

Kingston Conservation Commission Minutes

July 10, 2007

- 7:00p.m.** The chairman called the meeting to order.
Present: Gary Langenbach (chairman), Marilyn Kozodoy, Sue Chamberlain, James Dehner, William Underhill
Staff: Maureen Thomas, Conservation Agent and Brandi Gordon, Secretary
- Discussion regarding MACC suggestions for revisions to the “Rules for Hiring outside Consultants.”
- 7:10p.m.** **William Kavol arrived.**
- The paragraph under “Notice” shall state:
- The Conservation Commission shall give notice to the applicant of the amount of the fee to be charged for hiring an outside consultant and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is delivered with return receipt requested. Once payment is received, an outside consultant shall be chosen and the applicant shall be notified of the selection and identity of the consultant. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within 5 days of the date notice is given.”
- William Underhill motioned to accept the changes to the Rules for Hiring outside Consultants pursuant to GL Ch. 44 § 53G and the September 26, 2006 revisions to GL Ch. 44 Section 53G.
Sue Chamberlain seconded the motion.
- 7:18p.m.** **VOTE: 6-0-0**
- Sue Chamberlain motioned to reorganize.
Marilyn Kozodoy seconded the motion.
- 7:20p.m.** **VOTE: 6-0-0**
- William Underhill motioned for Gary Langenbach to remain chairman.
Marilyn Kozodoy seconded the motion.
- 7:22p.m.** **VOTE: 6-0-0**

Marilyn Kozodoy motioned for James Dehner to become Vice Chairman.

William Underhill seconded the motion.

7:23p.m.

VOTE: 6-0-0

Discussion regarding the document entitled "Proposal Identification" from the Community Preservation Committee

7:27p.m.

Informal Meeting with Craig Solari regarding 19 Station Street

Maureen Thomas stated that the Orders of Conditions were still valid but work never occurred because the Solari's were unable to purchase a piece of property for their septic system. She stated that fill has been placed on the property and she requested erosion controls to be installed. She also stated that the piles of fill were not for the construction of a house that was permitted through the Orders of Conditions.

Craig Solari gave history of the property. He stated that it was his intention to alleviate a water problem at his property across the street by removing some of the hill and installing a drain.

The chairman discussed history of the property and Notice of Intent filing.

The chairman asked how many truck loads were dumped on the property.

Craig Solari stated that there were approximately 30 truck loads.

The chairman stated that Mr. Solari should stabilize the edge of the slopes.

Maureen Thomas stated that there was a stockpile next to the bog to repair the driveway. She stated that a silt fence should be installed by the bog if they were not proposing to repair the driveway quickly.

Marilyn Kozodoy motioned to issue an enforcement order to grade the edges of the stockpiles to reduce slope adjacent to erosion controls and remove brush within the 25' no disturb buffer zone.

William Kavol seconded the motion.

8:05p.m.

VOTE: 6-0-0

Reviewed the minutes of May 15, 2007

William Underhill motioned to accept the minutes of May 15, 2007 as corrected.

William Kavol seconded the motion.

8:11p.m. VOTE: 6-0-0

Discussion regarding a Request for Extension of an Order of Conditions for Ryan's Way

Marilyn Kozodoy motioned to extend the Orders of Conditions for Ryan's Way for a period of one year.

William Underhill seconded the motion.

8:16p.m. VOTE: 6-0-0

Agent Updates

- 70 Indian Pond Road
- 15 Landing Road – yard waste on land along river

Marilyn Kozodoy motioned to issue an enforcement order and fine to the property owner of 15 Landing Road.

William Kavol seconded the motion.

8:23p.m. VOTE: 6-0-0

Agent Updates continued

- 208 Brookdale Street – fence posts removed
- 75 Wapping Road - fine

Sue Chamberlain motioned to rescind the fine to be issued to Roger Correira, property owner of 75 Wapping Road.

William Underhill seconded the motion.

8:30p.m. VOTE: 5-1-0 (William Kavol opposed)

Agent Updates cont.

- Off Wapping Road and Ring Road (Kelleher) – submit report from wetland scientist

8:34p.m. Continued a Public Hearing for a Notice of Intent for Ryan's Way, Map 52, Lots 3-1 thru 3-14

Sue Chamberlain motioned to continue the Public Hearing.

Marilyn Kozodoy seconded the motion.

8:35p.m. VOTE: 6-0-0

Continued to July 24, 2007 @ 8:15p.m.

William Underhill recused himself as an abutter to 37 Nottingham Drive

8:45p.m. Opened a Public Hearing for a Request for Determination of Applicability for 37 Nottingham Drive, Map 11, Lot 29
Present: Larry & Lisa Iarossi

Maureen Thomas stated that a complaint was received about the applicant installing a block wall. She stated that the closest point of the wall to the wetlands was 26' and was installed to reduce erosion.

The chairman asked if there was room for wildlife access.

Maureen Thomas stated that the wall tapers around the corners.

William Kavol motioned to close the Public Hearing.
Sue Chamberlain seconded the motion.

8:47p.m. **VOTE: 5-0-0**

William Kavol motioned to issue a negative determination.
Sue Chamberlain seconded the motion.

8:47p.m. **VOTE: 5-0-0**

8:48p.m. **William Underhill returned to the Commission.**

9:00p.m. Opened a Public Hearing for a Notice of Intent for 20 Brentwood Road, Map 8, Lot 92
Present: Joe Webby

Joe Webby presented the project to the Commission and the public.

Sue Chamberlain stated that the applicant would still be within outer riparian zone if an acceptable perc was found.

The chairman stated that he could not see damaging a resource area if a septic system would not fit.

