

SOUTHBOROUGH CONSERVATION COMMISSION  
THURSDAY, MAY 29, 2008  
TOWN HOUSE MEETING ROOM, 2<sup>nd</sup> fl.  
MEETING MINUTES

The Conservation Commission of the Town of Southborough held a meeting on Thursday, May 29, 2008 at 7:30 p.m. at the Southborough Town House, 2<sup>nd</sup> floor meeting room.

Members Present: John Leeds, Rhonda Russian, Phil Bevins, Mark Possemato, Russ Gregory and Richard Upjohn.

Absent: John Maciolek.

The meeting commenced at 7:30 p.m. with John Leeds as chairperson.

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**CONTINUED NOTICE OF INTENT – BETTY YUEN, 2 ASAREE DRIVE, ASSESSORS MAP 31, LOT 48:**

Mr. Leeds opened the hearing at 7:30 p.m. Present was Shawn Hardy, engineer. Mr. Hardy discussed and reviewed the plan revisions and planting plan submissions as requested by the Commission at the prior hearing. Mr. Hardy stated the haybales has been moved back, the large pine tree is being saved, no inorganic fertilizers will be used, a berm to protect the slope will be constructed and planted with bird friendly shrubs, etc.

The Commission thanked Mr. Hardy for the well-designed planting plan, and added that the haybales should be staked with bindings to the side. Mr. Leeds closed the hearing.

Upon motion by Mr. Upjohn, seconded by Mr. Bevins, the Commission voted (6-0) to approve a standard Order of Conditions (+38h) with Special Conditions that include 1) haybales to be bound around the sides, 2) planted area must meet performance standards of local bylaw, section 3.1, 3) no inorganic fertilizers may be used in perpetuity for lawn planting and lawn maintenance, 4) large pine tree to remain.

**CONTINUED NOTICE OF INTENT – LLEWELLYN ROGERS, 41 OREGON ROAD, ASSESSORS MAP 16, LOT 12:**

Mr. Leeds opened the hearing at 7:50 p.m. The Commission acknowledged the Board of Health had approved and issued a septic permit, which was the only item remaining open from the prior hearing. Mr. Leeds closed the hearing.

Upon motion by Mr. Upjohn, seconded by Ms. Russian, the Commission voted (6-0) to approve a standard Order of Conditions (-38h).

**ADMINISTRATIVE ENFORCEMENT HEARING – STEPHEN MORGAN, 206 TURNPIKE ROAD, ASSESSORS MAP 28, LOT 3A:**

Mr. Leeds recused himself as an abutter to the property and had Ms. Russian fill in as chair. Ms. Russian opened the administrative enforcement hearing at 8 p.m. Ms. Russian asked Mr. Upjohn to summarize the reason(s) why the Enforcement Order was issued. Mr. Upjohn explained that he witnessed the installation of fence posts within 100' from the edge of wetlands at the property, and possibly within the 20' No Touch Area. Ms. Russian asked whether Mr. Upjohn had spoken with property owner Mr. Morgan about the issue during his site visit. Mr. Upjohn replied that he had. Stephen Morgan, property owner, stated that the property address was incorrectly stated in the Enforcement Order, that the work in question was done by tenant Sandy's School and not by him, that he feels the Enforcement Order is improper since plans had been shown previously to the Commission

on behalf of Sandy's School that he had not approved, that he feels this is a minor issue and an insignificant project since soil was not disturbed and it should be dismissed, and that he is not responsible since a contractor hired by his tenant performed the work. Mr. Russian stated that under the state Wetlands Protection Act and the Southborough Wetlands Bylaw an Enforcement Order is issued to a property owner. Mr. Morgan reiterated the contractor was working for his tenant, and not himself. Ms. Russian explained the discussion at the previous meeting regarding the proposed playground installation, and the decision by the Commission that a permit would be required and that the Conservation Commission has jurisdiction over the project since it is within a jurisdictional wetlands area and work was being performed without a permit. Mr. Morgan replied that at the time of Mr. Upjohn's visit, the work was nearly done and all that remained was for bark mulch to be brought in. Ms. Russian stated it is not within the property owner's authority to determine the applicability of the Wetlands Protection Act; it is the Conservation Commission's responsibility. Mr. Bevins said the lease should indicate that all projects performed on the site must comply with state and local bylaws and regulations. Mr. Morgan said the work has stopped. Ms. Russian said the Commission may require the property to be restored or fines to be assessed. Mr. Possemato said it appears there is a lack of concern for wetlands and buffer zones. Mr. Morgan replied he had come before the Commission informally 2 years ago to determine what could be done on the property and he felt this project would be allowed. Mr. Possemato and Mr. Bevins stated they want a Notice of Intent filed showing what, when, and how the playground will be constructed.

