

Kingston Conservation Commission Minutes

October 2, 2007

7:00p.m. The chairman called the meeting to order.
Present: Gary Langenbach (chairman), Sue Chamberlain, Marilyn Kozodoy, William Underhill, William Kavol
Staff: Maureen Thomas, Conservation Agent and Brandi Gordon, Secretary

Reviewed the draft minutes of July 24, 2007

Gary Langenbach recused himself from the Nature's Edge portion of the minutes.

William Underhill motioned to accept the minutes of July 24, 2007 as corrected.

Marilyn Kozodoy seconded the motion.

7:05p.m. **VOTE: 5-0-0**

Reviewed the draft minutes of August 7, 2007

Gary Langenbach recused himself from the Nature's Edge portion of the minutes.

Marilyn Kozodoy motioned to accept the minutes of August 7, 2007 as corrected.

William Underhill seconded the motion.

7:07p.m. **VOTE: 5-0-0**

Discussion regarding rain garden installation by the Jones River Watershed Association, the filing of an after the fact RDA and a request to waive the filing fee by the applicant

William Underhill motioned to waive the filing fee for 55 Landing Road.

William Kavol seconded the motion.

7:09p.m. **VOTE: 5-0-0**

Discussion regarding:

- CPC application
- Filing for restoration on 49R Main Street
- Jean Landis-Naumann to discuss communication between the Conservation Commission and the Selectmen

Agent Updates:

- stormwater stenciling
- Nature's Edge appeal and the on site meeting

7:30p.m. Continued a Public Hearing for a Request for Determination of Applicability for 101 Independence Mall Way and Raboth Road, Map 89, 83 & 83, Lots 4, 11-1 and 11 respectively

Present: Mark Wagner, George Mariani, Gary Stafford, Rick Tabaczynski

Maureen Thomas stated that she had received the outside review from Amy Ball last Friday and agreed with most of the delineation except for a portion of the Riverfront Area delineation. She believed that a semi-circle should be depicted on the plans where the stream turns perennial.

George Mariani stated that he did not agree with Amy Ball's interpretation of the Wetland Protection Regulation. He stated that the semi circle would not change the scope of the work because their proposed work would be outside of the arc. He also stated that Amy Ball was attempting to contact DEP for clarification.

Discussion regarding using a semi circle for the beginning of the perennial stream

The applicant submitted new plans to the Commission depicting the semi circle.

Discussion regarding a second semi circle for the end of the perennial stream

7:52p.m. **James Dehner arrived.**

George Mariani stated that the regulations only addressed the beginning of a perennial stream.

James Dehner stated that there could be several different resource areas within a pond.

Gary Stafford discussed an adjudicatory hearing involving a stream flowing into an impounded area.

Discussion regarding plan having one or two arcs

Sue Chamberlain motioned to continue the Public Hearing.

William Underhill seconded the motion.

**8:08p.m. VOTE: 5-1-0 (William Kavol opposed)
Continued to October 16, 2007 @ 7:05p.m.**

8:11p.m. Continued a Public Hearing for a Notice of Intent for Lake Street / Chipman Way, Map 14 & 15, Lots 1, 5 & 6 and Lot 2

Present: Lawrence Winokur, Esq., John Massanro, Alex Spiegel, Theo Kindermanns

Lawrence Winokur stated that they moved the building outside of the buffer zone.

John Massanro reviewed the changes to the plans with the Commission and the public. He stated that the grading and disturbed line was pulled from the 25' no disturb buffer zone and the entry drive was pulled away from the vernal pool.

Maureen Thomas stated that on sheet LR 3.02 and 3.03 of the plans, it shows the construction entrance within 100' of the vernal pool.

John Massanro stated that the construction entrance had been moved.

Maureen Thomas asked if there was any information regarding the existing fertilizer and salt use.

Alex Spiegel stated that they currently use residential type fertilizer and would like to continue with what they use. He also stated that they were open to any suggestions. He stated that they use magnesium chloride for de-icing.

Discussion regarding use of fertilizers

The chairman asked if the applicant would consider placing a conservation restriction on the wetland resource areas east of Chipman Way.

Lawrence Winokur stated that he would look into a conservation restriction.

William Underhill motioned to continue the Public Hearing.
Marilyn Kozodoy seconded the motion.

8:36p.m.

VOTE: 6-0-0

Continued to 10/16/2007 @ 7:15p.m.

Gary Langenbach recused himself as an abutter to the Elm Street public hearing.

James Dehner became acting chairman.

8:38p.m.

Opened a Public Hearing for a Notice of Intent for Elm Street, Map 64, Lots 29-1 thru 29-10, 35, 35-1, 36 and 38

Present: Brad Holmes, Brian Wallace, Andrew Weiss

Brad Holmes presented the project to the Commission and the public.

Maureen Thomas presented the Commission with a draft of special conditions which were developed during the RDA process. She stated that the Order of Conditions also had general conditions. She also stated that she would not recommend a site visit because the Notice of Intent application was similar to the RDA.

Sue Chamberlain stated that she wanted to confirm that when the turtle restoration was being conducted with the least amount of impact.

Brad Holmes stated that everything would be done by hand.

Maureen Thomas stated that the proposed area for creating a turtle nesting site was within 100' of a vernal pool, but would be a habitat enhancement and activity would be performed by hand.

Brian Wallace stated that most of the work within the 100' setback was approximately 75' away from the vernal pool.

James Dehner requested that the applicant use sterile materials for the erosion controls.

