

CONSERVATION COMMISSION
AMENDED AGENDA
MARCH 16, 2005

7:15 Continuation - NOI – 316 Old High Street - Hydro plant
See attached information received.

7:45 Continuation – NOI - Ellsworth Village

8:15 Quail Ridge Country Club – Update

Request for Extension – 11 Lothrop Road – requesting 3 years for approved house addition for financial reasons

114 River Street requesting 3 years due to abutter appeals

Acton Clean Up Day – vote to support – see enclosed email from Karen O'Neill

Correspondence

EOEA – Department of Agricultural Resources – see attached information

MINUTES

February 2	comments received by	ME, JR, TM, ADM	<i>signature</i>
February 9	comments rec'd by	ME, JR, ADM, TT	
February 16	sent via email	3/9	
March 1	enclosed within		

CONSERVATION COMMISSION
MINUTES
MARCH 16, 2005

MEMBERS PRESENT: Jeffrey Rogers, Terry Maitland, Andrew Magee, Michael Eder, Cheryl Lowe

ASSOCIATE MEMBER: Janet Adachi, Matt Liebman

CONSERVATION ADMINISTRATOR: Tom Tidman

RECORDING SECRETARY: Andrea Ristine

VISITORS: Mike Coates, Carol Holley, Tom Lemire, Ed Vrablik, John Bresnahan, Jennifer Shea, Jay Peabody, Steve Graham, Mary Michelman, Jane Ceraso, F.J. ODonahue

7:21 Continuation - NOI – 316 Old High Street - Hydro Plant

Mr. Coates reported that the Maynard Conservation Commission (MCC) issued a draft decision but did not close the hearing pending tonight's meeting with Acton

Upon query by Mr. Rogers, Mr. Coates reported that the two gates were always closed with the exception of a flood event or to exercise the gates. The down stream (right) culvert was corroded for almost the entire length of the culvert (appx. 40') and when it was opened the flow pressure the culvert pipe folded and washed out.

The Commission and Mr. Coates discussed the special conditions drafted by MCC. Mr. Coates noted that FERC requirements will meet the requirements of MCC's OOC's. FERC requires a report and construction plans and an as built drawings that will have a structured process to receive this information. The Operation & Maintenance Plan discusses emergency draw downs and with slight modifications to his documents would meet the MCC's requirements.

Upon query by Mr. Rogers, Mr. Coates stated that the submitted time line is still doable.

Upon query by Mr. Tidman, Mr. Coates stated that he will have to request an amendment to MCC's OOC to include the review of a biological opinion with an extended drawdown of the pond. A short term drawdown will not have a significant impact; a longer period would have an impact. MCC's draft OOC relates to temporary drawdown not extended.

Upon query by Mr. Rogers, Mr. Coates stated that an emergency drawdown action plan is a standard requirement for FERC. A notification chart extends itself to FERC, state police, Maynard, Acton and Concord emergency dispatch. Mr. Coates feels that an excerpt from this chart should be sufficient as supplemental information to the NOI for both Acton and Maynard.

Mr. Magee suggested that the Commission could require a special condition to require a plan not required for FERC, but it is the same thing. Mr. Magee stated that the local body needs to know the risk factors. Mr. Coates stated that other local emergency bodies would have a copy of the plan and the Commission could issue a special condition stating that they could access through those local bodies. The emergency draw down plan it has to be updated on a regular basis and Mr. Coates would prefer to have it referenced suggesting that Commission could access copies from other local emergency bodies since it would be updated regularly with them.

Upon query by Mr. Magee, Mr. Coates stated that water levels and flood flows are included in the NOI.

Upon query by Mr. Tidman, Mr. Coates reported that the proposed fish ladders will be installed in the future. The NOI notes that when US Fish & Wildlife states when it is time to install and they will determine the time frame to do the work.

Upon query by Mr. Magee, Mr. Coates reported that the latest surveys found abundance of eels and eel ladders may not be required. If it is required they may be able to use a cable tray with wet astro-turf temporarily in place at a specific time of year could be used. Mr. Coates plans on submitting another NOI when it this issue arises.

Upon query by Mr. Coates, Mr. Magee stated that the Commission will have to have a special condition regarding the Operation and Maintenance Plan since a final document is not before the Commission at this time.

The Commission requested that applicant waive his right to have the Commission issue a decision within 21 days since they will not be meeting again until April 13 due to annual Town Meeting. Mr. Coates agreed.

7:55 Hearing no further comments or questions, Mr. Rogers closed the hearing.

