

SOUTHBOROUGH CONSERVATION COMMISSION
THURSDAY, AUGUST 21, 2008
TOWN HOUSE MEETING ROOM, 2nd fl.
MEETING MINUTES

The Conservation Commission of the Town of Southborough held a meeting on Thursday, August 21, 2008 at 7:00 p.m. at the Southborough Town House, 2nd floor meeting room.

Members Present: John Leeds, Rhonda Russian, Mark Possemato (arrived at 7:10 p.m.), A.J. Purcell, Phil Bevins, Dick Upjohn and Russ Gregory.

The meeting commenced at 7:00 p.m. with John Leeds as chairperson.

CONTINUED ADMINISTRATIVE ENFORCEMENT HEARING – 20 LEARNED STREET, ASSESSORS MAP 47, LOT 54:

Mr. Leeds opened the hearing at 7:00 p.m. Present for the hearing was Matt Jackson of Boston Road Realty Trust. Mr. Jackson stated he had added matting and haybales (there are now 4 rows), the trough at the top has been improved, and he has reseeded and cleared silt. He said he was present at the site during 2 storm events and the water coming off the hill was clean. Mr. Jackson felt the site will be stabilized within the next week. The Commission was pleased to see the improvements, but felt the site will take some time before completely stabilized. The Commission reminded Mr. Jackson that the Enforcement Order was still active. Mr. Leeds continued the hearing to October 2, 2008.

CONTINUED NOTICE OF INTENT – ENRICO CORSETTI, DEROSA CONSTRUCTION, LLC, 35 & 41 WHITE BAGLEY ROAD, MAP 46, LOTS 1 & 16:

Mr. Leeds opened the hearing at 7:15 p.m. Present for the hearing was Tim Paris of Connorstone Engineering and Scott Goddard of Carr Research Labs. Mr. Paris said some additional time is needed to address John Woodsmall's comments of 8/14/08. Mr. Paris said he is working on: a redesign of the drain and infiltration system; stormwater calculations; the design of the septic systems for submittal to the Board of Health; and grading for septic system on Lot 2 which is in the BVW buffer and will need to file a Notice of Intent for. Mr. Paris said the final subdivision lots have not been submitted to the Planning Board yet for approval.

Mr. Upjohn pointed out the septic system numbering shown on the plans does not match the Lot numbers, and inquired whether there was adequate space between the haybale line and the proposed grading so that dirt from the grading would not overtop the haybales. Mr. Upjohn suggested the haybales be moved and stated that he felt the brook running behind Colonial Gardens connects to the brook on the site. Mr. Purcell asked about the choices of location for the placement of the septic systems. Mr. Possemato spoke about the culvert near the site that backs up during rain events, and inquired if there are any plans to improve it. Ms. Russian asked why the Stormwater Management Permit had not been filed yet, and asked when it would be. Mr. Paris replied the applicant wanted to conclude with the Commission on the DEP Stormwater Management standards before filing the SMP, and before filing with the Board of Health and Planning Board. Ms. Russian indicated the Commission is uncomfortable with closing the Notice of Intent until the other town boards have given their approvals of the project. Grace Borelli of 25 White Bagley Road asked if the land proposed as the septic location would be clear-cut, or will a buffer of trees remain? Mr. Leeds continued the hearing to October 2, 2008 at 7:45 p.m.

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

Mr. Leeds opened the hearing at 7:50 p.m. Mr. Bevins recused himself as an abutter to the project. The applicant brought a stenographer to document the proceedings. Present for the hearing was Bob Heavey, George Connors of Connorstone Engineering, and attorney Mark Kablack.

Mr. Kablack distributed one copy of a letter and one set of new plans to the chairman, which was passed around for the other Commissioners to review. Mr. Kablack stated: 1) the site has been reflagged as requested; 2) the so-called Cygnus line was also reflagged; 3) the A, B, & C Lines have been reflagged; 4) the Sanford line has been reflagged; 5) the retaining wall and building wall locations have been staked; 6) revised plans dated 8/12/08 have been submitted in response to Fuss & O'Neill's comments to the ZBA dated 7/15/08 and to the Town Engineers comments dated 7/8/08; and 7) on 8/8/08, Connorstone issued a response letter that addressed all engineering issues. Regarding the recently revised plans distributed tonight, Mr. Kablack stated that they included additional mitigation as if the disputed jurisdictional wetlands existed. Mr. Kablack said the plans showed wetland replication within 2 areas totaling 6,340 square feet (Area 1 = 3,600 sq. ft; Area 2 = 2,740 sq. ft).

Ms. Russian asked what the square footage of the finger of wetlands is. Mr. Kablack replied it is 2,772 sq. ft. Mr. Kablack stated that since the validity of the Conservation Restriction (CR) from 1998 has been called into question (it is not permanent and there is a commonality of interest between grantor and grantee), the applicant proposes additional mitigation through the enhancement of the CR in 2 ways: 1) submit the CR to the Executive Office of Environmental and Energy Affairs for approval under their standards, and 2) expand the CR area to 8.5 acres. Mr. Kablack said this is an attempt to reconcile the concerns and issues raised by the Commission in prior hearings.

