to requesting change in order of warrant articles to move access road article before River's Edge articles.

Motion made that based upon uncertainty for funding of mitigation for access roadway and permanency of access roadway because of the pending appeal, the Conservation Commission does not support the conversion of the septage facility for the River's Edge development because the location may be needed for the transfer station; Seconded 6-0

A.Irwin will write an email which B.Monahan can share.

- d. Nyanza Funds
A.Irwin commented that there should be direct association with the Sudbury River for any proposal.

9. Compliance Updates

- a. 122 and 124 Lakeshore Drive; DEP File 322-803 and DEP File No. 322-802
B.Monahan reminded the Commission of binders of material and plans submitted by the Applicant. A Commission member is needed to volunteer to review materials with B.Monahan.
- b. 25 Millbrook Road
B.Monahan reported that a second letter was sent to the property owner.

10. Land Management

- a. Discussion - Proposed CR for Wayland Town Center
A.Irwin asked Commissioners if desired changes should be forwarded to Mr. Dougherty. B.Monahan noted that access is not allowed in one area and is not consistent. Total included land area is also inconsistent. B.Monahan will put in writing clarification of needed trail easement.
- b. Other CRs: 134 Boston Post Road, Lincoln Road, Alice Drive

B.Monahan reported that the Lincoln Road CR is not yet signed.

- c. B.Monahan did draft letter of 102 Lakeshore ZBA comments; consensus of Commission for B.Monahan to review the draft with S.Greenbaum to send to ZBA. Discussion ensued of concern around natural buffer. A.Irwin discussed the defined limit of lawn with site plan approval and the vegetation maintained in the bioswale noting that it should not be additional lawn. A.Irwin said there is variation allowed for the constrained site and noted the need to have other matters covered.

11. Correspondence/Expenditures

12. Executive Session – Discussion Potential Litigation

Motion by the Chair, A.Irwin, to enter Executive Session:

I move that the Conservation Commission enter into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss pending litigation regarding a dispute concerning a right-of-way on Dudley Pond.

CHAIR: Is there a second to the motion to enter into executive session? Seconded;

CHAIR: Roll call vote noting R.Backman, S. Greenbaum, B.Goldsmith, B.Howell, B.Salzberg and A.Irwin; 6-0 in favor

The Chair declares that a public discussion with respect to pending litigation regarding the dispute concerning a right-of-way on Dudley Pond will have a detrimental effect on the bargaining or litigating position of the Town.

CHAIR: Roll call vote R.Backman, S. Greenbaum, B.Goldsmith, B.Howell, B.Salzberg and A.Irwin.

CHAIR: A.Irwin invites attendance by staff members Brian Monahan, Conservation Administrator, and Andrea Upham, minute taker, for the Executive Session. Roll call vote was taken to approve the staff members' attendance noting the approval of R.Backman, S. Greenbaum, B.Goldsmith, B.Howell, B.Salzberg and A.Irwin.

A.Irwin announced that the Commission is now going into Executive Session and the open meeting will not be convened after the Executive Session. A.Irwin reiterated that the purpose of the Executive Session is to discuss the aforementioned litigation matter.

13. Adjournment

Motion by A.Irwin to adjourn from Open Meeting at 10:33pm and enter Executive Session;
Seconded 6-0

The next Conservation Commission Meeting is scheduled for Thursday, **April 10, 2014** in the Wayland Town Building.

NOTE: Per changes to the Open Meeting Law, notice of any meeting of a public body shall include "A listing of topics that the chair reasonably anticipates will be discussed at the meeting". AG's Office guidelines state that the list of topics shall have sufficient specificity to reasonably advise the public of the issue to be discussed.

**TOWN OF WAYLAND
MASSACHUSETTS
CONSERVATION COMMISSION**

**LIST OF PUBLIC DOCUMENTS PROVIDED TO THE CONSERVATION COMMISSION
February 28, 2014 to March 20, 2014**

February 28, 2014

322-819 Summary of project details at 102 Lakeshore Drive from Bob Drake
D-829 Responses to conditions for Happy Hollow Chlorine Analyzer project from Tata & Howard

March 4, 2014

Notice of forest conservation program from Dept. of Environmental Conservation at UMass Amherst
322-777 Request for Performance Guarantee for 8 Lundy Lane from Eve Wrigley

March 7, 2014

Notice of continued ZBA Hearing 3/11/14 re: 29 Leary Street

March 10, 2014

Legal Notice of Application for alcoholic beverage license at 87 Andrew Ave. from Sperry's Fine Wine

March 12, 2014

322-802/803 Response to C194 Permit conditions for 122/124 Lakeshore Drive delivered by F.Mannix
322-691 Groundwater/Water Quality Monitoring Reports for CVS, 325 Boston Post Road, from VHB, Inc.

March 13, 2014

322-701 Proposed As-Built Basin Volume Comparison, Wayland Town Center, from Griffin Engineering
322-818 Updated stormwater and sewage plans for 30 Lakeshore Drive from Bob Drake
322-819 Updated Proposed Conditions Site Plan and depth calcs for 102 Lakeshore Drive from B.Drake

March 14, 2014

As-Built Drainage Plan from Griffin Engineering
Letter re: New England Sand and Gravel five-year period review report from URS Corporation

March 17, 2014

D-818 Copy of Waterways License for 55 Knollwood Lane from DEP
D-819 Update to animal keeping and Board of Health hearing for 17 Concord Road from L.Kiernan

March 19, 2014

ZBA continued hearing notice 3/25 re: 102 Lakeshore Drive
ZBA continued hearing notice 4/29 re: 42 Shaw Drive
ZBA decision re: 29 Leary Street
ZBA decision re: 30 Lakeshore Drive
Letter to US Army Corp of Engineers from J.Moynihan re: landfill access road
Notice of new street address (8 Indian Road) from Building Commissioner
Superior Court Memorandum of Decision / Town's appeal of Attorney General ruling re: pesticide use

March 20, 2014

322-673 Revised Groundwater Monitoring Reports for 367 Commonwealth Road from J.O'Connor

LIST OF EXPENDITURES February 28, 2014 to March 20, 2014

No items to report