

METHUEN CONSERVATION COMMISSION
Minutes of Meeting – May 21, 2009

The City of Methuen Conservation Commission held a public meeting on May 21, 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, Christopher Parsons, Secretary, George Kazanjian, Financial Secretary, and Commissioner Sandra Boulay (arrived 7:12 p.m.). Also present were Joseph T. Giarrusso, Conservation Officer and Head Clerk, Dianne A. Dewan. Absent was Commissioner Isabel Tourkantonis.

The Chairperson called the meeting to order at 7:05 p.m.

I. NOTICES OF INTENT:

- A. Notices of Intent – DEP File # 219-1071 – MCC File # 09-001 – 57 Chase Street – William Gallant – James J. Curran, RPLS (Con't from 04/23/09)

The Chairperson re-opened the public hearing and read an e-mailed received May 17, 2009, from the applicant, William Gallant, requesting the hearing be continued to July 9, 2009.

Hearing no public input at this time, a motion was made by Mr. Wilkens; seconded by Mr. Kazanjian; so voted, UNANIMOUS to CONTINUE the hearing to the meeting of July 9, 2009 as requested.

- B. Notices of Intent - DEP File #219-1062– MCC File # 08-014 – 137 Pelham Street – Saragas Dimetrios / Heavenly Investments LLC (Con't from 05/07/09)

The Chairperson re-opened the public hearing for the above noted project and Robert Masys of RAM Engineering noted that revisions have been submitted to the satisfaction of the City Engineering Department.

Ms. Lamoureux read a memo dated May 13, 2009 from the City Engineering Department noting that all of the outstanding comments from his memo April 8, 2009 memo have been adequately addressed.

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

- C. Notice of Intent – DEP File # 219-10?? – I-93 Northbound Exit 46 off-ramp and Intersection of Riverside Drive and Route 110 – Massachusetts Highway Department – TranSystems

Per e-mail dated May 21, 2009, from Ryan McNeill of Mass Highway, a motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to TABLE the public hearing to the meeting of June 4, 2009.

METHUEN CONSERVATION COMMISSION

Minutes of meeting – May 21, 2009

D. Amended Notices of Intent – DEP File #219-1035 – MCC File # 07-011 – 254 Broadway / 4 Gleason Street – Methuen Assisted Living LP – Merrimack Engineering Services, Inc.

The file in order, a motion was made by Mr. Kazanjian; seconded by Mr. Parsons; so voted, UNANIMOUS to ACCEPT the Amended Notices of Intent for the above noted project.

Mrs. Boulay arrived at the meeting at this point, the time being 7:12 p.m.

The Chairperson opened the public hearing for this project and Steve Stapinski of Merrimack Engineering submitted reduced size plans for the Commission's convenience. He noted that the amendment that is proposed is for the assisted living development on Gleason Street in Methuen. Several months ago they prepared a plan that had a proposed drain line that would be built around the Fisichelli property so that any water that came into the flood storage area from the front of the site rather than from the back, like a flood storage area should work, could be routed around and would not be standing and flooding the Fisichelli parking lot. The Commission approved that modification because at the time, Mr. Fisichelli did not have any interest in giving an easement to Mr. Spada. Subsequently, he granted an easement to Mr. Spada and requested that they construct a berm along his parking lot edge and actually construct the swale closer to the parking lot edge so that it could be maintained by him if it was ever necessary to be maintained and if Mr. Spada never maintained it. Mr. Stapinski stated that he then went ahead and designed a swale and a berm and they were going to submit it as a modification, like they did now. In the meantime, Mr. Spada had his contractor working out at the site screening loam on lot 13-A1. There was all this dirt stockpiled on the front of Broadway and Gleason Street that hadn't been removed. Basically, the assisted living is all done and paved and planted. This contractor went ahead, and he does not understand why, went ahead and built the swale. So the swale is physically there. So he then went out and surveyed the swale, so what the Commission sees here is the as-built location of the swale and the as-built location of the berm. The modification request that they made is to eliminate the previously approved piping that would go around the Fisichelli property and construct the swale as they currently have it configured on the site. At this point, it is not stabilized; it needs to be sodded, so it is basically just dirt. That would be the scope of work remaining to be complete to have it be completed. He went ahead and made sure that there was no loss of flood storage as a result of building the berm because that was not in the original plan. He submitted calculations by e-mail today (to Steve Gagnon in Engineering) to show that there is still excess flood storage so the berm does not negatively impact the flood storage on the site at the elevations it was built at. He submitted a copy of the e-mail and noted that he sent stamped and signed calculations in the mail to be received by the Commission tomorrow. That is it in a nutshell and he will be happy to answer any questions that the Commission may still have.