7:58 Continuation – NOI - Ellsworth Village

George Dimakarakos presented amended plans to the Commission noting that there have been many amendments pertaining to concerns brought forth by town staff. These amendments are still under review by the respective staff and the applicant is requesting a continuation of the hearing to allow for the complete review and receipt of all staff comments. Mr. Dimakarakos continued stating that he felt that it was important for the Commission to review current changes to date that are outlined in the Supplemental Information dated 3/10/05. Brabrook Road is being extended, the new location of the T-turnaround is to be constructed by the Town as the turnaround is well defined and outside the property and mostly facilitates snow plow trucks. There is a clear line between the town and private property responsibilities. Some of the existing pavement is to be removed and reverted to lawn within the buffer zone. Grading in this area will be done to drain towards the stormceptor; this will also allow the flow of drainage from Brabrook Road. Upon request of the Planning Board a (pressure treated wood) boardwalk will be provided for pedestrian access to Wetherbee Plaza through a wetland. Based on a meeting with Mr. Tidman the wetland replication plan has been amended providing a small micro pool that will hold water for a few months, provide hummocks, basking rocks and additional shrub plantings that are beneficial to wildlife. The location of the replication area was chosen based on the Commission's findings stated in the Order of Resource Area Delineation. A wildlife culvert connection will be provided for the wetland crossing to the replication area that will allow light passage under the roadway. The culvert will displace 42' of bank. There will be a total of 4,015 s.f. of wetland fill on site. The reasons for limited access and alternatives analysis are also addressed in the supplemental information.

Upon query by Mr. Magee regarding possible alternative access, Mr. Dimakarakos stated that the on site wetland is already in a compromised state and was included in the construction and mitigation formula for the site development.

Upon query by Mr. Rogers, Mr. Dimakarakos reported that the turnaround location evolved with the town engineers and the DPW creating a clear line of ownership and responsibility for maintenance of the road to prevent confusion of private land.

Upon query by Mr. Magee, Mr. Dimakarakos stated that that access road enters and leaves the 75' no structure setback as quickly as possible; as a limited project with no reasonable alternative access to the site a written request for waiver is not required under the Bylaw.

Henry Chaffin from 4 Brabrook Road expressed concern regarding alternative access under CMR 10.53 noting that the current listed owner of this property is the same as the abutting parcel. Mr. Magee stated that this NOI is not filed as a limited project under CMR 10.53, but is valid under the Bylaw.

Upon query by Mr. Magee, Mr. Dimakarakos reported that the Planning Board took a nonbinding vote in support of the proposed access as shown on the plan. The Planning Board prefers to not create a new intersection at Pope Road and Great Road.

The applicant James Fenton gave a brief history on the parcel and its proposed access. He has had the property under agreement for more than two years. At that time zoning did not allow access from Great Road and only a recent zoning change approved at town meeting changed that allowance. The property was under agreement with Robert Moran prior to the allowance being granted. He tried to negotiate with the abutting apartment complex but could not come to an agreement. He also tried to design an emergency access road through the town owned property but that is not allowable.

Mr. Magee stated that the Commission will need a written statement noting the date of the agreement with a notation of the town meeting zoning change and its' date.

Abutter, Carol Holley stated that the zoning was changed to allow a mixed use for the East Acton Village (EAV) District on several parcels in this area.

Upon query by Mr. Eder, Mr. Dimakarakos reported that the alternative analysis is addressed in the supplemental information and will provide a written statement noting the ownership/agreement information as requested by Mr. Magee. Mr. Magee suggested that the Commission should get a legal reading on this issue as well.

Upon query by F.J. O'Donahue, the Commission stated that wetland replication areas cannot create buffer zones on abutting properties.

Grahm Knowland from 29 Esterbrook Road expressed concern regarding the wildlife habitat diversity plan since it is dated February 2004. When was the actual data collected?

Upon further query by Mr. Knowland, Mr. Rogers stated that the timing of the agreement and zoning changes will be addressed in writing by the applicant.

Mr. Knowland also asked if the property could have been developed in such a way that would not have required wetlands alteration. Mr. Eder stated that the applicant has agreed to provide an alternatives analysis that should address this issue.

9:05 Hearing no further comments or questions, Mr. Rogers continued the hearing until 4/13/04 at 8:00 PM.

8:15 Quail Ridge Country Club (QRCC) – Update

Project Manager for Quail Ridge, Jennifer Shea, gave a general update to the Commission. She submitted an amended base line for the Data Collection Program. At this time QRCC is requesting an Extension Permit for the OOC.

George Dimakarakos reported that he needs to regenerate a new model of the hydrology on site since two of the three proposed irrigation lakes have been changed from the approved OOC plan. He will be providing new site topography is necessary for each pond as well as the small detention basins.

