

# Kingston Conservation Commission Minutes

## December 21, 2010

7:00p.m.

The chairman called the meeting to order.

**Present:** Sue Chamberlain (chairman), Gary Langenbach, Marilyn Kozodoy, William Underhill

**Staff:** Maureen Thomas, Conservation Agent and Brandi Gordon, Secretary

Agent Updates:

- 187 Indian Pond Road – waiting for woodchips to freeze to then be removed to cause less damage to the wetlands
- Wapping Road Bogs – spoke with Gary Makuch from DEP and work appears to be exempt. Picking and maintenance has occurred within the last five years keeping the bog from be abandoned.
- School Street issue – memo received from Henny Walters stating that the “Board of Health concluded that the entire matter falls within the jurisdiction of the Conservation Commission and that it will not order a Title 5 enforcement letter at this point in time.”
- Cranberry Watershed Preserve (CWP)– fence posts ordered to repair the fence
- EB Sampson Fund – request funds to secure a dumpster to clean up Cranberry Watershed Preserve property and barn. Also request funds for an internship for maintenance of conservation properties
- NRCS - CWP for the WHIP restoration project of Pine Brook and engineer will be present to discuss design plans on December 23<sup>rd</sup> at noon.
- Wage and Personnel Request – support letter from Commission in favor of a grade increase for the Conservation Agent from an S-5 to an S-6 beginning in FY12
- BioMap 2 - updates the 2001 *BioMap* and 2003 *Living Waters* plans and expands upon those to include vulnerable fish, wildlife and habitats identified in the DFW State Wildlife Action Plan
- New Commissioner – Matt Fahey will be appointed to the Commission on December 28, 2010

Reviewed the draft Minutes of November 16, 2010

Marilyn Kozodoy motioned to accept the minutes of November 16, 2010 as corrected. William Underhill seconded the motion.

7:25p.m.

**VOTE: 4-0-0**

Reviewed the draft minutes of November 29, 2010

Gary Langenbach motioned to accept the minutes of November 29, 2010 as submitted.  
Marilyn Kozodoy seconded the motion.

**7:29p.m. VOTE: 4-0-0**

Discussion regarding cancelling the January 4, 2011 meeting

Marilyn Kozodoy motioned to cancel the January 4, 2011 Conservation Commission meeting.

William Underhill seconded the motion.

**7:29p.m. VOTE: 4-0-0**

**7:30p.m.** Continued a Public Hearing for a Request for Amendment/Deviation for Nobadeer Village, Map 42 Lots 4-8 through 4-15, Map 52 Lots 4-1 through 4-7 and Map 52 Lots 4-18 through 4-32

**Present:** Matt Dacey

Maureen Thomas stated that she had contacted the property owners at 40 Nobadeer Circle regarding the two drywells that needed to be repaired and they had said that they had not been repaired yet.

Matt Dacey stated that was accurate. He stated that the ground was frozen but should loosen up in the next couple of weeks where he would be able to repair the issue.

Discussion regarding the remaining items to be completed for a Certificate of Compliance to be issued

Gary Langenbach motioned to continue the Public Hearing.

Marilyn Kozodoy seconded the motion.

**7:39p.m. VOTE: 4-0-0**  
**Continued to January 18, 2011 @ 7:30p.m.**

**7:45p.m.** Continued a Public Hearing for a Notice of Intent for 105 Monks Hill Road, Map 89, Lot 11

**Present:** Marti Nover, Henry Nover, Dr. Paul Taylor

*Exhibits:*

- *Notice of Intent dated September 28, 2010 and received November 19, 2010*
- *Plan of Proposed Driveway, Flame of Fire Covenant Church dated October 28, 2010*
- *MA Division of Fisheries and Wildlife letter dated December 15, 2010 from Thomas W. French, Ph.D.*

Henry Nover reviewed the plans with added colors for readability. He stated that there would be .3 acres of disturbance within the buffer zone.

Maureen Thomas stated that if this project were permitted, it would be precedent setting.

Gary Langenbach asked if the applicant was considering a guardrail.

Henry Nover stated that they were considering a guardrail or boulder barrier.