Ms. Lamoureux read comments from the Conservation Officer's report for this meeting into the record.

Mr. Giarrusso noted that Mr. Stapinski mentioned calculations that he e-mailed today. Unfortunately, he assumed that those were the calculations that he had promised the Commission regarding the requirements dealing with occupancy permit. The e-mail that he sent back to Mr. Stapinski may make no sense. He assumes that this going to provide double duty; both verify

METHUEN CONSERVATION COMMISSION
Minutes of meeting – May 21, 2009

that the compensation has been properly done, but also document that under the proposal there won't be any impacts. It is his understanding of easements that were granted for work on Mr. Fisichelli's property is the easement area that is actually shown that no work was done in it. He assumes that there will be additional easements granted or he asked if they have already been granted.

Mr. Stapinski noted that he thinks the 15' wide easement that he shows on the plan is the one that is on the recorded plan at the Registry of Deeds and the intent would be to grant an easement over this swale and parallel to it and where the berm is on his property as well. There was an issue with the flooding of the parking lot and there were some suggestions on the part or certain Town staff that maybe they look at constructing a berm and they construct a swale to drain that area off so that they can avoid the flooding of the property. He thinks that when there wasn't an easement available, then that work couldn't be done and, in fact, they had a berm that ran along all of the Spada property lines and that caused some loss of flood storage within the designated flood replacement area, so they designed the culvert and grading so that the berm could be built with all the loss in the storage. The ideal location of the berm and swale was always where they have them. At the time, Mr. Fisichelli did not want to grant the easement. He thinks there was some posturing that had to do with a Dairy Queen or something. He would say that Mr. Fisichelli and Mr. Spada agreed to the berm and swale. That is what was relayed to him. Before they could file that modification with the Commission, the contractor went ahead and built it. He became aware of it afterwards and rather than have him remove everything, they as-built surveyed it and they know, in fact that it works, because they are out there monitoring it on a weekly basis. They sent the Commission photos showing that it works properly, but again, the swale has not been stabilized. If this was nine months ago, this would have been the proposal that they would have been brought forth to the Commission had it been permissible with the abutter. Subsequently, it is the thing that the abutter wants.

Mr. Giarrusso noted that he is confused on what Mr. Fisichelli wants because when he was struggling to grant an easement where it is shown on the plan, they had a conversation and he wanted to make sure it was done right. He told him that obviously, Mr. Spada wants to make sure he can get the easement and obviously he is going to construct it where you grant the easement. Unfortunately, how it went somewhere else, he is not sure.

Mr. Stapinski noted that it is pretty simple. The contractor went out and built it.

Mr. Giarrusso noted that the contractor said that John Murphy instructed him.

Mr. Stapinski noted that John Murphy instructed anybody to do anything in terms of building the berm or the swale.

Mr. Giarrusso noted that Mr. Pandalina stated this at the last meeting.

Mr. Stapinski noted that Paul Pandalina can say whatever he wants, but he can tell the Commission that John Murphy never instructed him to build a berm and swale. He did it between the dates of the inspection and it was after he got a phone call from someone other. John Murphy had not even been out there. John goes out on a Friday and the reports go to the

METHUEN CONSERVATION COMMISSION
Minutes of meeting – May 21, 2009

Commission on a Monday or Tuesday and Mr. Giarrusso called and said what about the swale. The swale was dug after John had been out there. Then when he went out there on Friday, he went out there and looked at it. He went out on Thursday and John went out on Friday and took the pictures and submitted them in. He did pick it up on his weekly inspection and he did go out and look at it beforehand. That's when they made the decision to not make the contractor fill the swale back in, but to as-built survey it because essentially it does what they were going to do in the easement anyway and it certainly does what the piping was going to do and it is more easily maintained. That is all he knows.