Mr. Rogers and Ms. Lowe expressed concern that the ponds were changed from what was approved, already built and the Commission was not informed prior to their construction. Mr. Dimakarakos reported that they encountered many issues with ledge. The relocations of the two large ponds are not jurisdictional within the buffer zone but are a part of the hydrologic model. They are in flux at this time because site work is not complete. His role is to make sure that that a change in the plan will work with the hydrology in the end. The real answers will come from additional survey work and he will be back before the Commission to address the changes made and resulting outcomes. The limit of work has not changed on the site at all. He is working to make sure that the total hydrology works by analyzing the detention basins that will be expected to be completed.

Upon query by Mr. Tidman regarding the drainage basin at Fairway 18, Mr. Dimakarakos reported that it is not a clay lined basin; it will hold 1' of water then infiltrate into the ground. The overflow will be directed to the surface of the ground as originally proposed within the buffer zone.

Upon further query by Mr. Tidman, Mr. Dimakarakos reported that he wants to analyze the site after the seasonal snow melt and have quantifiable numbers to present to Commission; he hopes to be back about one month after the snow has melted.

Upon query by Mr. Maitland, Mr. Tidman stated that he understands that the family center and nine random, non-consecutive holes will be open by June 2005.

Upon query by Mr. Eder, Mr. Dimakarakos stated that he will identify to the Commission the changes from the original proposal. The Commission will have the ability to change what they don't agree with.

Mr. Magee discussed the general Commission process for all projects that it is proper for an applicant to notify the Commission prior to construction; if a house foundation will be moved from the original approved proposal. The Commission must be notified before that work is done. Mr. Magee asked if work in jurisdictional areas on site have been changed without the Commission's consent prior to the actual work. It is not acceptable to the Commission to come in after the fact with site changes that are within their jurisdiction. The Commission needs to know immediately prior to changes being done so they can address the issues at the time and not be reactionary. An amended OOC may be needed to address the changes. Mr. Dimakarakos will have to look at the jurisdictional areas and assess if there are any changes that need to be addressed by the Commission.

The Commission also noted that it is short notice for the Commission to receive a Request for Extension. Requests for Extension are to be made 30 days prior to the expiration of the OOC. The applicant failed to file the request in a timely manner and now was putting the Commission on the spot.

John Bresnahan provided updated data on the base line water table.

Upon query by Mr. Rogers regarding pesticide and herbicide screening, Mr. Bresnahan reported this has been done on selected wells and a chemical sweep once operational based on the products used once the golf course is operational. The bedrock wells are currently being monitored.

Upon query by Mr. Rogers regarding perchlorate, Mr. Bresnahan reported that wells BE5 and BE7 have been sampled. A program will be developed when monitoring commences.

Upon query by Mr. Tidman, Mr. Bresnahan reported that they have tested for perchlorate in the areas that had major blasting. Mr. Rogers suggested that one round of testing for perchlorate be done on all of the wells and then scale back from there. Mr. Bresnahan noted the extensive costs for this testing and suggested testing be done in the areas that it is projected to have the worst case scenario at the lowest grade points. He has two data points tested for perchlorate, BE7 and BE5. BE7 being the more probable area showed no detection of perchlorate. BE5 detected .916 ppb of perchlorate.

Upon query by Mr. Tidman, Mr. Bresnahan reported that the blasting on site is complete based on the proposal.

Mr. Tidman stated that he feels that it makes sense to add another surface water monitoring point by Nagog Brook down gradient of the golf course.

Matt Liebman expressed concern regarding the nitrogen and phosphorous testing. The total phosphorous in streams in New England in terms of reference, he would not expect to find anything above .05 and suggested that the detection limits should be reduced for total phosphorous since the State standards are potentially going to address total phosphorous.

Mr. Bresnahan stated that he believes that the base line data submitted tonight meets the OOC and that they are in compliance. The new environmental monitor, Mike Toohill from ENSR has also reviewed this document.

Upon query by the Commission, Mr. Graham stated that it is not feasible to receive certification from Audubon International but they have worked with Mike Toohill to reach the desired criteria.

Upon query by Mr. Magee, Mr. Graham stated that he does not know if the applicant is in compliance with the approved OOC. Mr. Graham suggested that the Commission could issue an enforcement order after granting the extension if the project was not in compliance with the OOC. Mr. Magee suggested it would be inappropriate to grant an extension of an order if the applicant was already out of compliance. Mr. Graham suggested that if the Commission felt the applicant was not complying with the order then it should issue an enforcement order. Mr. Magee asked if Mr. Graham was really suggesting the Commission stop work at the site. Mr. Graham said that if that was true that is what the Commission should do.

Mr. Rogers expressed concern noting that an environmental monitor was to be on board throughout the entire construction process of the golf course and Bruce Stamski was no longer involved as of the summer of 2004.

