

**TOWN OF ACTON
CONSERVATION COMMISSION**

Minutes

June 20, 2018

7:15 PM

**TOWN HALL - 472 MAIN STREET
ROOM 204**

COMMISSIONERS PRESENT: Jim Colman, acting chair, William Froberg, Amy Green, Tim McKinnon, Paula Goodwin

Associate Commissioner: Sue Flint

NATURAL RESOURCES DIRECTOR & RECORDING SECRETARY: Tom Tidman

VISITORS: Joe Holmes, Jim Snyder-Grant, Sherman Smith

7:45 Land Naming Guidelines: discussion and decision on accepting guidelines proposed by Land Steward Committee

Joe Holmes, Land Steward, discussed the naming of 176 Central Street. It will now become part of the Heath Hen Meadow Conservation Area. The Commission discussed whether small parcels should be named. They discussed changing the phrase "will not" name to "may" name small parcels.

Mr. Froberg asked if the Land Steward Committee has a set of bylaws. Mr. Holmes replied that they had guidelines but not policies. Mr. McKinnon commented that the document should be treated as a guidance document. Mr. Holmes pointed out that all of their guidelines were printed on their website. The approved guidelines will be listed there as well. Mr. Colman read his edits. (See attachment A for full text and edits). Jim Snyder-Grant commented that most deeds listed the Conservation Commission as the responsible party.

Decision: Mr. McKinnon moved to adopt the Land Naming Guidelines as presented with edits proposed by Mr. McKinnon and Mr. Colman reflected in the final document. Ms. Goodwin seconded the motion and it passed unanimously. **See Attachment A.**

7:30 Like Structures: discussion

Mr. Colman led the discussion, focusing on the phrase "Reasonable alternative" as requiring further review. Mr. McKinnon suggested that the term be simply changed to be "alternative." Mr. Colman and Mr. Froberg: "Pre-existing" means currently existing or in existence and serving its intended use.

Decision: Mr. McKinnon moved to accept the guidance outlined in the "Like Structures" document presented by Jim Colman, changing the word "reasonable" in the phrase "reasonable alternative" to "feasible" such that the phrase will read "feasible alternative. Ms. Green seconded the motion and it passed unanimously.

See Attachment B.

Mr. Colman said he will bring other topics needing discussion to the next meeting.

8:10 Easement connecting Wright Hill to Guggins Brook: Jim Snyder-Grant and Sherman Smith from the Land Steward Committee

Counsel's advice was that Jim Snyder-Grant, as an abutter, could have a conflict of interest. Sherman Smith, as a member of the Land Steward Committee, is speaking for the town.

Mr. McKinnon inquired if the Commission was being asked to weigh in on the language of the agreement or the location of the agreement? Mr. Snyder-Grant responded that it was mostly the language but also the location as offered by the two homeowners groups. Mr. Snyder-Grant noted that the landowners would prefer to not have drones flying over their land. Mr. Colman responded that it was still their land, so if they didn't want drones flying over, that was their business.

Mr. Snyder-Grant noted that it would require two easement documents since it crosses two privately owned parcels. Mr. Colman noted that the Commission would not preclude horses from using the Conservation land on both sides of the easement. Mr. McKinnon said that something should be added outlining maintenance guidelines to be included. For example, would the home owners association permit the use of herbicides? Mr. Snyder-Grant said he would go back to the HOA to see if herbicides would be permitted within the easement.

Mr. Froberg said he would like to walk the proposed easement. Mr. Tidman will arrange a site walk for the Commissioners.

Certificates of Compliance

481 Great Road DEP #85-857

Decision: Ms. Green moved to issue a Certificate of Compliance; Mr. McKinnon seconded the motion and it passed unanimously.

153 Summer Street DEP #85-1229

Decision: Ms. Green moved to issue a Certificate of Compliance; Mr. Froberg seconded the motion and it passed unanimously.

Extension Permit for Orders of Conditions

Ice House Pond Parking Lot, DEP #85-1187

Decision: Ms. Green moved to issue a Extension Permit; Mr. Froberg seconded the motion and it passed unanimously.

Minutes of June 6, 2018: Reviewed by JS, PG, TMc

Decision: Mr. Froberg moved to accept the minutes of June 6; Ms. Goodwin seconded the motion and it passed unanimously.

Meeting adjourned at 9:00 PM



Terry Maitland
Chairperson

Approved as amended - see attached per Jim Colman.

Attachment A.

Acton Conservation Land Naming Guidelines

Revised 19 January 2017

Adopted by Conservation Commission June 20, 2018

Background

Historically most Acton Conservation Lands are named for a prominent, natural feature located within the parcel. Often when a property is first purchased, its name references the seller or former owner. Later a permanent name is chosen, sometimes through a formal process, and sometimes through grassroots common usage. Smaller parcels not given a name are referred to by their civic street address. Most of our conservation lands are conglomerations of many tax parcels acquired at different times. Some consist of non-contiguous lots.