The chairman read 5.2.2.1 from the Zoning Bylaw Intensity of Use Regulations under 5.2 dimensional requirements and 5.2.2 Lot Area.

Maureen Thomas stated that area was designated as core habitat by Natural Heritage and Endangered Species Program and referred to bm 1164 of the Kingston Bio Map of Species and Natural Communities.

William Underhill asked how the test pits would be dug.

Joe Webby stated that they would use a backhoe with the ability to dig 10' deep.

James Dehner asked why there were no elevations on the plans.

Joe Webby stated that he felt the Riverfront Area and resource areas were important.

Maureen Thomas read a list of reasons for the power to deny a project.

Heidi Olson, abutter, stated that the brook named on the plans should be Howard's Brook and not Halls Brook which is further downstream. She stated that the abutters were listed on the plan but not the property owner. She felt that property downstream from this property could be affected by any new disturbance. She also stated that the map and lot were incorrect on the Public Hearing notice that she received from the applicant.

Maureen Thomas stated that the map and lot were incorrect on the filing. Under a Request for Determination of Applicability, the applicant is not required to notify abutters.

James Dehner requested field notes from Bob Gray.

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

9:28p.m.

VOTE: 6-0-0

Continued to July 24, 2007 @ 8:00p.m.

Site visit July 20, 2007 @ 5:15p.m. on site

9:30p.m.

Opened a Public Hearing for a Request for Determination of Applicability for 21 Wharf Lane, Map 59, Lot 30

Present: Dick Savickey, Peter Rosen, Matthew Watsky, Esq.

Matthew Watsky presented photographs to the Commission and gave a brief narrative of the project.

Peter Rosen reviewed the report that was submitted with the Request for Determination of Applicability.

Maureen Thomas asked if the area would be considered land subject to tidal action.

Matthew Watsky stated that it was not subject to tidal action because the mean high tide was lower than the surface.

The chairman stated that the Commission would set a precedent by allowing the construction of a vertical structure blocking storm flowage. He stated that the Commission could issue a Positive Determination and the applicant could appeal or the applicant could give money to be held in escrow for the Commission to hire a consultant to review the proposed project.

Maureen Thomas stated that the wall extension was within the 25' no disturb zone of a resource area. She stated that the Commission had discussed allowing the installation of an iron gate to allow storm flow at a previous meeting.

Courtland Harlow III, an abutter, stated that he was in support of Mr. Savickey's project. He described the flow of waves onto the property and stated that it was a unique structure on land that had already been disturbed.

Peter Rosen stated that the wharf was an existing disturbance. He also stated that during the highest tide, the site could not support a 3' wave and referred to figure 7 of his presentation.

The chairman stated that the main concern was allowing a vertical wall within the velocity zone.

Maureen Thomas asked if there was any damage to the existing wall.

Dick Savickey stated that the waves come over the wall. It leaves approximately 5" of water in the driveway like a stream and hits the northerly wall. He stated that the stone wall has never been repaired since it was built in the 1960's.

Maureen Thomas stated that she spoke with the Building Inspector and the extension would not require a building permit. She also stated that Highway Department Superintendent didn't feel the project would have any impact on the roadways.

Pat Harlow, an abutter, stated that she had lived in the house to the left of the wharf. She stated that she never had standing water under the house or the deck and there was no sand or wall erosion.

Maureen Thomas stated that she believed that this was a minor project and would not have adverse impacts.

William Kavol stated that he did not see a problem with allowing the extension of the wall.

Marilyn Kozodoy stated that she would feel more comfortable with a second opinion.

Matthew Watsky stated that the Commission had more than ample evidence in front of them to reach a conclusion for a 4' extension of a wall. He stated that it was a de minimis amount of work and requested a Negative Determination with conditions.

Russ and Delila Boidleau, abutters, stated that they were in support of the project and had never seen any negative effect to the property.

Ray Dumont, an abutter, stated that the project would not be setting precedence because the property is one of a kind.

Matthew Watsky asked if there would be any measurable impacts.

Peter Rosen stated that there would be no measurable impacts.

William Underhill motioned to close the Public Hearing.

William Kavol seconded the motion.

10:28p.m. VOTE: 6-0-0

William Underhill motioned to issue a Negative Determination of Applicability with conditions.

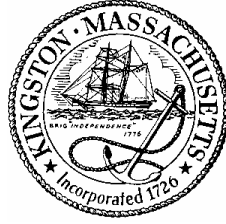
Sue Chamberlain seconded the motion.

10:30p.m. VOTE: 6-0-0

William Underhill motioned to adjourn.

Sue Chamberlain seconded the motion.

10:30p.m. VOTE: 6-0-0



Kingston Conservation Commission

Rules For Hiring Outside Consultants Under GL Ch. 44 § 53G

Purpose. As provided by GL Ch. 44 § 53G, the Kingston Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such expert services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), the non-zoning Kingston Wetlands Protection Bylaw, G.L. Chapter 13, Articles 1 – 12, the Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.

Special Account. Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 § 53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

Consultant Services. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by, and report only to, the Commission and/or its Agent or Administrator.

Notice. The Conservation Commission shall give notice to the applicant of the amount of the fee to be charged for hiring an outside consultant and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is delivered with return receipt requested. Once payment is received an outside consultant shall be chosen and the applicant shall be notified of the selection and identity of the consultant. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five (5) days of the date notice is given.

Payment of fee. The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 and the Kingston Wetlands Protection Bylaw and Regulations. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant review identified as necessary by the Commission. The Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g. the questions it needs answered.

Appeals. The applicant may appeal the selection of the outside consultant to the selectboard who may disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the selectboard and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

Return of Unspent Fees. When the Commission's review of a project is completed and an Order of Conditions issued, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.