

METHUEN CONSERVATION COMMISSION
Minutes of Meeting – August 6, 2009

The City of Methuen Conservation Commission held a public meeting on August 6, 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. Also present was Joseph T. Giarrusso, Conservation Officer. Absent were Commissioner Isabel Tourkantonis and Head Clerk Dianne A. Dewan.

The Chairperson called the meeting to order at 7:10 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 07/23/09)

The Chairperson re-opened the public hearing and read a letter dated July 28, 2009 from William Gallant requesting the hearing be continued to the meeting of September 17, 2009.

Hearing no public input at this time, a motion was made by Mr. Kazanjian; seconded by Mrs. Boulay; so voted, UNANIMOUS to CONTINUE the hearing to September 17, 2009 as requested.

- B. 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 (Tabled from 07/23/09)

As requested in an e-mail dated July 24, 2009, a motion was made by Mr. Parsons; seconded by Mr. Kazanjian; so voted, UNANIMOUS to TABLE the hearing to August 20, 2009.

II. CALL TO ORDER: The Chairperson called the regular meeting to order at 7:15 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 Mr. Parsons; so voted UNANIMOUS to ACCEPT the minutes of 05/21/09 as written

V. OLD BUSINESS:

The Commission took items out of order to accommodate those present.

B. Certificates of Compliance/ Bond Release – DEP File #219-1045 – MCC File # 07-019 – Lot 13, Greenside Way – Toll Brothers, Inc. – The Neve-Morin Group, Inc.

The Chairperson read a memo dated August 6, 2009, from the City Engineering Department.

Upon recommendation of the Conservation Officer, a motion was made by Mr. Kazanjian; seconded by Mr. Wilkens; so voted, UNANIMOUS to ISSUE Certificates of Compliance and RELEASE the Bond for the above noted project.

A. Enforcement

With respect to the Emerald Pines project, Mr. Giarrusso updated the Commission on the findings of the site walk and submitted a partial portion of his document outlining the violations on the site. He took the overall site plan and started with the section of the project closest to Howe Street on the fringe of Phase I and beginning of the Phase II project. At this point in the project, the applicant has bonded up to station 8+00 which is identified approximately 1 and ½ inch from Howe Street on the key map. He described each violation identified on the key map, noting that the applicant is trying to address many of these items through the request for Amendment. He has not yet been able to determine a cumulative amount of vegetation that was cut in jurisdictional areas, but he and Mr. Parsons did a rough quadrangle calculation and there were 18 trees above 6” in caliper that were removed. The majority were White Pines and there was no evidence of recovery (suckers). Two Red Maples and other smaller trees did show some kind of recovery. He noted that the Commission has received an updated letter from Natural Heritage noting that all issues have not been addressed and they have expanded their enforcement action to station 15+00 and beyond.

Mr. Parsons asked if the temporary sedimentation basins are within the Commission’s jurisdiction.

Mr. Giarrusso noted that some of these areas are definitely within the Commission’s jurisdiction in the buffer zone.

Curt Young of Wetlands Preservation spoke to this issue noting that during the process of construction, there were and are and will be a number of temporary measures taken to control erosion and runoff on the site. If areas are disturbed that were not proposed to be disturbed during construction, they have to be restored. They prepared a Stormwater Management status plan as to how they manage water through the site. That is an evolving document that will be updated to reflect the way they are currently managing Stormwater on the site. Most of the temporary measures either will be cleaned up and reconfigured to meet design if they were part of the original proposal or they will be restored to whatever grade or condition they were before.

Mr. Parsons noted that he noticed and is concerned with the 20-degree temperature change on the site in areas of clearing changing the entire biology of that area. He cannot see justification for clearing as a temporary measure and would personally never approve it.

Mr. Young noted that the steps they are taking are taken in concert with Seekamp Environmental who is reviewing the construction monitoring work as they move along so it is not without some controls as they are being looked at. He appreciates the point and it bears on the issue of the tree cutting limits as well. That is an issue that bears some discussion. Very clearly, trees were cut in areas that were not intended to be cut, didn't have to be cut, but mistakes were made in regard to tree cutting. Those areas that were cut that were outside of the proposed use are not going to be used. They are going to have to be restored.

Mr. Giarrusso suggested that a plan be provided showing the areas of over cutting.

Mr. Young noted that there are areas that were over cut, which had not been disturbed subsequently since they were cut and there are areas that may have been cut that ended up being temporary sedimentation basins such as near the end of the road. Most of the over cutting that he has seen is associated with the central wetland area, the two hundred foot swath on each side, and the 800' setback to the vernal pool. Those are the biggest over cutting areas. Those were areas that, in many cases, were and are proposed for work. It's just that they were not going to cut those. They weren't supposed to cut those until they had a Conservation management permit in place and had paid their mitigation fee. The tree cutters went out there and over cut. He cannot excuse it whatsoever.

Mr. Giarrusso noted that right now there are thermal effects from the over cutting. He does not know how the Commission is going to quantitatively say this is what is wrong and this is what the recourse is when you look at the community of vegetation and the thermal effects right now on areas that shouldn't be touched.

Mr. Young noted that he believes that a joint meeting with Community Development and Conservation is forthcoming to bring everyone together on the same page and make sure they are all talking about the same thing. Most of the inconsistencies and discrepancies and out of compliances that Mr. Giarrusso talked about are pretty close to the list of the things that they have in the Request to Amend the Orders of Conditions. The tree cutting is outside of that and they have to get a handle on that and arrange a meeting with NHESP. He hopes to be able to report to the Commission on the outcome of any meeting they do have with them so the Commission knows where everything is going on that front. The one thing that they want to proceed with is to get a bond set up for the second phase. He asked how they get started with that process.