Lenny Boucher, co-owner of Sandy's School, stated that the playground had existed at 200 Turnpike Road and needed to be relocated when the day care moved to the 206 Turnpike Road building. Mr. Boucher said the state required a new playground closer to the new location and that 2 other sites on the property had been considered but were ruled out as being too labor intensive to develop. Mr. Morgan stated it is just the installation of fence posts with concrete footings. Mr. Possemato replied the Commission needs to understand the whole scope of the project. Ms. Russian said a full application with wetland delineation by wetland scientist and engineered plans are needed, and the address on the Enforcement Order would be corrected. Ms. Russian made a motion to ratify the Enforcement Order against Tatnuck Systems, Inc., 206 Turnpike Road, Stephen J Morgan, President, for permitting activities within the jurisdiction of the Wetlands Protection Act and potentially within the local wetlands bylaw without applying for any permits. Mr. Upjohn seconded the motion. Mr. Possemato and Mr. Bevins asked the Commission to consider a time frame to require the permit filing and suggested the vote be suspended on the Enforcement Order ratification until after the permit is filed. Ms. Russian said a motion is on the floor and asked for a vote. Ms. Russian and Mr. Upjohn were alone in voting in favor of the motion. Ms. Russian stated since only 2 members are in favor and that is not a majority, the motion did not carry. The Commission agreed to require a permit be filed for the next meeting on June 19, 2008 or the Enforcement Order will be ratified.

**NOTICE OF INTENT – PALMIRA NAPOLEON, 103 MAIN STREET, ASSESSORS MAP 52, LOT 18:**

Mr. Leeds opened the hearing at 8:50 p.m. The application is to demolish an existing deck and construct a landscaped patio within the 100' buffer zone. Present for the hearing was Peter Bemis of Engineering Design Consultants. Mr. Bemis stated that work had commenced on the site when building inspector Peter Johnson noticed the pond nearby and stopped the work from proceeding further until permitted by the Commission. Mr. Bemis said the patio will be pervious. Mr. Upjohn noted the topography of the property, and asked where the haybales will be placed. Mr. Bemis replied on the top of the slope, and the footings from the old deck will be removed and the new patio is a smaller footprint than that existing. Mr. Leeds closed the hearing.

Upon motion by Mr. Upjohn, seconded by Ms. Russian, the Commission voted (6-0) to approve a standard Order of Conditions (-38h).

**CONTINUED NOTICE OF INTENT – ROBERT HEAVEY, 84 TURNPIKE ROAD (WOODLAND MEADOWS), MAP 38, LOT 10:**

Mr. Leeds opened the hearing at 9:04 p.m. Mr. Bevins recused himself as an abutter. Mr. Leeds acknowledged town engineer John Woodsmall in attendance, and asked him to share his comments after the applicant's presentation. Ms. Russian stated the plans were revised, and asked the applicant to explain the revisions. Present were property owner Bob Heavey and engineer Tim Paris of Connorstone Engineering. Mr. Paris said that as part of the DEP Administrative Consent Order for the replication area constructed years ago, other wetlands on the site were considered a loss. Mr. Heavey explained that DEP would allow the finger of wetlands to be filled in if the ordered replication was done. Ms. Russian stated that previous to these recent plan revisions, the Sanford Ecological wetland delineation was approved by the Commission and being shown on all plans. Mr. Paris stated the wetland line needed to be moved since wetland filling was not being allowed under the new state regulations. Mr. Upjohn said all previous projects proposed for this site were held up due to the dispute between the property owner and the Commission of the wetland line and the wetland finger, and the Commission refused to accept previous wetland lines for that reason. Mr. Heavey said DEP gave permission to fill wetland when the replication was ordered. The Commission responded that documentation from DEP would need to be presented affirming these statements.

Mr. Paris continued to highlight the other plan revisions: new BMP's including a constructed wetland; outfalls moved outside the 200' line; drop inlet discharge has been moved; one pond has been eliminated; stormwater along Woodland Road will be caught by new berm being proposed; and, redevelopment of Woodland Road will change the project to "Redevelopment", therefore changing the project requirements. Ms. Russian asked for clarification of the latter statement; how or why would improvements to a public way change the classification of the project to "Redevelopment"? Mr. Paris replied the box culvert installed will be larger than existing. Mr. Leeds said the stream was misrepresented on the recent drainage calculations as intermittent. Mr. Paris said it was an error and will be corrected. Mr. Paris said the proposed walking trails will run along the stone wall for 400' and will be utilized only by tenants, and there will be a walkway to Walgreen's. The Commission asked Mr. Paris to show where on the new plans were the previously shown wetland filling and wetlands replication areas. Mr. Paris said that both have been eliminated on the revised plans.

