

CONSERVATION COMMISSION
MONDAY, JUNE 26, 2023
RESOURCE ROOM

Attendance: Chair Tracy Sharkey, Katiegrace Dudley (remote), Mike Greco, Jim Foran, Mark Mungeam, Steve Zisk Conservation Agent

Absent: Eric Harris, Joe Fitzpatrick

Tracy Sharkey called the meeting to order at 7:04 PM.

Discussion:

1. (0:13 TS) Mail/Orders to be signed:
 - DEP email regarding Potter Rd complaint
 - Enforcement Order, 17 Potter Road – Ms. Sharkey issued an enforcement order last Saturday. Mr. Zisk stated that there was a complaint that went to the DEP on work being done and clearing within the riverfront and water withdrawal, and DEP suggested filing an enforcement order, which stated that they should file a notice of intent. When Ms. Sharkey spoke with DEP, they disagreed with the notice of intent and that it must be a restoration plan at this point. Therefore, the Commission should only accept a restoration plan at this point and not an NOI filing.
 - Ecotec Consulting Service Proposal, 17 Potter Rd – Art Allen provided the estimated which is \$2350.00, and Division of Fisheries and Wildlife is also issuing an enforcement order, the disturbed area is a priority habitat and DEP may seek their own enforcement as well. The town's enforcement order was just to stop any work so that everyone could gather what they needed for information. They need to hire their own consultant to prepare a restoration plan and submit it to the Commission, so Ms. Sharkey suggest holding off on voting on this tonight. Jessica Bankston 11 Potter Road and 17 Potter Road and stated that their plan was to clear the dead trees and reinstate new trees that are native fruit trees and flower shrubs and has this all on an Ariel plan, but she is waiting for more information on what is needed and who needs to receive it. Ms. Sharkey stated that the restoration plan would have to be engineered professionally. The landowner's father from Millbury stated that part of this restoration plan should be looked at by National Grid as well because they were down in that area for three years cutting dead trees. Ms. Sharkey stated that when they have their restoration plan done that it includes a narrative and to include all the past work and information they have. The restoration plan is due in 30 days stated in the enforcement order, so by July 17 the landowner's need to have the restoration plan submitted to the Commission, and at that point the Commission will review it and make a determination.
 - (19:20 TS) Letter from William Henchy, DEP #143-1038, Whittin Reservoir Watershed – Attorney Winner joined remotely and stated that he has had many discussions with Attorney Henchy on this and to recap Attorney Henchy appealed the towns order of conditions to the DEP and his main issue on the appeal was that section 2 (e) was left blank, which Attorney Winner believes should have been where the reference to a letter with Natural Heritage was dated October 3, 2022. Attorney Henchy's issue us ultimately with Natural Heritage as to whether or not and to what extent they are trying to regulate the approved project. Attorney Henchy's position on this is that the October 3, 2022, letter is not part of the

Commission's order of conditions because it's not listed there, therefore he feels that he doesn't need to appeal to the DEP anymore since that was the part he was challenging. Unless the Commission disputes this, he is content to dismiss his appeal and just pursue the project and if Natural Heritage has any disagreement or dispute, he will pursue it with them directly and he is in contact with them and has had correspondence with them. Attorney Winner brought it before the Commission tonight to get their opinion on this whether they want to pursue anything further or let Attorney Henchy deal with Natural Heritage directly as he would prefer. Ms. Sharkey stated that even though the letter was not included there was still a "catch-all" phrase in the order of conditions in the general conditions section that reads:

"This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations. Ms. Sharkey also stated that they agreed that last time and covered that the letter did not make it into the list of documents, but the previously referenced statement is covering the requirement for them to meet any other jurisdictional entities. Attorney Winner stated that the matter before the Commission tonight is not whether he will comply but whether or not the Commission is going to step in and monitor his compliance with Natural Heritage's agency's conditions. Ms. Sharkey stated that she does agree that it is a separate enforcement or inspection path in addition to the Commission, her understanding is that they will comply with all regulations outside of the Commission's order of conditions and will take this to a vote. The Commission agrees.

