

METHUEN CONSERVATION COMMISSION
Minutes of Meeting – October 1, 2009

The City of Methuen Conservation Commission held a public meeting on October 1, 2009, at 7:00 p.m. in the William Quinn Public Safety Building, Sanborn Hall. Present for this meeting were Suzanne M. Lamoureux, Chairperson, John Wilkens, Vice Chairperson, George Kazanjian, Financial Secretary and Commissioner Sandra Boulay (arrived 7:15 p.m.). Also present were Joseph T. Giarrusso, Conservation Officer and Head Clerk, Dianne A. Dewan. Absent were Christopher Parsons, Secretary and Commissioner Isabel Tourkantonis.

The Chairperson called the meeting to order at 7:20 p.m.

I. NOTICES OF INTENT:

- A. Notices of Intent – DEP File #219-1074 – MCC File# 09-005 – 19 Country Lake Road - Gregory Doyle – Stowers Associates

The Chairperson re-opened the public hearing for the above noted project and Hugh Dunkley of Stowers Associates, Inc. presented the revisions to address concerns of July 23, 2009, by adding the new wetland line and locating the existing boulders, canopy trees and cross section of the ground to the plan.

Leah Basbanes of Basbanes Wetlands Consulting addressed concerns of the DEP noting that she spoke to the reviewer, Gary Bogue, and explained that there has been no alteration of the area. One dead tree was cut and the stump remains. There is no need to restore anything. The plan is to maintain the height of the existing vegetation to be about 4' to 5' in height so not to obstruct the view from the house. They provided the revised plan that shows the individual plants that they want to cut to maintain that height. There is an existing canopy that is going to remain and there is no plans to further prune any of the trees. There is no proposal to remove any vegetation in its entirety.

Hearing no public input at this time, a motion was made by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to CLOSE the public hearing. The Commission now has 21 days in which to make their decision. It will not be made this evening.

- B. Notices of Intent – DEP File #219-10?? – MCC File # 09-008 – 83 Hampstead Street – Steven Douglass (Con't from 09/03/09)

The Chairperson re-opened the public hearing for the above noted project and the applicant, Steve Douglas, noted that they have amended the maps to show where the wall would be located and provided details of its construction.

Mr. Giarrusso noted that, to date, the project has not been assigned a file number from DEP. He suggested that the applicant follow up with DEP to see if the application was lost. The Commission cannot issue an Order without a file number.

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Ms. Lamoureux read a memo dated September 24, 2009, from the City Engineering Department and asked for public input. There was none.

A motion was made by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to CLOSE the public hearing. The Commission now has 21 days in which to make their decision. It will not be made this evening.

II. CALL TO ORDER: The Chairperson called the regular meeting to order at 7; 25 p.m.

III. ACCEPTANCE OF AGENDA / AMENDMENTS (IF ANY): A motion was made by Mr. Kazanjian; seconded by Mrs. Boulay; so voted, UNANIMOUS to ACCEPT the Agenda as posted.

IV. ACCEPTANCE OF MINUTES: Minutes of 09/17/09 were not ready at this time.

V. NEW BUSINESS:

A. Request for Determination of Applicability – MCC File # 09-008 – 296 Hampshire Road – Bradley Jones

Brad Jones submitted a copy of the legal notice and presented the plan for the repair of an existing foundation within the Buffer Zone of Bordering Vegetated Wetlands. Erosion control would be approximately 25' from the resource area.

Hearing no question of the Commission, a motion was made by Mr. Kazanjian; seconded by Mrs. Boulay; so voted, UNANIMOUS to ISSUE Negative 3 Determinations with standard boiler plate, general condition #2 & #7 waived under the state and #7 under the local to require a letter upon completion and adding the following special conditions:

- **Before Building Permit may be signed off**, erosion control consisting of double staked hay bales shall be installed at the limit of work as shown on the submitted plan and confirmed by the Conservation Officer in the field. Installation shall be inspected and approved by the Conservation Commission or its agent.

- All materials shall be stockpiled as shown on the submitted sketch.

- Existing grades shall not be altered as a result of the proposed work.