Mr. Kablack then spoke to the jurisdictional issue, and reviewed the historical context of the site as outlined in his letter. The letter Mr. Kablack distributed (one copy only to the chairman) discussed the historical issues such as the ACOP, the Cygnus plans, the 3 types of flagging and the color coding shown on the plans, the reference to Patrick Garner's letter of May 08, and the photos overlaid on the revised plans. Mr. Kablack stated the restoration work ordered by the ACOP was still ongoing after 10 years due to force majeure events stalling the process, and claimed the applicant was still functioning under the terms and conditions of the ACOP. Mr. Kablack further asserted that any reseeded and regrading on the site was still under the ACOP, and explained the reasons for his taking this position: 1) it is significant to the project; and 2) the same report will be presented to the ZBA next week. Mr. Kablack asked the Commission to issue a report to the ZBA on their findings regarding the stormwater aspects of the project to allow the process to continue moving forward. Mr. Kablack said the process is now stalled at the ZBA while waiting for the Commission to opine on the stormwater issues.

Mr. Leeds asked who took the photos. Mr. Heavey replied he took the photos between 1998 and 2001. Mr. Purcell asked if the wetland finger is non-jurisdictional, how that affects the proposal. Mr. Kablack replied that the setback requirements for the septic systems can be met, and the drainage systems can meet the stormwater standards of Zone A. Mr. Upjohn questioned whether the wetlands allowed to be filled under the ACOP included the disputed finger. Mr. Kablack replied the finger was not included, which was created by stockpiling and dewatering of wetland soils. Mr. Upjohn said he was unable to locate all the flags and stakes in the field, and added the Commission never fully discussed the replication areas before they were removed from the earlier plans. Mr. Upjohn also said there is a concrete foundation in one area and asked how it would be handled. Mr. Possemato stated when Sanford rechecked the wetland line, the Commission understood that all ACOP work was completed. Mr. Possemato said that tonight is the first mention he has heard that the ACOP work is ongoing, and asked the other Commission to concur. Ms. Russian said Mr. Heavey never stated the ACOP work was not complete during the many years of ongoing permit filings and enforcement issues, and the Commission had understood that all of the ACOP work was done previously. Mr. Possemato asked for an answer as to why the Commission bothered to go through the Sanford delineation and the previous exercises if the ACOP was incomplete? Ms. Russian said if the ACOP is still open, the Commission does not have jurisdiction, DEP does. Mr. Kablack said there are some things that are complete in the ACOP, and some that are not. Mr. Heavey explained the reasons for the

delay in his complying with the ACOP, and that he conceded to allowing Sanford to reflag the wetland line in order for the septic systems to be installed as ordered by the Board of Health.

Ms. Russian introduced Ryan Joyce, a wetland scientist from New England Environmental hired by Fuss & O'Neill under the Commission's peer review of the project to review the wetland delineation. Mr. Joyce stated he reviewed a variety of materials prior to his field work, and after walking the site he concluded: 1) flags A1 – A11 are placed accurately; 2) A12 thru A15 appear to be placed aggressively, between 20' – 25' away from the real wetland line; 3) flags 27 & 28 are 7' away from where they should be placed; 4) the C line was aggressive and should come out about 10'. Mr. Joyce suggested that data points should be done in the field and data sheets provided, and stated the B series was not accurately flagged. Mr. Joyce said that no bank flags were visible along the perennial stream, and that it should be flagged. Mr. Kablack replied that some of the wetlands identified by Mr. Joyce may not be jurisdictional, and may be irrelevant to the discussion. Ms. Russian said she was not prepared to make a decision on those points tonight, and if the ACOP was in fact still open, the project should not be before the Commission. Mr. Heavey asked the Commission if he could finish the ACOP restoration work. The Commission replied that is not relevant. Mr. Kablack asked the Commission to render advice on the stormwater waivers being requested and the SMP status, in order for the process to move forward with the ZBA. Mr. Possemato asked for clarification from the applicant about the status of the ACOP, and asked for it to be documented in a written statement from DEP. Mr. Leeds asked for copies of the meeting transcripts. Mr. Kablack said he would consider this request.

