

SOUTHBOROUGH CONSERVATION COMMISSION
THURSDAY, FEBRUARY 4, 2010
TOWN HOUSE MEETING ROOM, 2nd fl.
MEETING MINUTES

 APPROVED

The Conservation Commission of the Town of Southborough held a meeting on Thursday, February 4, 2010 at 7:30 p.m. at the Southborough Town House, 2nd floor meeting room.

Members Present: Dick Upjohn, A.J. Purcell, Russ Gregory, Chris Molinaro (arrived at 7:40 p.m.), Mark Possemato and Rhonda Russian.

Absent: John Leeds

Also Present: Ellen Chagnon, Conservation Scientist Consultant

The meeting commenced at 7:30 p.m. with Ms. Russian acting as chairperson.

CONTINUED NOTICE OF INTENT – MARILYN GREEN, DEERFOOT REALTY TRUST, 75 DEERFOOT ROAD, ASSESSORS MAP 34, LOT 55:

Ms. Russian opened the hearing at 7:30 p.m. Present for the hearing were Marilyn Green, attorney Robert Dionisi, and Tom DiPersio, Jr. of Thomas Land Surveying. Mr. DiPersio said the revision made to the plan shows the limit of yard at 50-feet from the Riverfront Area. Ms. Russian suggested permanently demarcating the proposed limit of work so that encroachment does not occur. Mr. Upjohn said the inner riparian zone must remain untouched by structures of any kind. Peter Bernier, the potential property owner, introduced himself and stated his plans for the property. Ms. Russian explained the Rivers Protection Act and gave examples of ongoing conditions the Commission may impose for the site. Mr. Upjohn said the open field would need to be maintained by annual mowing, and suggested the permanent installation of 2 barriers: 1) at the edge of proposed lawn area; and 2) 20-feet from the edge of the BVW and the Riverfront Area. Attorney Dionisi asked for closure of the hearing tonight, and for the Commission to include Special Conditions instead of waiting for the plan revisions. Mr. DiPersio suggested using iron pins to delineate the limits. Mr. Gregory said he preferred installing a concrete monument flush with the ground to demarcate the No Touch Area. None of the Commissioners liked using iron pins. Ms. Russian stated she would prefer to wait for a revised plan showing the barriers in order to eliminate any ambiguity, and continued the hearing to 2/25/10 so that the Applicant can submit an administrative revision to the plans.

CONTINUED STORMWATER MANAGEMENT PERMIT AND CONTINUED NOTICE OF INTENT – NU-YANKEE, LLC, 0 NORTHBOROUGH ROAD, ASSESSORS MAP 70, LOT 2:

Ms. Russian opened both hearings concurrently at 8 p.m. Present for the Applicant was Mike Sullivan of Connorstone Engineering. Mr. Sullivan said revised plans were submitted to the Commission two days prior, the Board of Health has not reviewed the septic plan yet, stormwater will now be treated with a Stormceptor, snow storage areas have been relocated, and since the first Planning Board meeting will not be held until March 1st, Mr. Sullivan asked for the hearing to be continued until after the Planning Board hearing. At 8:10 p.m., Ms. Russian continued the hearing to March 18, 2010.

CONTINUED STORMWATER MANAGEMENT PERMIT AND CONTINUED NOTICE OF INTENT – HARVEY INDUSTRIES, ONE WILLOW STREET, ASSESSORS MAP 38, LOT 1:

Ms. Russian opened both hearings concurrently at 8:15 p.m. Mr. Gregory recused himself from the hearings. Present for the hearings were Mike Sullivan from Connorstone Engineering, property owner John Hennessey, and Robert Dion, architect with Dion & Sokol. Mr. Sullivan summarized the recent plan revisions: a construction apron has been added; all equipment repair and refueling is outside the 100-foot buffer; both Stormceptors have been relocated from the storage yard to the parking lot area; one catch basin is being eliminated and the parking lot regraded; jersey barriers and signage will be used to contain the snow from being plowed into wetlands; a row of white pines will be planted along

the edge of the parking lot (about 35-feet from BVW) per a Planning Board screening requirement; rhododendrons will be planted along roadway near the culvert; a sign will be added within the 20-foot No Touch Area; the four drain lines in the garage bays have been permanently blocked with concrete; and the decision regarding the zoning question has not been received from Town Counsel. Ms. Chagnon pointed out that the location of one Stormceptor has oil-saturated soil which must be properly disposed of as hazardous waste.

Russ Gregory of 57 Breakneck Hill Road, a landscaper by trade, suggested replacing the white pines with spruce trees since the pines are weak and fast growing. The Commission agreed to send a memo to the Planning Board recommending using spruce rather than white pine. Mr. Sullivan asked the Commission to close the hearing. Mr. Purcell said he was satisfied with the plan revisions, and felt it was appropriate to close the hearing with the contingency that special conditions are included in the Order that relate to the contaminated soils. Mr. Upjohn, Mr. Molinaro and Mr. Possemato concurred, while Ms. Russian expressed reservations pertaining to 1) the Planning Board hearing being still open, and 2) the zoning use variance question still not being decided. Following the wishes of the majority, Ms. Russian closed the hearing(s) at 8:45 p.m. Mr. Gregory rejoined the Commission.

ADMINISTRATIVE ENFORCEMENT HEARING AND CONSIDER THE REQUEST TO AMEND THE ORDER OF CONDITIONS – SAGE INVESTORS, 154 MAIN STREET, ASSESSORS MAP 51, LOT 30:

Ms. Russian opened the hearing at 8:45 p.m. Mr. Gregory recused himself from the hearing. Ms. Russian disclosed that she is an employee of Mass DEP and as such, has other unrelated issues with attorney Richard Nysten and engineer Peter Bemis, who are representing Sage Investors. Present for the hearing were Attorney Richard Nysten, developer Chris Christopher, homeowner Peter Brinkman, and engineer Peter Bemis.