VI. OLD BUSINESS:

A. Enforcement

1) EO #08-002 – 115 North Street – Morin

Mr. Giarrusso noted that the property owner is in Iraq and he has not been able to contact his wife to do a site walk. He is going to look at it on his own and report back at the next meeting.

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- B. Certificates of Compliance – DEP File #219-430 – MCC File # 94-023 – 48 Kensington Avenue – Charles F. Perrault, Esq. (Tabled from 09/17/09)

As requested in a letter dated October 1, 2009, from Charles Perrault, Esquire, a motion was made by Mr. Kazanjian' seconded by Mrs. Boulay; so voted, UNANIMOUS to TABLE this to the meeting of November 5, 2009.

- C. Request for Insignificant Change – DEP File #219-967 – MCC File# 05-022 – Lot 15 (formerly 16) # 6 Pine Tree Drive (Emerald Pines) – R & D Development

Mr. Giarrusso explained the changed from the approved subdivision plan and the “Proposed Plot Plan” dated August 18, 2009, noting that the majority of the grading is outside of the Buffer Zone, including the new design and location of the house.

Lawrence Kady of R & D Development expanded on the explanation changes and further noted the change in lot numbers.

Ms. Lamoureux read a memo dated September 24, 2009, from the City Engineering Department.

A motion was made by Mrs. Boulay; seconded by Mr. Wilkens; so voted, UNANIMOUS to APPROVE the change, finding it Insignificant.

Mr. Kady noted that he has been working on the bond issue. He thinks they have the wording and lots correct. The bank has not signed off yet, but he is going to leave it for the staff to review. He also noted that he got an e-mail from Elizabeth Saboujian of DEP and he is trying hard to comply and will contact her tomorrow.

Mr. Giarrusso explained the status of DEP enforcement noting that the e-mail was a notice of failure to comply with the time frame for compliance. She is dealing with the State's enforcement. Although the Commission respects that, he does not feel it is appropriate to take action where it is DEP's responsibility to enforce their own enforcement. He does not feel that this Commission has the authority to go after Mr. Kady under their enforcement.

Mr. Kady noted that he was only updating the Commission on the status of that.

- D. Certificates of Compliance – DEP File # 219-542 – MCC File # 97-003 – 145, 147 & 151 Pelham Street (Ranger Plaza) – DF Land, LLC – Smolak & Vaughan, LLP

Ms. Lamoureux read comments and reviewed pictures from the Conservation Officer's report noting the findings of human waste on the site and read a memo dated September 25, 2009, from the City Engineering Department.

Patrick Seekamp of Seekamp Environmental noted the presence of Chris Tymula of MHF Design and Attorney John Smolak. He noted that he was on site doing the oversight of the landscape planting and can assure the Commission that the site was clean when he left the site at 2:45 p.m. yesterday. He did a sweep with the brothers that were in charge of the maintenance on

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the site and there was not anything like that out there yesterday, but there was today when he went to the site with Mr. Giarrusso. He thinks that it is a problem with all the truck activity out there.

Mr. Giarrusso noted that it is a chronic problem with containers or bags. Previously, they have been told to clean up. It is frustrating as there are three restaurants on site and a sign saying no trucks. The problem is that you have people that show no respect and it is in the Floodplain and less than 10' from the Bordering Vegetated Wetland.

Mr. Seekamp continued giving a brief history of the site, noting there were Orders of Conditions issued in 1997 with several minor modifications to the Orders. The buildings were constructed in accordance with the Orders. There was a recent subdivision on the sit of the two lots you see outlined on MHF's plan. The larger Fox Nissan lot remains in the back of the site. He was called to go out and assess the validity of the buffer planting which was a component of the original Orders of Conditions. In looking at that, it was determined that the plantings needed to be redone. The buffer got planted yesterday. All the plants that were in the subsequent planting plan that was submitted by Seekamp Environmental along with the Certificate of Compliance request have been delivered and are now planted on site.

Mr. Giarrusso noted he feels it would be appropriate for the buffer be maintained and the wording be tweaked to allow for every fall snow fencing be installed adjacent to the parking lot to prevent these planting from being destroyed.