It is desirable to agree on the names so they can be listed consistently in the Open Space and Recreation Plan (OSRP); on trailhead signage; on paper maps; and on various online maps. To establish a process of assigning new names to Acton conservation lands, the following guidelines are adopted:

Guidelines

When choosing a future name, the following will be considered, in priority order:

1. Is there a legally-mandated name, (check deeds, town meeting votes, and conservation restrictions)?
2. If the land was donated, does it reflect the wishes of the donor?
3. Does the land serve a special purpose (e.g. Acton Arboretum)?
4. If it is adjacent or proximal to an existing conservation land, should it assume the same name (e.g. extending Bulette to include the land obtained from Anderson)?
5. Is there a significant natural feature such as a named hill, brook, or pond, worthy of recognition (e.g. Grassy Pond)?
6. Is there a significant historical property owner worthy of recognition (e.g. Pacy)?
7. Is the land local to a particular neighborhood (e.g. Patriots Hill)?
8. Is there some other noteworthy natural or man-made feature (e.g. Robbins Mill)?

These guidelines were developed by looking at existing names. It is not the intention of this guidance is to rename well established lands, even if the current name does not conform to this guidance.

Names should not get too long; however it is important to retain significant history. Therefore, the name "Town Forest" will be retained, as is historically appropriate. Particularly small parcels (less than 10 acres total) may not be named, but, in general, it will be referred to by their street address.

Procedure for naming a conservation land

1. Seek the input of any entities that may hold a CR on the property, such as a land trust.
2. The Land Stewardship Committee votes on a recommendation at a publicly noticed meeting.
3. The proposed name is brought to the Conservation Commission for approval.
4. A new name is publicized by revising the following: the Acton Trails web site; Acton's printed *Guide to*

Conservation Lands; Acton Natural Resources' Land Chart as used in the Open Space and Recreation Plan; Open Street Maps; Google Maps; signs at the conservation land entrances; Acton's web based trail maps; any printed trail maps; Acton's *MapGeo* GIS database.

The following are current conservation land names:

Named for special function/purpose:

Acton Arboretum
Acton Canoe Launch
Camp Acton Conservation Land
North Acton Community Gardens
Town Forest

Named for a natural feature (hill, pond or brook)

Grassy Pond Conservation Land *3
Great Hill Conservation Land
Guggins Brook Conservation Land
Heath Hen Meadow Conservation Land *3
Nagog Hill Conservation Land
Nashoba Brook Conservation Land *2
Pratts Brook Conservation Land *2
Spring Hill Conservation Land
Wills Hole Conservation Land *2
Wright Hill Conservation Land

Named for a previous owner:

Bulette Conservation Land Jenks Conservation Land Pacy Conservation Land
Wetherbee Conservation Land
Caouette Simeone Farm Land (preliminary name) Monsen Conservation Land (preliminary name)
Putnam Conservation Land (preliminary name)
Steinman and McGloin Conservation Land (preliminary name) *2

Named for a nearby street or neighborhood:

Arborwood Conservation Land (preliminary name)
Flint Road and West Acton Conservation Land (preliminary name)
Patriots Hill Conservation Land (preliminary name)

Named for other nearby natural or man-made feature

Robbins Mill Conservation Land *2
Stoneymeade Conservation Land (nearby farm)

Unnamed:

915 Main Street
52 Harris Street, Rear
145 Great Road, Rear
2 Minot Avenue, Rear
41 Tuttle Drive
53 Stow Street (preliminary name) *2
46 Martin Street
133 River Street
176 Central Street (preliminary name)
(* shows the number of discontinuous parcels)

**Guidance for implementing the terms “like...activities” and
“like...structures” in the Acton Wetland Bylaw**

Approved by the Conservation Commission: June 20, 2018

INTRODUCTION

Section F8.3 of the Acton Wetlands Bylaw sets forth minimum distances (setbacks) from the edge of wetlands or vernal pools for activities regulated by the By-law. This section also includes an exception to the minimum setbacks:

“Pre-existing activities or structures not meeting the setbacks set forth above need not be discontinued or removed [but shall be deemed to be non-conforming]. No new activity shall be commenced and no new structure shall be located closer to the edge of wetlands or vernal pools than existing non-conforming LIKE ACTIVITIES OR STRUCTURES, but the Commission may permit new activity or structures as close to the edge of wetlands or vernal pools if it finds that such activity or structure (1) will not affect the interests protected by the Bylaw more adversely than the existing activity or structure.” (emphasis added)

The Bylaw does not include definitions of “like activities” or “like structures”. However, the Rules and Regulations issued by the Commission under the Bylaw contain the following definitions and section:

“LIKE ACTIVITY shall mean any activity similar in nature, purpose and extent as that activity currently occurring on the site of the proposed work”.

“LIKE STRUCTURE shall mean any structure similar in design OR use currently located on the site of the proposed work”. (emphasis added)

Section 3.3 WETLAND SETBACKS FOR EXISTING STRUCTURES

Work associated with pre-existing structures or activities not presently in compliance with Section 3.2 [the setback requirements] may not increase the degree of “non-conformance” of those structures or activities. No new activity shall be commenced and no new structure shall be located closer to the edge of a Wetlands Resource Area than existing non-conforming like Activities or structures, but the Commission may permit new like Activity or structures as close to the Wetland Resource Area as the existing like Activity or structure if it finds such Activity or structure will not affect the interests provided for in the Bylaw more adversely than the existing Activity or structure.