Mr. Giarrusso noted that they do it the same way they did for the previous phases. Provide the next phase in the phasing plan and identify the area they are looking for the next phase and the City will provide an estimate for the bond. The letter should be directed to the Commission office. He noted that the reality is that there is no way the next phase will encompass the whole scope of violation that is out there from a bond perspective. The Commission needs to address that there is work out there that is in violation because without a bond, it either needs to be restored or become legal.

Mr. Young noted that it is there intent to provide a bond or compatible document that gives the Commission the warm fuzzy feeling they need to have.

Mr. Giarrusso noted that Mr. Kady is well aware of some of the options since they have been talking about it since last year. He suggested to the Commission that the applicant provide a definite plan showing the areas of over cutting. He asked when that would be submitted.

Mr. Young noted that it is easy to say, but it is harder to get the number. He thought he would have it today. It will be done by the joint meeting

Mr. Giarrusso felt it is appropriate for the Commission to issue a verbal cease and desist beyond station 8+00. They could start with that with the reality that they will either have to amend or issue a complete Enforcement Order. That information is going to be important to the Commission in how it determines any future action. The more detailed that information, the less work intensive it would be on his part verifying certain information that the Commission would be looking for.

Mr. Young noted that the information he sees coming together right now is very detailed and should be providing exactly what the Commission is interested in as well as himself. He has to know where these over cutting areas are located.

Ms. Lamoureux asked Mr. Giarrusso to clarify that what he was looking for is a verbal cease and desist beyond 8+00 with future issuance of an enforcement order on August 20, 2009.

Mr. Giarrusso noted that at this point, the Commission does not even need to issue a cease and desist because they do not have the right to work beyond 8+00. The only thing the Commission has allowed on the site was any mediation associated with Enforcement. The Commission could issue a final enforcement order at the next meeting when they have all the information.

Mr. young noted that they are currently projecting some work out to station 15+00, which is allowed by the NHESP enforcement order. He does not think it is anything that would have an adverse affect on wetlands.

Mr. Giarrusso asked what the scope of the work would be.

Mr. Kady stated that the City Engineering Department had asked them to do everything they could to control the water flow down the street, so they did do the silt sacs and hay bales and the other thought was to start trying to get the curbing in place on the road that exists as it stands now. The curbing would be able to go in up to station 12+00, which would help control water.

Ms. Lamoureux noted that is construction. She does not have a problem with silt sacs, but curbing is building a road.

Mr. Young added that it is also erosion control.

Mr. Giarrusso noted that they could solve that with a lot of ways using hay bales.

Mr. Young added that permanent erosion control is much better than temporary.

Mr. Kady noted that the question was what would they be doing. They are not doing anything obviously, but they are trying to be prepared for when it is ready and everybody is in agreement with what they are doing. They will do whatever the Commission wants.

Mr. Giarrusso recommend that they talk with Engineering to see if the curbing is something that they feel is a necessity. He agrees that it is a permanent method of controlling runoff, but it is a significant disturbance that is not bonded.

Mr. Kady noted that this is not going to happen without the appropriate bonds in place.

Mr. Giarrusso noted that if the bond is in place, then they are in compliance.

Mr. Kady noted that the goal is to have that all put together before the joint meeting.

Mr. Young noted that if they get the bond in place, then station 15+00 is the limit.

Mr. Giarrusso noted that to expedite this process, the first thing they need is a letter of request outlining what they are looking for the next phase.

Mr. Kady noted that they have work that was done from 8+00 to 24+00 and in a cursor look with their own engineering firm, in terms of bonding numbers from 8+00 to 24+00, they are through all of the sections now that require all the underground systems and now it goes to conventional drainage from station 15+00 on. There are no more storm captors or underground detention systems at all; it becomes conventional by drainage and under drains. It might be advantageous to all if they say look at creating a bond from station 8 to station 24+00.

Ms. Lamoureux noted it was up to them; it is whatever they do.

Mr. Giarrusso noted that is fine, but the bottom line is they want to be sure that they can control the site. If the Commission said that they have 200 acres left to get bonded and they wanted to come in for all 200 acres, the Commission would be quite happy with that, because they would then take all that area that is in violation because of no bond and legitimize it.

Mr. Young asked if all the information he needs to get the bond estimate just the station numbers.

Mr. Giarrusso noted that was correct.

Mr. Young noted that it is the intent of this modification request to capture all of the variances and put them on the table and get them resolved one way or another and move forward. They Intend to envelope everything together in this change and move forward in a more organized fashion.

Ms. Lamoureux noted that because these amendments will affect both the Commission and Community Development, they decided that they would have a joint public hearing on the

August 20, 2009, the first item on the Commission's agenda so everyone would be on the same page. She asked if the existing bonds have been extended.

Mr. Giarrusso explained that the seizure process would take place should they not be extended by the September 3, 2009 meeting.

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

1) Mr. Giarrusso explained that Bob Boone of Mass Highway has requested that the guardrail on route 213 contains a 3 strand cable system and they have found this to be insufficient. They now need to install a 4 strand cable system. Work will all be done in the median strip and it is his opinion it is barely in the Commission's jurisdiction. He considers it maintenance of existing structures. The Commission agreed and no filing is necessary.

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

IX. ADJOURN: A motion was made by Mr. Kazanjian; seconded by Mr. Parsons; 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

09/03/2009
Date Approved