Mr. Tidman noted that it is his understanding a team from ENSR including Mike Toohill will be the new environmental monitor.

Jen Shea noted that the job site had shut down at one point. Mr. Tidman agreed that nothing had occurred for a period of time last year when Mr. Stamski had left because the project was being shut down at that time.

Mr. Tidman noted that the Commission has not received any updates from ENSR since coming into picture. Ms. Shea reported that using ENSR as the environmental monitor has been agreed upon by the applicant but they were still working on the contract details with the Town.

Mr. Magee stated procedurally that the applicant shouldn't be working on site without an environmental monitor (EM) on site. The EM needs to provide a report to the Commission since approving an extension of the OOC is crucially based on the EM issue.

Mr. Eder stated that the developer should report to the Commission what they are not in compliance under the approved OOC.

Mr. Bresnahan reported that the maintenance plan has not yet been due to the extended construction process; it was supposed to be complete March 2005.

The Commission discussed the issues with granting an extension permit now and not being able to extend a second time under the Bylaw. The Commission expressed concern with not having outstanding compliance issues addressed prior to the issuance of an extension permit.

Mr. Graham stated that he feels that everyone needs to get to a practical stand point, get the project rolling again and smooth out the issues.

Mr. Rogers noted that the Commission will, again, need to schedule a special meeting since they do not meet prior to the expiration of the OOC. The applicant should present outstanding issues with a time line that will get them into compliance or certify that they are in compliance. Information should be an accounting of what is left to do and its time table of getting the project done.

Jane Ceraso from the Acton Water District stated that she is concerned with the submitted data regarding pesticides. The methods chosen to collect the data are by wastewater methods and they should be done by drinking water methods. Many of the pesticides and herbicides listed by Mr. Bresnahan don't have a standard protocol method of testing. She would prefer that testing for pesticides used on site be done within 90 days and that the lab doing the testing be certified in drinking water quality standard methods.

Mr. Bresnahan agreed that some of the pesticides listed do not have a standard method developed for testing but the lab being used is certified for pesticide analysis.

Upon further query by Ms. Ceraso, Mr. Bresnahan stated that due to the nature of an Integrated Pest Management Program they do not want to limit themselves to products that are available today. They need a palate of different chemicals to test for but he will review the issue described by Ms. Ceraso regarding water quality monitoring.

Upon further query by Ms. Ceraso, Ms. Shea suggested that her concerns also be included in the scope of services for ENSR.

Mary Michelman, member of Acton Citizens for Environmental Safety (ACES), expressed concern noting that the Conant Well field is immediately down gradient from this site. Once chemicals are detected it is possibly too late and very expensive to remedy. She also expressed concern regarding the potential presence of perchlorate from the blasting activities. Mr. Bresnahan stated that he is agreeable to do sampling as suggested by Mr. Rogers based on discussions he will have with the owner/applicant that they are agreeable to.

Upon further query by Ms. Michelman, Mr. Rogers reported that he has personally reviewed the scope of services for ENSR. He also suggested that the new EM actually come in personally and report to the Commission and not just submit reports as was previously done by Mr. Stamski before he left the project. He also noted that the Commission has no jurisdiction over the agreement made between the applicant and DEP in regards to the Water Management Act.

Mr. Bresnahan reported that they are currently in compliance with the DEP Water Management Act agreement and their conditions.

Upon query by Mr. Liebman, Mr. Rogers noted that the baseline data collection program was previously received by the Commission but the updated data was only received tonight.

Upon query by Mr. Liebman, Mr. Bresnahan reported that the applicant has chosen a different Audubon Program since the OOC was written after the possibility of being under the certification program process.

Mr. Liebman suggested that there be an independent evaluation of the progress.

Mr. Rogers stated that the Commission will hold a special meeting on April 6, 2005 at 8AM so the Commission can address the outstanding issues and a vote on the issuance of an Extension Permit.

Extension Permit - 11 Lothrop Road - Konstantin Zilberberg

Mr. Maitland moved that the Commission issue a three year extension for the OOC issued 5/15/02 as requested by the applicant. Discussion. Mr. Eder 2nd; unanimous.

Extension Permit - 114 River Street - Winding Brook Realty Trust

Mr. Maitland moved that the Commission issue a three year extension for the OOC issued 4/29/02 as requested by the applicant. Mr. Eder 2nd; unanimous.

Minutes

The Commission approved the minutes dated February 2 and February 9, 2005.

Acton Clean Up Day – vote to support – see enclosed email from Karen O'Neill

The Commission voted unanimously to support Acton Clean Up Day as described by Karen O'Neill in her email dated March 9, 2005

11:00 Meeting adjourned.

J Maitland, Acting Chair

Jeffrey Rogers
Chair