Gary Langenbach stated that he was concerned about setting precedence and the stabilization of the slope.

William Underhill stated that it was a creative challenge for this type of development and was also concerned about setting a precedent and stabilization of the slope.

Marilyn Kozodoy stated that in 2004 the Commission changed the by-law to have a 100' no disturb zone to a vernal pool. She stated that even 100' was inadequate and was not comfortable with the proposed project.

Henry Nover stated that there was a pre-existing driveway within the 100' no disturb zone to the vernal pool.

The chairman stated that if there was no alternative access then the situation would be different. She stated that she personally had a very similar situation and she shares a driveway instead of impacting wetlands.

Marti Nover stated that they had discussed gating off the other driveway if the new driveway was approved.

Dr. Paul Taylor stated that depending on the steepness of the new driveway, they may need to use the existing driveway during snow events and for emergencies.

William Underhill asked what type of traffic was typical.

Dr. Paul Taylor stated that it was sporadic. Typically there would be around 15 vehicles on the weekends and the caretaker would be there during the week.

Paul Costa, abutter, stated that the building was a single family dwelling with a change in use. He stated that traffic goes by his house constantly and some events have over 50 cars. He stated that the easement was designed for a single family home and the change in use has been greatly disturbing to his family. He discussed the history of the property, driveway and permitting.

Maureen Thomas stated that the Commission never approved the driveway where it exists today. The Commission issued an Order of Conditions disallowing it and then requiring restoration. She stated that work occurred prior to obtaining permits. The minutes during this process clarifies what occurred.

Gary Langenbach stated that there was a hunting lodge on the property that had then burned down prior to the single family home.

Paul Costa stated that it would be less tragic to have the access that was proposed and allow the other access to re-vegetate.

Maureen Thomas stated that there were provisions in the By-law and Regulations that empowers the Commission to deny a project.

Maureen Thomas read the following aloud:

- KWPR section 2.03 – denial of permit
- KWPR section 2.09 – waiver
- KWPR section 5.05 – Order of Conditions
- KWPR section 6.0 – Performance Standards
- KWPR section 6.01 – Buffer Zone
- Kingston Wetlands Protection By-law – Definition of Vernal Pool
- Article 5 – Permit and Conditions

The chairman stated that the Commission needed to protect the eight interests of the Act. She stated that if this project were to be permitted then others will want to be permitted as well.

Paul Costa stated that the proposal was less invasive to the vernal pool.

Gary Langenbach stated that the proposed project was a cart path that was expanded by the previous owner. The traffic that would be using it would make it worse. He stated that he was concerned with the erosion and stormwater.

Paul Costa stated that he would encourage the Commission not to vote on this until other information was considered.

Marilyn Kozodoy motioned to close the Public Hearing.

William Underhill seconded the motion.

**8:38p.m.**

**VOTE: 4-0-0**

The chairman stated that if approved, this would be precedent setting and very disruptive to habitat. She stated that there was another access to the property and that the Commission had made a commitment to vernal pools with a 100' no disturb zone.

William Underhill stated that approving this project would be precedent setting. Disturbed conditions would be extreme and conditions in the Orders would need to be extremely severe.

Marilyn Kozodoy stated that the change in property use was extraordinarily unfortunate but that discussion had to be secondary to what the Commission is charged with upholding. More training and research shows how important it is to protect vernal pools.

Gary Langenbach stated that the change of use for the building was a zoning issue. He stated that the 100' no disturb zone to a vernal pool was in the Regulations in 1996 and then was added to the By-law. He stated that the Commission had been adamant in protecting vernal pools. Altering the area to a 1 to 1 slope causes concerns relating to drainage, stabilization and clearing.

Discussion regarding reasons for denial of the project

William Underhill motioned to deny the project because the interests of the Wetland Protection By-law and Act could not be adequately protected.

Marilyn Kozodoy seconded the motion.

**8:56p.m.**

**VOTE: 4-0-0**

Marilyn Kozodoy motioned to adjourn.

William Underhill seconded the motion.

**8:59p.m.**

**VOTE: 4-0-0**