(31:10 TS) Motion to authorize and instruct Attorney Winner to convey the Commission's position on the matter to Attorney Henchy made by Mark Mungeam, 2nd by Mike Greco.

Roll call vote - Mark Mungeam, Mike Greco, Jim Foran, KG Dudley all in favor.

- (32:05 TS) BOS Member Appointment – Already covered earlier in the meeting.
- 2. (32:25 TS) Meeting Minutes: April 10, 2023 – Possible Votes
The Commission has not reviewed the minutes yet and they will hold them until the next meeting.
- 3. (32:52 TS) Updates:
 - Brian Keevan, 41 Pine Street Donations from 2014 – The Keevan's approved the sign, and Steve Zisk still must speak with the DCR superintendent about getting a materials list.
 - CRG, 105 & 123 Gilboa St (DEP #143-1042) – Art Allen with Ecotec consultant for the Commission stated that he has been monitoring this project and it has been going smoothly and as of the last site inspection on June 23, there has been no significant releases or impacts to resource areas.
 - BWC Whitin Reservoir, 45 Oak Street (DEP #143-0989) – Art Allen was also out at this project site on June 23, and they have opened the site and have their construction entrance stabilized, they have the lower stormwater basin in with the outer slopes partially vegetated, the outlet control structure has been installed, they have their roadside swales and check dams installed and are working on stabilizing them. The engineering side has been inspected by Haley and Ward with comments on stormwater. There was correspondence from Jeff Murphy, the project engineer at Beals and Thomas that has some addition comments on the Haley and Ward recommendations. Jeff Murphy, a civil engineer with Beals and Thomas joined to speak to the Haley and Ward comments about the runoff observed at the site entrance. He went out to the site over the weekend and was able to observe the drainage patterns along that section of Oak Street and showed the Commission the photos and plans and described his thoughts on the issues and will continue to monitor

the issues and address as needed and is willing to work with the town before and after construction.

4. (45:00 TS) 143 Shore Rd, Work within Buffer Zone – Possible Votes

Art Allen with Ecotec was asked to look at the recent drainage swale work along Shore Road and submitted a report to the Commission. Mr. Allen stated that the swale goes from one cross culvert to another, it appears there was some drainage there along Shore Road historically, but it has recently been excavated and deepened and it's connected to the wetland adjacent to Shore Road. At this point, it is functioning as a conveyance for that wetland as an intermittent stream conveyance to the culverts. Technically that roadside swale is a resource area, and they should have had an order of conditions to work in there, which Mr. Allen believes they did not have. The Commission discussed the matter with Mr. Allen and that the area has become a jurisdictional area and they decided to have the applicant attend the next meeting to have a further discussion and issue a cease-and-desist order and send an informal violation.

5. (53:35 TS) Review/Discussion on Culvert Replacement for 115 Shore Road

Attorney Winner updated that at the last meeting, they negotiated an MOU, Douglas Properties LLC had executed it and it had been circulated by and in between counsel, Henry Lane for Douglas Properties, Attorney Winner for the town of Douglas and the counsel for the Millers. In the meantime, of that document being circulated, Attorney Winner understands that the Millers pursued permitting and approval of their drawings for work that was all contingent upon the execution of this agreement and as of tonight Attorney Winner still has not seen an executed copy of that agreement. Ms. Sharkey asked Mrs. Miller if she had the document signed to give to the Commission tonight so they can proceed with the construction. Mrs. Miller stated that the document is stating the incorrect type of pipe. Ms. Sharkey replied that she could adjust the wording for the pipe material and ask that Mrs. Miller initial the changes. Mrs. Miller is also concerned about the location of the pipe installation being on Douglas Properties' property and wants to have confirmation that there is authorization for doing the work and that it is done correctly. Ms. Sharkey stated that Douglas Properties would assent to replacement since most of the pipe is on their property and its own fee to the middle of the road. Mrs. Miller also felt that Glenn did not need to be present at the installation because he is a wetlands expert and not a pipe installer. Ms. Sharkey revised the agreement to state that Glenn did not have to be present, the change in what the pipe was made of, Mrs. Miller agreed to those changes, and Mr. and Mrs. Miller initialed the changes. Attorney Winner stated that he is comfortable with a practical solution. The installation is scheduled for Wednesday and Jeff Walsh of Graves Engineering stated that he feels comfortable that he can make himself available to be on site for the pipe install.