The Commission has interpreted these provisions to mean that when there are existing non-conforming activities or structures within the minimum setbacks, expansion or replacement of such activities and structures will not be permitted unless such expansion or replacement is no closer to the wetland or vernal pool

AND does not increase any existing adverse affects on the wetland or vernal pool.

There has been confusion as to how the terms "like activities" and "like structure" are implemented by the Commission. The purpose of this document is to provide guidance to potential applicants under the Wetlands Bylaw as to how the Commission interprets these terms.

GUIDANCE

In implementing these provisions, the Commission will be guided by the following general statements:

—the exception to setbacks for pre-existing activities and structures is a modest one and meant to be used sparingly. It is intended to allow limited expansion or replacement of existing non-conforming structures and activities in very limited circumstances when there is no feasible (2) alternative;

—in examining any particular proposal that involves expanding or replacing a structure and/or an activity, the Commission will give greater weight to the structure or activity that has, or has the potential to have, greater impact to the resource area;

—a determination by the Commission that a proposed structure or activity meets the definition of "like activity" or "like structure" is not sufficient for the Commission to approve such proposal; the Commission must also find that the like activity or like structure will not affect a resource area more adversely than the existing activity or structure.

The following examples illustrate the Commission's interpretation of "like structure" and "like activities":

1. There is a pre-existing (3) house within the 75' setback. The Commission will not permit an expansion to that house unless the Commission finds that the addition is no closer to the wetland or vernal pool than the pre-existing house and provided that there is no increase in any adverse impact on the resource area than may already exist due to the pre-existing house and there is no feasible alternative.
2. There is a pre-existing driveway within the 75' setback. The Commission will not permit an expansion of the driveway unless the extension is no closer to the wetland or vernal pool, there is no increase in any existing adverse impact on the resource area due to the pre-existing driveway, and there is no feasible alternative.
3. There are a pre-existing office building and parking lot within the 75' setback. The office building is 55 feet from the wetland resource area and the parking lot is 40 feet from the resource area.

The Commission will not permit an expansion (4) of the building unless the expansion is no closer to the wetland or vernal pool than the pre-existing building and will not permit an expansion of the pre-existing parking lot unless the expansion is no closer to the wetland or vernal pool than the pre-existing parking area, there is no increase in any adverse impact on the resource area than may already exist due to the pre-existing building and parking lot, and there is no feasible alternative. Note that the existing building and parking lot are treated independently as separate structures; therefore, their respective setbacks are independent.

4. There are two pre-existing buildings on one lot: Building A is 60' from a resource area; Building B is 40'. Even though Building B is closer to the resource area than Building A, the Commission will not permit an expansion to Building A that is closer than 60' from the resource area unless there is no increase in any adverse impact on the resource area than may already exist due to the pre-existing Building A and there is no feasible alternative.
5. There is a pre-existing above-ground swimming pool within the 75' setback. The Commission will not permit the above-ground pool to be replaced by an in-ground pool because an in-ground pool is not a "like structure", even though the activity is a "like activity".
6. There are a pre-existing house and detached garage similar in structure to the house on a property. The pre-existing house is 40' from a wetland; the garage is 30'. Because the house and garage are considered to be similar in structure, the Commission will not permit an expansion of the house closer to the wetland than the current garage (30'), unless there is no increase in any adverse impact on the resource area than may already exist due to the pre-existing house and garage and there is no feasible alternative.
7. There is a pre-existing driveway within the 75' setback. The Commission will not permit a garage where the driveway is because a garage is not similar in design or use to a driveway.
8. There is a pre-existing child's play area (sand box and/or play gym) within the 75 foot setback. The Commission will not permit that play area to be replaced by an in-ground swimming pool because an in-ground swimming pool is not similar in design or use to a play area.
9. There is a house with a pre-existing deck or terrace within the 75 foot setback. The Commission will not permit an addition to the house where the deck or terrace are located because they are not similar in design or use to a living area.

(1)The By-law says in Section F 8.3 that the Commission may "permit new activity or structures" and the regulations say in Section 3.3 that the Commission may "permit new like activity or structures". The context of the By-law clearly

indicates that it is referring to like activity and structures and that the regulation merely provides clarity.

(2) For the purposes of this guidance, “feasible” means physically and financially possible.

(3) For the purpose of this guidance, “pre-existing” means currently serving its intended use and in existence or having a valid order of conditions as of April, 2003, the date the current by-law was enacted.

(4) For the purpose of this guidance, a new like structure or a new like activity will be treated the same as an expansion.

This Guidance Document is not intended to and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in any litigation with the Acton Conservation Commission. Nothing in this Guidance Document limits the Commission’s authority in approving or disapproving any Request for Determination of Applicability or Notice of Intent submitted pursuant to the Acton Wetland Bylaw or in determining compliance with the Bylaw. The Commission reserves the right to act at variance with this Guidance Document and to change it at any time without public notice.

CONSERVATION COMMISSION
Amended AGENDA
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Minutes of June 6, 2018: Reviewed by JS, PG, TMc