Mr. Seekamp noted that based on the site walk today, everything regarding the plantings was addressed. During the site walk, they did notice that there were several areas of berm that were broken up; it's a Cape Cod berm. They are prepared to commit to repairing that. There is about 50 linear feet total in about three areas where the Cape Cod berm is broken up or non-existent at this point. The owner of the project has committed to repairing the berms. They are also trying to develop some kind of barrier at the back where some of the truck activity swings in and park the backs of the trucks over what they just planted. They thought maybe a row of boulders would give the plantings a little more buffer and send a message to the truckers that they are not to park their trucks so they back out over the tops of those plantings.

Mr. Giarrusso noted that there also needs to be some commitment by the property owner to better police the property for dumping of debris and human waste as the next step would be to involve the Health Department because these conditions do benefit the business out there as there would be a health issues.

Attorney Smolak noted that what they have to do is more effectively police that occurrence because it is difficult to really stop that from happening, but they will try to have some more effective enforcement over at that site. In terms of the issue of the berm and the other items; boulders, if the Commission chooses to allow that to happen, they would be willing to install them (boulders and berms) within the next 30 days if the Commission is willing to issue a Certificate of Compliance.

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Mr. Wilkens noted his concern with the dumping problem and snow plowing into the resource area.

Mr. Giarrusso noted that the installation of snow fencing will provide a barrier to prevent them from creating a mountain of snow and may result in the removal of snow from the site. As these were not conditions remaining in perpetuity, it is difficult now to require this, but the reality is if the Commission wants these plants to be maintained in perpetuity, this would be an incentive to install the boulders and snow fencing.

In response to Ms. Lamoureux's comments. Attorney Smolak noted that they agree to all of the above and will provide a letter of assurance to the Commission. There hope is to redevelop the rear portion of the property and hopefully more activity in that area would avoid the circumstances that have occurred in the past.

Mr. Kazanjian noted that he would like to see everything done before they issue the certificates.

Ms. Lamoureux noted that actually everything had been done because all the buffer plantings had been replaced and there was no requirement in the Order to maintain those buffer plantings in perpetuity, but the applicant has replaced them several times already. The Commission is gaining by the applicant's willingness to do all of the above.

A motion was made by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to ISSUE Certificates of Compliance for the above noted project to be released upon the receipt of a letter of commitment that the buffer plantings will be maintained in perpetuity, the berm will be repaired, and boulders and snow fencing installed.

E. Order of Conditions/Bond – DEP File #219-1075 – MCC File # 09-007 – Wheeler Street - Toll Brothers, Inc.

A motion was made by Mr. Wilkens; seconded by Mrs. Boulay; so voted, UNANIMOUS to ISSUE Orders of Conditions with Standard Boiler Plate, General Condition #4, changed from "one year" to "three years", # 24 to be waived, #33 to read 100', #48 to reference Special Condition D and adding the following:

Findings:

The Notice of Intent submitted by Toll Brothers, Inc. with plans prepared by Andover Consultants, Sheets 1 thru 10, 12, 16 & 17 of 24, dated November 5, 2008, revised August 20, 2009, Sheets 11, 13 -15, and 18 -20 of 24, dated November 5, 2008, revised February 19, 2009 and Sheet 1 of 2, "Wetland Crossing Site Plan & Details" and Sheet 2 of 2, "Wetland Crossing Restoration Plan", dated June 23, 2009 is for the proposed construction of an active adult residential community of 230 dwellings and utilities crossings on a 73+/- acre active sand and gravel operation, which will result in impacts to the following resource areas: Inland Bank (50'), and Bordering Vegetated Wetlands (1,400) and associated Buffer Zones.