6. (1:009:50 TS) Request for Certificate of Compliance, 274 Yew St, (DEP #143-1063)

The applicants, The Vargas' stated that they feel they have met all the conditions outlined by the Commission given to them in the order of conditions in the winter, and asked if there are any other conditions from the Commission. Ms. Sharkey asked if they had to increase the drainage swale or did everything stay as approved. The applicant stated that per the order of conditions they moved the placement of the shed farther away from the wetlands and planted 6 new red maple trees about six weeks ago. Mr. Zisk did a site walk after the trees were planted and showed the Commission the site walk video. The Commission discussed the matter and Mr. Mungeam questioned the location of the trees versus the as built. The Commission went back and forth, as to whether this was in compliance. Ms. Sharkey asked the applicant if they filed the substantial compliance document certifying that a professional reviewed and signed off on the compliance. Ms. Bacon stated that that was her error, and she told the applicants that it was not necessary because it was a minor project and did not think they needed it done. Mr. Zisk

found the original plans dated July 25, 2022 – revised through October 19, 2022, and after review, the Commission stated that the trees are not in the correct location and they need the missing letter of substantial compliance. The trees were supposed to be at the 50-foot buffer and 2 behind the shed. Ms. Sharkey stated they need to table this until the next meeting on July 17, 2023.

7. (1:32:35 TS) Request for Certificate of Compliance, 42 Chestnut St, (DEP #143-1016)
Margaret Bacon is present on behalf of Les Stevens the modifications made is the house is smaller than the original design and added the tree planting to the plan. Mr. Zisk showed the Commission the site walk video. The Commission feels the site looks stable and has no additional comments.
(1:39:30 TS) Motion to issue a certificate of compliance Mark Mungeam, 2nd by Mike Greco. Roll call vote – Mark Mungeam, Mike Greco, Jim Foran and KG Dudley all in favor.
8. (1:40:10 TS) Modification Discussion, (DEP #143-1051), 92 Martin Rd, David Briggs
Margaret Bacon with Civil Site Engineering and the applicant David Briggs are present, Ms. Bacon showed the Commission the original plans that were approved last summer, Mr. Briggs is in the process of purchasing this property and has a different design proposed. Ms. Bacon showed the Commission the newly revised proposed plans that include a larger house, but it has been moved closer to the road, and everything could be moved including the septic farther away from the wetland.
(1:42:55 TS) Motion to consider the changes shown of plan dated June 13, 2023, as a minor modification to the order of conditions made by Mike Greco, 2nd by Mark Mungeam. Roll call vote – Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.

(1:45:10 TS) Ms. Sharkey would like to clarify on the memorandum agreement for 115 Shore Road when it mentions the conservation commission and/or its agents it is going to refer to Graves Engineering, Jeff Walsh.
(1:45:30 TS) Motion for the Commission to have that understanding that wherever it says agent for the commission it is going to be Graves Engineering and/or Jeff Walsh made by Mark Mungeam, 2nd by Mike Greco. Roll call vote – Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.
9. (1:46:03 TS) Request for Extension, (DEP #143-0967), Douglas Renewables, LLC, 170 West St.
The request to extend the permit for one year.
(1:47:40 TS) Motion to grant the extension for 1 year as requested by the applicant made by Mark Mungeam, 2nd by Jim Foran. Roll call vote – Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.
10. (1:48:05 TS) Request for extension, (DEP #143-0957), David L’Heureux, 130 Southeast Main St
David and Chandra Ferraro joined remotely, there has been no work done except having the land cleared.
(1:48:45 TS) Motion to grant a 3-year extension on the order of condition for 130 Southeast Main St made by Mike Greco, 2nd by Mark Mungeam. Roll call vote – Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.