Mr. Giarrusso asked if Mr. Pandalina had a plan.

Mr. Stapinski noted that he had no plan. He had done a proposed plan originally of a berm and a swale in the area and given it to Mr. Spada. He also had another berm running along the Spada property lines along with a pipe, which is shown on the plan, which is what the Commission approved. He also had a pipe running through the easement and he also had a swale running through the easement. What he thought was going to happen actually was that they were going to build a swale through the easement.

Mr. Giarrusso asked Mr. Stapinski to clarify that his office has not done any real inspections while construction is going on.

Mr. Stapinski's reply was negative. He did not know about it until after he received a phone call from him (Mr. Giarrusso).

Ms. Lamoureux asked to clarify that there is nothing underground, because he did not put any piping it there now.

Mr. Stapinski noted that the piping is not there.

Ms. Lamoureux noted that anything that was done was above ground anyway. It wasn't sanctioned by the engineer.

In response to Mr. Giarrusso's question, Mr. Stapinski noted that he does not know what the berm is made up of.

Mr. Wilkens asked Mr. Stapinski if he did a "look see" on the original site before they even started doing anything to it.

Mr. Stapinski stated he did.

To fast forward, Mr. Wilkens noted that Mr. Fisichelli decided there was a little depression. That was a minor depression and that parking lot would flood anyways. There was a berm that was higher probably on Mr. Spada's side that the water was going nowhere except up onto that lot.

Mr. Stapinski noted that the inlet on the inlet side of the river at the bend where it currently comes in, that backwaters, is higher than the elevation of the river down below is a couple of foot

METHUEN CONSERVATION COMMISSION
Minutes of meeting – May 21, 2009

difference. His parking lot got flooded in really large storm events. His parking lot, after they put in the drainage system, was getting flooded in smaller events than what it normally was.

Mr. Giarrusso noted that before, his parking lot would get flooded as part of a backwatering effect. What happened was that the assumptions were made that the water was flowing through. They made the assumption that the connection was going to go like what you might assume it would go, but they did not take into consideration that backwater effect. That is why doing something, obviously to do a connection, going around the abutters property was appropriate, because the only way to do it was to backwater the water upstream, which obviously the design was not made that way.

Mr. Stapinski noted that, as a result, since the swale was put in and whether the swale was put in or you cover it and fill it in and go and put the pipe in, effectively, you are going to have the same hydrological condition. The only reason for the swale was because of the issue of the Dairy Queen lot. Once that became resolved, the easement was granted and they were going to come in for a modification to put a swale where the 15' wide easement was recorded.

After a lengthy discussion, Mr. Giarrusso clarified that, although the system is working, it does not meet the Commission's standards and would never have been approved by them.

Mr. Stapinski noted that this is one of his designs, but is not the one he was told was going to be built. They were going to come for a modification to eliminate the pipe and put the swale where the 15' wide easement would be. They actually built it in its present location. In terms of the suitability and it working, it is easier for Mr. Fisichelli to maintain it in this location if necessary. The Commission can keep fining Mr. Spada, but he thinks the swale works fine. It can be stabilized and it can be replanted and it is really going to do the job. If the Commission says no, they want them, under the Enforcement Order; they want them to re-establish the area and the vegetation that is fine. Then they will come back and modify it with a swale going through the 15' wide easement. You can continue this and he will modify the plan and come back. He thinks everyone wants to get the swale that is there either filled in and replanted or it should be sodded because right now it's not vegetated and it should be. It shouldn't be filled in before they dig the new one in case of a rain event.

Ms. Lamoureux asked Mr. Stapinski if he believed that he could address the items, because basically it doesn't comply, he has the ability to rebut the presumptions. She asked if he was prepared to address those.