Mr. Bemis stated that his request for a Certificate of Compliance for the property triggered awareness by the Commission of the site violations. Mr. Bemis provided a history of the lot, its former uses, and the Notice of Intent hearings. Mr. Bemis said he is requesting that the Commission consider approving an Amendment to the Order of Conditions since two independent wetland scientists have reviewed the wetland delineation and have both agreed that the actual line is further down gradient than what was shown and approved on the plans. Mr. Bemis suggests allowing a fence to be installed at the revised line location in place of the boulders originally required. Mr. Bemis feels the Amendment process appropriately handles this issue of the wetland line discrepancy. Mr. Christopher, a developer and resident of Southborough, apologized for the error regarding the limit of allowed work on the site, and said he hoped to remedy the error through the hiring of the two wetland scientists to review the site delineation.

Attorney Richard Nysten said one alternative is to relocate the boulders, but the Commission must consider whether any damage will be or has been caused to the resource area, and whether the violation was intentional. Attorney Nysten said the Commission has total discretion on enforcement orders. Richard Araujo of 156 Main Street said that since the 154 Main St. driveway was cut, he has seen ponding on his property at the headwall. Ms. Russian explained the enforcement was issued for a violation of the local wetlands bylaw 20-foot No Touch Area, the plans were not followed as designed and approved by the Commission, that the Commission has discretion whether to amend or to not even consider a request to amend. Ms. Russian said that some amendments are considered to be administrative updates, while some require re-issuance as Amended Order of Conditions. Ms. Russian stated the Commission verified the original wetland line at the time of the approval of the Order of Conditions. Mr. Upjohn said a plan was approved by the Commission, and the house that was built did not follow the approved plan. Mr. Upjohn said the local bylaw was violated, the 20-foot No Touch Area should not be lawn but should be left to grow naturally, and the septic tank was also improperly placed in the 20-foot No Touch Area. Mr. Molinaro said the Commission established and confirmed

the “Murphy line” during the NOI hearings, and there was no debate during the hearings about the validity of the line. Mr. Possemato addressed the contradiction as to how soils were used to delineate the “Murphy” wetland line back then and are now being used to justify a changed line.

Ms. Russian stated the line that was originally approved is still valid and in effect; new lines are not relevant. Ms. Russian said the past meeting minutes reflect that the Commission struggled with the NOI approval and gave considerable thought to the project. She added the local bylaw clearly states there are to be no structures in the 20-foot No Touch Area. Ms. Russian said an amendment is not appropriate as this is not a plan redesign during construction but an alteration post construction. Ms. Russian said that just because the Commission did not catch the violation earlier does not make it acceptable and the Enforcement proceeding is appropriate in this case. Mr. Upjohn recalled Commissioner’s concerns during the NOI hearings of whether the site was developable or not. Attorney Nysten replied it would be ridiculous to consider moving the septic tank and the boulders just to issue a Certificate of Compliance, and then having the applicant submit a new NOI for the fence and the new wetland line. Attorney Nysten accepts that mistakes were made and wants to move forward. Mr. Upjohn agreed it does not make sense to move the septic tank as that would cause more damage, and he disagreed with the new delineation. Mr. Possemato questioned how a resolution could be achieved. Mr. Molinaro asked why the applicant hasn’t shown an alternate plan to restore the site as was originally approved. Mr. Bemis offered to plant some shrubs within some of the lawn area.

Mr. Purcell suggested the Commission consider imposing fines for the septic tank installation within the 20-foot No Touch Area, and suggested as a compromise that the fence be placed about 3-4 feet behind the original line and behind the septic tank. By a vote of 5-0, the Commission denied the requested amendment to the Order of Conditions and asked for a restoration plan to be submitted, adding that fines will be imposed. Mr. Possemato pointed out the pump chamber is also within the 20-foot No Touch Area, and the applicant needs to consider future maintenance as part of their restoration plan submittal. Ms. Russian continued the hearing to 2/25/10. Mr. Gregory rejoined the Commission.

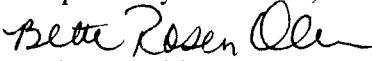
ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION – WILLIAM ZIELINSKI, SKW PARTNERS, INC., CRYSTAL POND ROAD/TURNPIKE ROAD, PUBLIC ROADWAY:

Ms. Russian opened the hearing at 10:10 p.m. Ms. Chagnon said a revised plan was received as requested with the following changes: the stream under Route 9 was changed to intermittent from perennial; the soccer field line was eliminated; and previously degraded Riverfront Area is shown on the plans. Upon motion by Mr. Upjohn, seconded by Mr. Purcell, the Commission voted (6-0) to accept the Order of Resource Area Delineation as shown on the revised plans.

OTHER BUSINESS:

1. **Meeting Minutes:** Tabled until next meeting.
2. **Certificate of Compliance:** Wells Lane Roadway and Detention Basin. Upon motion by Mr. Upjohn and seconded by Mr. Molinaro, the Commission voted (6-0) to approve a Certificate of Compliance.
3. Mr. Possemato indicated he will not be in attendance at the next meeting.
4. **Woodland Meadows:** The Commission was asked by the ZBA to offer comments to the most recent plans. The Commission agreed to discuss this at the following meeting.
5. **Breakneck Hill Cow Fund License Renewal 2010:** The Commission approved and signed.

Upon motion by Mr. Purcell, seconded by Mr. Gregory, the Commission voted (6-0) to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Beth Rosenblum
Conservation Administrator