Town Engineer John Woodsmall was given the opportunity to offer his comments on the plan revisions. Mr. Woodsmall said in the new hydrologic analysis showing existing versus proposed conditions, the watershed is not the same. Mr. Paris said the analysis point is different due to the larger culverted area where water is flowing through. Ms. Russian asked if this method was valid. Mr. Woodsmall said he would need to consider it more thoroughly. Mr. Woodsmall added the trail and the well need to be considered in the applicant's calculations, and if the trail is proposed to be maintained, it should be part of the Notice of Intent since it is located in the wetlands. Mr. Woodsmall spoke about the stormceptor unit, infiltration rates, the culvert and flow issues, and that a Stormwater Checklist with all calculations had still not been submitted as required under the new regulations. Mr. Woodsmall added the plans show that all discharges have been moved to outside the 200' line, but they do not meet the standards of no BMP's within the 200' line. Mr. Paris said he had spoken with DEP about the discrepancies in the new regulation, and they had agreed there were errors in the new policy. The Commission said they would need to see documentation of that DEP statement. Mr. Woodsmall added that the DPW does not have the equipment to handle the stormceptor system being proposed and does not want ownership of it. He added the applicant can not take infiltration credits for the roof drywell that is in close proximity to a retaining wall with weep-holes, as the wall is not designed for the hydraulic pressure being proposed. Mr. Woodsmall added the proposed water main should be relocated, the wetland line was changed without any formal justification, the stream will be disturbed during the construction of the box culvert, the disturbance of Land Under Water triggers a 401 Water Quality Certificate from DEP, a construction sequence needs to be provided, and suggests the

Commission utilize a 3<sup>rd</sup> party wetlands review that includes and Alternatives Analysis that considers adjacent properties owned by the applicant as the regulations allow.

Ms. Russian stated the revised plans presented do not originate from the most recent wetland line that had been approved and used in prior materials presented by the applicant. The Commission stated documentation of the wetland delineation change must be presented. The Commission confirmed the septic system permit had not been applied for through the Board of Health; the stream is perennial and must be shown on plans and other documents presented as such; and the town's Legal Counsel opinion for a Stormwater Management Permit application to be filed remains valid, yet still has not been received. The Commission asked ZBA chairman Sam Stivers, in attendance, for advice on that matter. Mr. Stivers replied the issued is still being discussed; the applicant's counsel disagrees with town counsel's opinion; and that ZBA understands the matter is under the jurisdiction of the Conservation Commission. Ms. Russian listed several items that remain outstanding: the applicant's application is not considered complete without the Stormwater Management Permit filing; that since MEPA Certificate utilized the former plans wetland delineation line, a Notice of Project change to MEPA may be warranted; evidence from DEP that the Administrative Consent Order has been complied with; the stormceptor system proposed for Woodland Road must be revisited per John Woodsmall's comments; compliance with the new DEP Stormwater standards must be demonstrated; more information on the walking trails is needed to be provided. Mr. Paris responded that the trails will be eliminated. Mr. Gregory said the well head should be covered. Mr. Possemato commended Mr. Woodsmall on his thorough review of the plans and said there is still a lot that needs to be worked out by the applicant, primary among that is the wetland line must be agreed on before any more plans are presented.

Roger Challen of 29 Oak Hill Road said some neighbors have retained Patrick Garner to help them understand the project and he hoped Mr. Garner's comments would be helpful to the Commission. Mr. Challen asked when the drainage ditch in the buffer zone was constructed. Mr. Upjohn pointed out that most of it is outside the buffer zone, and only a small portion may be within it. Mr. Challen stated one of the abutter's lots is mis-represented on the plans.

Patrick Garner identified himself and presented his credentials to the Commission. He stated he has spoken with MaryAnn Dipinto of DEP in regards to BVW issues and the correct wetland line. Mr. Garner said Ms. Dipinto stated the wetland line represented by the applicant on the revised plans is not correct and the wetland finger is a wetland. Mr. Garner urged the Commission to consider a 3<sup>rd</sup> party engineering review of the project. Mr. Garner spoke about the stream crossing standards and said that detailed procedures are required to be followed that include an analysis. Mr. Garner said the present 18" culvert is a restrictive device which causes water to back up and is what created the wetlands. Mr. Garner said changing this will dry up the wetlands and the impacts will be great and have not been considered or quantified. Mr. Garner said it may cause significant BVW impacts, would allow for the free flow of water through Woodland Road, and the basin on the plans is not shown as a constructed wetland. Mr. Bevins of 29 Woodland Road said the size of the culvert will drain the swamp and the area will dry up and unclean water will now flow into the reservoir. The Commission agreed that peer review of the wetland line including verification of the Sanford Ecological report, hydrology, stream crossing and all other calculations was necessary. Mr. Leeds continued the hearing per the applicant's request to July 10, 2008 at 7:30 p.m.