Mr. Stapinski noted that he is seeing this for the first time today and he would say that he would have to go out there and physically look at it tomorrow to see what impacts there have been from the unvegetated swale into the wetland area along with a botanist. That botanist would have to evaluate whether or not there have been any damage to the resource areas.

Mr. Giarrusso noted that the Commission has to make sure that they show the continuity that they are upholding their regulations and the way to get around the regulations isn't to create a violation and then say it's there and it works.

METHUEN CONSERVATION COMMISSION
Minutes of meeting – May 21, 2009

Mr. Stapinski added that this was permitted as a comprehensive permit as well so there were waivers that were granted to the local regulations, not to the DEP, but to the local regulations. There might want to be some latitude to the Regulations because of the way it was permitted. He is not suggesting that any of the Commission's Regulations aren't important.

Mr. Giarrusso explained that he does not meet those relaxed standards as well. Additional information is necessary and possibly modify what was done that could never be done.

He requested that this be continued to June 18, 2009, to allow him time to contact his client, address the issues, rebut the presumptions and submit the necessary information.

Hearing no public input at this time, a motion was made by Mrs. Boulay; seconded by Mr. Kazanjian; so voted, UNANIMOUS to CONTINUE the public hearing to the meeting of June 18, 2009.

E. Amended Notices of Intent – DEP File #219-911 – MCC File # 04-013 – Emerald Pines Country Club and Estates (off Howe Street) – Wetlands Preservation Inc.

AND

F. Amended Notices of Intent – DEP File #219-967 – MCC File # 05-022 – Emerald Pines Country Club and Estates (off Howe Street) – Wetlands Preservation Inc.

Per e-mail of May 18, 2009, from Wetlands Preservation Inc., a motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to TABLE the public hearings for items E and F above to the meeting of June 4, 2009.

II. CALL TO ORDER: The Chairperson called the regular meeting to order at 7:45 p.m.

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

IV. ACCEPTANCE OF MINUTES: A motion was made by Mr. Kazanjian; seconded by Mrs. Boulay; so voted, UNANIMOUS to ACCEPT the minutes of 04/02/09, 04/16/09 and 04/23/09 as written.

V. OLD BUSINESS:

A. Enforcement

1. EO # 09-002 – 8 Ayers Village Road – Bernard Real Estate LLC (Update)

Mr. Giarrusso updated the Commission on the above violation noting that all fill has been removed and the ditch/intermittent streambed and bank and the Bordering vegetated Wetlands have been re-established and they are now doing punch list items. The \$100 citation has also been paid. He will be monitoring it through the summer and recommends that this be placed on the Commission's October 1, 2009 meeting for an update.

METHUEN CONSERVATION COMMISSION
Minutes of meeting – May 21, 2009

2. EO # 09-004 – Broadway / Gleason Street - Spada

Mr. Giarrusso had nothing to add to the discussion under the public hearing noted above.

B. Orders of Conditions/Bond – DEP File #219-1072 – MC File# 09-003 – 101 Lindberg Avenue – 268 Broadway Realty Trust

A motion was made by Mr. Parsons; seconded by Mr. Wilkens; so voted, UNANIMOUS to ISSUE Orders of Conditions with Standard Boiler Plate, with General Condition # 4 changed from 1 to 3 years under the local, #24 to require a bond in the amount of \$62,000 as recommended by the City Engineering Department, #33 to read as shown on the plan, #48 shall reference Special Condition “C” and adding the following:

Findings:

The Notice of Intent filed by 268 Broadway Realty Trust, with plans (Sheets 1 thru 12 of 12) dated March 6, 2009, revised April 23, 2009 are for the proposed razing of existing structures, concrete pads, septic tank and construction of a new commercial building, associated parking and utilities and proposed extension of a sewer line. All work is proposed within Buffer Zones associated with the existing Bordering Vegetated Wetlands.

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 "**NPDES Stormwater Management for Construction Activities Permit**" and "**Stormwater Pollution Prevention Plan**," shall be submitted at this time.