Roger Challen of 29 Oak Hill Road offered the following comments: 1) due to the last minute receipt of the letter from Mr. Kablack, neither Mr. Challen or his consultants had the opportunity to review it and offer their comments; 2) the conveyance of the Conservation Restriction must be done properly; 3) why has it taken 10 years to comply with the ACOP and it is still not done? Mr. Challen said he hopes the alleged delay will not allow the applicant to fill in wetlands on the site. Ms. Russian said the applicant should ask the DEP for the status of the ACOP for the record. Mr. Kablack accepted this. Mr. Upjohn also asked the applicant to obtain DEP information on the adequacy of the wetland line. Mr. Kablack replied he does not feel that DEP will comply with this, and again asked the Commission to issue its opinion to the ZBA of the stormwater issues. Mr. Possemato asked for clarification; should the opinion be based on the plans revised 8/12/08 along with the letter submitted tonight? Mr. Kablack asked the Commission to commit to submitting comments to the ZBA, and added the jurisdictional wetland line issues should not impact the stormwater comments. Ms. Russian said she feels the wetland line directly relates to stormwater. Mr. Possemato asked if the stormwater calculations took into account the wetland finger. Mr. Kablack replied they do not, and reiterated his request for the Commission to make a decision on the stormwater issues since the ZBA process is now at a halt. Ms. Russian and Mr. Possemato summarized the issues that are now under consideration: 1) as suggested by our wetland scientist, a full delineation and data sheets are needed; 2) the Town Engineer needs to submit his comments to the latest plan revisions; 3) the ACOP status is needed from DEP. Mr. Leeds continued the hearing to September 11, 2008 at 8:30 p.m.

NOTICE OF INTENT – FAY SCHOOL, MARLBOROUGH JUNCTION, 185-191 MILL STREET SOUTH, ASSESSORS MAP 91, LOT 4:

Mr. Leeds opened the Notice of Intent hearing at 9:40 p.m. Mr. Upjohn and Mr. Purcell recused themselves as employees of the Fay School. Present for the hearing was Robert Weidknecht of Beals and Thomas. Mr. Weidknecht stated he had failed to notify abutters under the Stormwater Management Permit requirements (300') and asked that the SMP hearing not be opened and instead moved to the next meeting agenda to give him adequate time to properly notify abutters and re-advertise the hearing. In addition, Mr. Weidknecht requested that the Notice of Intent hearing also be continued to the next meeting on September 11, 2008 so that both permit application hearings are held together. Steve Davis of 10 Stowe Road said he will be out of town on 9/11/08 and unable to attend the

hearing but he would like to submit written comments. Mr. Leeds continued the NOI hearing to September 11, 2008 at 9:00 p.m., and agreed to open the SMP hearing at the same day and time.

REQUEST TO AMEND SMP AND ORDER OF CONDITIONS – FAY SCHOOL, 48 MAIN STREET, ASSESSORS MAP 53, LOT 17:

Mr. Leeds opened the hearing at 9:45 p.m. Mr. Upjohn and Mr. Purcell recused themselves as employees of Fay School. Present for the hearing was Wayne Chouinard of Beals and Thomas and Gary Reed of Fay School. Mr. Chouinard summarized the issues and the plans, addressed the Town Engineer's comments, and distributed a comment letter in response. Mr. Chouinard said a level spreader was added to the entire length, Beals and Thomas will work with the DPW on the catch basins and drywells, and asked the Commission to make their decision tonight to accommodate the ongoing work schedule. Mr. Chouinard described the maintenance of the system, and asked the Commission to include the maintenance schedule and maintenance logs as special conditions in the amended Order of Conditions and amended SMP permits. Mr. Leeds closed the hearing.

Upon motion by Mr. Possemato, seconded by Mr. Bevins, the Commission voted (5-0-2 with Mr. Upjohn and Mr. Purcell abstaining), to accept the revisions to the subsurface drainage and to approve an amendment and special conditions to the Order of Conditions and Stormwater Management Permit.

OTHER BUSINESS:

1. Meeting Minutes:

- a. Minutes of 7/10/08 were reviewed. Upon motion by Ms. Russian, seconded by Mr. Possemato, the Commission voted (7-0) to approve the minutes as amended.
- b. Minutes of 7/31/08 were reviewed. Upon motion by Ms. Russian, seconded by Mr. Upjohn, the Commission voted (7-0) to approve the minutes as amended.

2. Certificate of Compliance: Upon motion by Mr. Upjohn, seconded by Ms. Russian, the Commission voted (7-0) to approve (2) Certificates of Compliance for 7 Deerfoot Road (DEP File #'s 290-217 and 290-305).

3. Cumberland Farms, 344 Turnpike Road: Upon motion by Ms. Russian, seconded by Mr. Gregory, the Commission voted (5-0-2 with Mr. Bevins and Mr. Upjohn abstaining) to approve a standard Order of Conditions (-38h) and Special Conditions as amended.

4. 3 Watkins Lane: Upon motion by Ms. Russian, seconded by Mr. Gregory, the Commission voted (7-0) to approve a standard Order of Conditions with Special Conditions as amended.

5. 2 Asaree Drive: The Commission reviewed the proposed deck modification and agreed it was a minor change that did not require an amendment to the Order of Conditions.

6. Wildlife Habitat Letter: The Commission reviewed a draft of the proposed letter, and approved it as amended.

Upon motion by Mr. Possemato and seconded by Mr. Upjohn, the Commission voted (7-0) to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Beth Rosenblum
Conservation Administrator