## **OTHER BUSINESS:**

1. **Meeting Minutes:** Minutes of the May 8, 2008 meeting were reviewed. Upon motion by Ms. Russian seconded by Mr. Upjohn, the Commission voted (5-0-1) to approve the minutes as amended.

2. **Informal Discussion about process for Amending an SMP at Fay School:** Wayne Chouinard of Beals & Thomas spoke to the Commission about a possible amendment request to the Stormwater Management Permit for Fay School. Mr. Upjohn recused himself from the discussion. Mr. Chouinard stated that Beals & Thomas is proposing a subsurface infiltration system to replace the swale at the Parkerville Athletic Field area. The system would be designed for the 2 year storm, would infiltrate into a splitter system, and will increase the water quality treatment capacity. Mr. Chouinard presented details about the design of the system. The Commission stated that the SMP Decision requires a new application and amendment to be filed when a change or alteration is proposed that is significant. Mr. Chouinard pointed out the water quality improvements the new design would produce. The Commission agreed the sophisticated system is a great improvement, but still would require a formal amendment to the SMP application be filed in order to maintain a sequential paper trail of the project. Mr. Chouinard stated the next step is to do a cost analysis for Fay to determine whether the proposed project should be initiated.
3. **Tree Removal Requests:**
  - a. **5 Candlewood:** Property owner Paul Gleason spoke to the Commission about their denial of his request to remove a tree. He stated he is an arborist by trade, and the red maple tree in his rear yard is rotting and a hazard. Mr. Gleason addressed the concerns of the Commission about the tree stabilizing the bank. Mr. Gleason said that erosion of the bank is not an issue, there are other trees nearby that will thrive when this one is removed and they will hold the stream bank. Ms. Russian asked how he proposed the tree to be removed. Mr. Gleason said he will leave a 3' stump. Mr. Gregory suggested a flush cut, and noted that if the tree fell and the stump came out it would cause greater destabilization of the bank, and he agreed removing this rotted tree will allow the others to thrive. Mr. Gleason said he will remove the tree in pieces, drag the pieces to the driveway and chip it there, and it will be a labor intensive process. The Commission unanimously agreed to allow him to move forward, and asked to be notified when done.
  - b. **22 Richards Road:** Property owner John Lyons spoke to the Commission about the process he intends to follow for the removal of a large pine tree on his property. He said the contractor will remove branches and take it down piece by piece manually, and there will be no heavy equipment used. Mr. Bevins noted there is a huge nest on top of the tree, and said his preference is to wait past the nesting season (one month) before removing the tree. Mr. Lyons agreed and said that Richard Lewis of Natick will be doing the work. The Commission unanimously agreed, and asked for notification when done.
4. **Requests for Certificates of Compliance:**
  - a. **DEP File # 290-839, 16 Wood Street:** Upon motion by Mr. Bevins, seconded by Mr. Gregory, the Commission voted (6-0) to approve a Certificate of Compliance.
  - b. **DEP File # 290-376, 9 Mount Vickery Road:** Upon motion by Mr. Possemato, seconded by Ms. Russian, the Commission voted (6-0) to approve a Certificate of Compliance.
5. **Request to Amend Order of Conditions. 27 Presidential Drive:** Property owner David Franks was present for the discussion. He has requested an amendment to his Order of Conditions be granted since he has changed the plan design of the swimming pool to a chlorine-free system. Mr. Franks would like to install 2 drywells rather than the Cultec chamber system approved in the Order of Conditions, shown on a revised plan he presented to

the Commission. Mr. Franks explained how the Ecosmarte Pool system works, and how clean the pool water will be. Upon motion by Ms. Russian, seconded by Mr. Upjohn, the Commission voted (6-0) to approve an Amended Order of Conditions in accordance with the applicant's request to revert to the original plan proposal of 2 drywells and to eliminate the infiltration bed based upon applicant's representation that he will be utilizing an Ecosmarte (chemical free) Pool system.

6. **Recognition of Former Commissioners:** The Commission reviewed Mr. Upjohn's suggested language for the plaques and agreed to it.

Upon motion by Ms. Russian, seconded by Mr. Upjohn, the Commission voted (6-0) to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Beth Rosenblum