Brad Holmes stated that the erosion controls would be weed free.

Maureen Thomas stated that the Determination of Applicability was appealed and it was possible that the Order of Conditions would only be issued under the By-Law.

Discussion regarding superseding Determination of Applicability versus Orders of Conditions

Paula McDonough from 148 Elm Street asked who determined that the nesting areas were suitable.

Brad Holmes stated that Dr. John Regosin from the Natural Heritage and Endangered Species program determined that the turtle nesting areas were suitable.

Paula McDonough asked if there were any studies to date on the use of the turtle tunnels.

The chairman stated that this issue was beyond the scope of the Conservation Commission due to its location and information from NHESP.

Paula McDonough questioned whether it was in the Conservation Commission's jurisdiction.

Maureen Thomas stated that only activity within the 100' buffer zone was the Commission's jurisdiction. She also stated that the turtle tunnel was outside of the 100' buffer zone.

Pine duBois asked why the turtle barriers couldn't be moved outside of the 100' buffer zone.

Brian Wallace stated that based on studies, they were located in the ideal spot.

Pine duBois stated that she was looking for what makes the area the most rational.

James Dehner stated that the Commission had walked the site and Natural Heritage and Endangered Species Program (NHESP) was recommending the location.

Brad Holmes stated that the location was 50' from the town's 25' no disturb zone.

Pine duBois stated that the path of least resistance for the turtles was not being followed. She asked why the Commission was not giving the maximum protection of 100'. She stated that the intensity of the development would put stress on the habitat that uses the area.

Brian Wallace stated that they contact NHESP first to get professional assistance. He stated that the project was designed around the turtle habitat.

Pine duBois requested correspondence from John Regosin.

Paula McDonough asked if the mitigation site would be monitored.

Brian Wallace stated that the entire area would be monitored annually by a third party.

Maureen Thomas asked what progress had been made on the conservation restriction.

Brian Wallace stated that they had a site visit with Wildlands Trust on October 31, 2007.

Paula McDonough requested that the Public Hearing be continued.

Marilyn Kozodoy asked if it was worthy of continuing to obtain new information.

Maureen Thomas stated that it is often required that the conservation restriction be established before the issuance of a Certificate of Compliance or Building Permit.

The chairman stated that it could be a condition in the Orders of Conditions.

Maureen Thomas stated that the Operations and Maintenance Plan would be handled by the Planning Board, but could also be submitted to the Conservation Commission.

Pine duBois stated that although the Commission was familiar with the project, the abutters were new to this and requested information.

Brian Wallace stated that the abutters were notified of every Public Hearing via Public Hearing Notices placed in the paper as well as abutter notification mailed to their homes for the ANRAD filing. The abutters were aware that there was a proposed project.

James Dehner asked the applicant if they were willing to continue the Public Hearing.

Brian Wallace stated that they were not willing to continue the Public Hearing but were willing to work with Pine.

Paula McDonough asked why there were already special conditions drafted.

Maureen Thomas stated that in order to help the Commission with their decision on the Determination of Applicability filed previously, she had compiled a draft list of potential special conditions. Only minor conditions were allowed for a Negative Determination of Applicability. The Commission issued a Positive Determination in order to write a more comprehensive Order of Conditions.

William Underhill motioned to close the Public Hearing. Marilyn Kozodoy seconded the motion.

Sue Chamberlain stated that she was concerned that the abutters still had unanswered questions and were new to this, but she also understood that the applicant had been before the board on numerous occasions with this plan.

9:40p.m. VOTE: 5-0-0

William Underhill motioned to issue Orders of Conditions with special conditions.

Sue Chamberlain seconded the motion.

9:40p.m. VOTE: 5-0-0

Gary Langenbach returned as chairman.

9:43p.m. Continued a Public Hearing for a Notice of Intent for 5 Grandview Avenue, Map 38, Lot 92

Present: Joe Webby, Paul Mullen

Joe Webby stated that they added a drywell for the roof runoff and the existing deck to be replaced.

The chairman stated that instead of using 2' by 8' planks, they should use 1' by 4' planks which would allow more spacing and sunlight for any habitat.

Maureen Thomas stated that the soil borings were only performed to determine what building material to use. It could be conditioned without the receipt of the soil borings.

Discussion regarding possible conditions

Sue Chamberlain motioned to close the Public Hearing.

James Dehner seconded the motion.

9:56p.m. VOTE: 6-0-0

Sue Chamberlain motioned to issue Orders of Conditions with special conditions.

William Underhill seconded the motion.

9:58p.m. VOTE: 6-0-0

10:01p.m. Opened a Public Hearing for a Request for Determination of Applicability for Pine Hill Road, Map 79, Lot 2-20

Present: Greg Morrison, Dana Miller

Greg Morrison presented the project to the Commission.

Discussion regarding the location of the vernal pool

Maureen Thomas asked if the applicant was willing to comply with the conditions issued by NHESP.

Greg Morrison stated yes.

Sue Chamberlain motioned to close the Public Hearing.

James Dehner seconded the motion.

10:18p.m. VOTE: 6-0-0

Sue Chamberlain motioned to issue a Negative Determination of Applicability with conditions.

James Dehner seconded the motion.

10:19p.m. VOTE: 6-0-0

Informal discussion with Pine duBois regarding a project already in progress at 55 Landing Road

William Underhill motioned to adjourn.
Sue Chamberlain seconded the motion.

10:40p.m. VOTE: 6-0-0