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Special Conditions:

- A. Before ANY activity on the site may begin**, the Contractor, job supervisor, and City Engineer shall meet with the Conservation Officer to review the Order of Conditions, Construction Sequence, Erosion Control plan and timetable for the project. At this time, the contractor shall review any issues with the location of stockpile areas. Copies of the MEPA certificate and "**NPDES Stormwater Management for Construction Activities Permit**" and "**Stormwater Pollution Prevention Plan**," shall be submitted at this time.
- B. Before ANY activity on the site may begin**, the Applicant shall submit four (4) copies of all necessary information to address issues raised in Conservation Officer's letter dated September 3, 2009 and City's Engineering Division's letter dated September 2, 2009. The applicant will be responsible for all costs associated with this review. All comments shall be reviewed and verified by the City's Engineering Division, which shall submit a final report to the Commission. City's Engineering Division shall also provide the required bonds for each phase of the project. The Commission shall approve all revised information and required bonds.
- C. Before ANY activity on the site may begin**, the limit of work SHALL be staked in the field. The Conservation Commission or its agent shall inspect it before tree removal and/or clearing and installation of erosion control.
- D.** The applicant shall comply with the Long Term Operation and Maintenance Plan, dated August 21, 2009 and copies of all drainage maintenance reports shall be submitted to the Commission. **This condition shall remain in perpetuity.**
- E.** The Contractor shall submit a biologist report to the Commission on the required restoration, once the area is completed. This report shall outline the species makeup, quantity of plants, and shall include calculations on mitigated areas and soil conditions. The Commission and/or its agents shall review and verify compliance. This report shall not replace the required final mitigation report required for Certificate of Compliance.
- F.** Prior to any field changes, a written request to include drawings shall be submitted for review and approval by the Commission and/or its agent. Should dewatering be required for the construction, the Commission shall be notified and shall approve the methods used.
- F.** Amended Orders of Conditions – DEP File # 219-1048 – MCC File # 08-001 – East Capitol Street Sewer Improvements – City of Methuen

A motion was made by Mr. Wilkens; seconded by Mrs. Boulay; so voted, UNANIMOUS to ISSUE Amended Orders of Conditions with the following:

Findings:

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The Amended Notices of Intent submitted by City of Methuen with 8 ½" x 11" sketch attached to letter dated September 4, 2009 from Magdalena Lofstedt of Camp Dresser & McKee Inc. is for the proposed project change to re-install (2) 6" HDPE pipes to the design elevation. This work will result in the temporary impact to the following resource area: Bordering Vegetated Wetlands (400 sq/ft) and associated Buffer Zones.

Special Conditions:

A. The above referenced sketch shall be added to those plans referenced in the Order of Conditions issued 2/26/2008 and Amendment issued on 12/23/2008. All other plans, conditions, and limit of work shall remain the same.

B. The applicant shall be required to comply with all requirements as stated in the letter issued by Natural Heritage Endangered Species Program, dated August 31, 2009.

VII. INSPECTOR'S REPORT: In addition to his written report, Mr. Giarrusso noted the following:

1) Schruender Park

Mr. Giarrusso presented an update on the progress of the Schruender Park project (TIP Healing Garden) with a concept plan from the architect. For the most part, they are utilizing the existing trails. They have requested to change the location of the existing monument and rededicate it. Sheila Schruender had no objections. The whole project is in the Riverfront and will need Natural Heritage approval. Because they are using the existing trail network and are trying to control erosion by putting in some water bars in specific areas that get washed out. They are looking at putting in a memorial bench for Brenda Waller and group seating area of boulder benches. They would like to place the Brenda bench there to be dedicated for their walk-a-thon this fall. They are aware they need to file a Request for Determination of Applicability for the project in its entirety.

After a lengthy discussion on the whether the placement of the bench will significantly impact flood storage for the area, the Commission asked that the City Engineering Department review the proposal and provide written confirmation on whether there would be a significant loss of flood storage. They will allow placement of the "Brenda bench" if there is no significant flood storage loss.

VIII. OTHER BUSINESS: There was no other business at this time.

IX. ADJOURN: A motion was made by Mrs. Boulay; seconded by Mr. Wilkens; so voted, UNANIMOUS to ADJOURN the meeting at 8:30 p.m.

Respectfully submitted by:

Reviewed by:

Approved on:

Dianne A. Dewan
Head Clerk

Suzanne M. Lamoureux,
Chairperson

11/05/2009
Date Approved