New Business:

11. (1:50:40 TS) 7:00 PM (NOI – DEP #143-1079) Public Hearing: Notice of Intent: 58 Cottage Colony, Map 159 Lot 34 (Single Family Home Addition/Tight Tank), Norma Aldrich – Possible Votes

This will be moved to the meeting on July 17, 2023, the wrong address was advertised so it will need to be advertised and the abutters notified.

12. (1:51:00 TS) 7:00 PM (NOI – DEP #143-10xx) Public Hearing: Notice of Intent: 125 Ledgestone Road, Map 110 Lot 11 (Single Family Home), Jacob Bloniasz – Possible Votes
This item also will be moved to the July 17, 2023, meeting due to advertising issues.

Old Business:

13. (1:51:30 TS) 7:00 PM (RDA) Public Meeting Continued: Request for Determination of Applicability, 45 Martin Road, Southwick Brook (Intermittent Stream Determination) Map 169 Lot 23 – Possible Votes
Mitch with Goddard Consulting stated that he read over Art Allen's memo that stated that he believes that documentation up to date for the stream having no flow characteristics would be needed for the Commission to make a determination. Mitch is requesting a continuance for the September meeting to allow them to document the stream with no flow conditions. Ms. Sharkey suggests they have the applicant re-notify and re-advertise for the September 18, 2023, meeting if this is continued.
(1:53:20 TS) Motion to continue the public meeting to September 18, 2023, at 7 PM with the conditions of re-notifying and re-advertising for that meeting date made by Mark Mungeam, 2nd by Mike Greco. Roll call vote – Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.
14. (1:54:00 TS) 7:00 PM (NOI – DEP #143-1076) Public Hearing Continued: Notice of Intent: Legacy Circle, Map 166 Lot 15 (Site Access Drive), Peter Michael Business Park, McIntyre Loam, Inc. – Possible Votes
Mike Dryden, senior project manager at Allen Engineering stated at the last meeting they had not received correspondence from Graves, and they received it the next day and he has signed off on everything. They will be reviewing a draft order of conditions this evening, and last discussion the Commission wanted a cost estimate to determine an appropriate bond amount. Ms. Sharkey suggested to the Commission consider waving the bond because it is going to be completed in accordance with the plan and in a timely manner and because this is mainly a culvert install and the bonding is for replication and stream crossing. Mr. Zisk agrees with forgoing the bond. The Commission discussed whether to require a bond or not or only require a as built. Ms. Sharkey went over all the conditions, and the Commission agrees to strike the bond requirement. Another change was that if dewatering is necessary during construction water shall be pumped from excavated trenches to an area of a minimum of 20 feet up gradient of the stream and 20 feet down gradient from the excavation, through a dewatering silt filter bag and over land through a secondary row of sediment control barrier.
(2:11:15 TS) Motion to close the public hearing made by Mark Mungeam, 2nd by Mike Greco. Roll call vote – Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.
(2:12:00 TS) Motion to issue the order of conditions for off Legacy Circle with the special conditions of use of filter bags if dewatering is necessary and the waiver of the bond requirement for the stream crossing and if the guard rails are required, they shall be installed on the top of the retaining wall or inside the retaining walls made by Mark Mungeam, 2nd by Mike Greco. Roll call vote – Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.
(2:13:35 TS) Mr. Mungeam asked if anyone has or would reach out to Joe Fitzpatrick and see if he is going to continue with being on the Commission, and Mr. Zisk replied that he would have Jen reach out to him.

Upcoming Meetings: July 17, 2023 & August 7, 2023

(2:14:00 TS) Motion to adjourn the meeting made by Mike Greco, 2nd by Jim Foran. Roll call vote
– Mike Greco, Jim Foran, Mark Mungeam, and KG Dudley all in favor.

Respectfully submitted,

Stephenie Gosselin