B. Before work may begin, the applicant shall revise plans to address the Commission’s concerns regarding the location of erosion control associated with proposed restoration plan. The Applicant shall also arrange for test pits to be dug with the Engineering Division and Conservation Officer present at the time of testing to determine existing soil type/perc rate. The plans shall be revised as needed as a result of the obtained information and concerns stated in the Engineering Division’s letter dated May 5, 2009. These plans shall be reviewed and approved by the Commission and/or its staff.

C. The applicant shall comply with the approved Stormwater Pollution Prevention Plan, and Operation & **Maintenance** Plan, as noted in condition #26. Copies of all drainage maintenance reports shall be available to the Commission upon request. **This condition shall remain in perpetuity and be referenced in the chain of title for the property.**

D. Before ANY activity on the site may begin, the proposed erosion control located at the limit of work SHALL be installed in the field. The Conservation Commission or its agent shall inspect it before work may begin.

METHUEN CONSERVATION COMMISSION
Minutes of meeting – May 21, 2009

E. Applicant shall be required to obtain all required permits for the demolition of the existing building before the removal of the building may be allowed.

F. A copy of the foundation(s) certification showing the location of the foundation and **cellar floor and/or top of foundation elevation** shall be submitted to the Commission and approved **before** a final building permit is released. This plan shall be at the same scale as the approved plans.

G. 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.

C. Orders of Conditions/Bond – DEP File #219-1073 – MCC File # 09-004 – 9 Joffre Street – Richard Hall

A motion was made by Mr. Wilkens; seconded by Mr. Parsons; so voted, UNANIMOUS to ISSUE Orders of Conditions with Standard Boiler Plate, General Condition #4 changed from one to three years under the local, #24 to require a bond in the amount of \$2,900 as recommended by the City Engineering Department, #33 to read 50' and adding the following:

Findings:

The Notice of Intent submitted by Richard Hall with plans by Engineering and Surveying Services dated April 24, 2009 is for the proposed removal of the existing 1,248 sq/ft building with the replacement of a building the same size located further from the intermittent stream. The proposed project will result in alteration to Buffer Zone of Bordering Vegetated Wetlands associated with the intermittent stream. Erosion control consisting of double-staked hay bales and silt fencing are proposed to prevent impacts to the resource areas.

Special Conditions:

A. **Before work may begin**, erosion control consisting of double staked hay bales and silt fence shall be installed at the limit of work shown on the approved plan. Installation shall be inspected and approved by the Conservation Commission or its agent.

B. A copy of the foundation certification showing the location of the foundations and **garage floor elevation** shall be submitted to the Commission and approved **before** a final building permit is released. The plan shall include the location of the wetland flags and be at the same scale as the approved plan.

C. A dumpster will be used for the construction debris to prevent materials from blowing into the resource area(s) and it shall be covered at the end of each workday.

METHUEN CONSERVATION COMMISSION

Minutes of meeting – May 21, 2009

D. **Before Building Inspector’s final inspection**, proposed blueberry bushes shall be planted as shown on the approved plan. Once planted, the Commission and/or its agents shall inspect them before final building inspection is made.

E. 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.

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

- 1) Mr. Giarrusso explained that there are some issues that they are trying to address with Emerald Pines. A site inspection revealed that the water main that is required to be a minimum of 5’ in the ground was actually 3 ½’ which is not good in New England because of the freezing action. Pandalena Construction is the company doing the work. There were also some groundwater issues. He is going to be going out there next week and finalizing his overview of all the enforcement issues. What was submitted to the Commission, as part of the Amendment, is not sufficient for a proper review.
- 2) Mr. Giarrusso explained requested changes to Lot 4, Whisper Meadow to the Commission. They appear to be insignificant and the Commission required that they file for the change before an Occupancy Permit is issued.

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

VIII. ADJOURN: A motion was made by Mr. Parsons; seconded by Mrs. Boulay; so voted, UNANIMOUS to ADJOURN the meeting at 8:00 p.m.

Respectfully submitted by:

Reviewed by:

Approved on:

Dianne A. Dewan
Head Clerk

Christopher Parsons,
Secretary

08/06/2009

Date Approved