

Kingston Conservation Commission Minutes

August 19, 2008

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

Reviewed the draft minutes of July 15, 2008

James Dehner motioned to accept the minutes of July 15, 2008 as corrected.

William Underhill seconded the motion.

7:06p.m. **VOTE: 5-0-0**

Discussion regarding returning funds for Conservation Consultant Funds

James Dehner motioned to return the remaining funds for Conservation Consultant Accounts 041-26612 (Wingate Healthcare-Lake St), 041-26607 (Delwin LLC Barrows Brook), and 041-26609 (Tucci Brook Realty Trust Off Brook St.) and close the accounts.

Sue Chamberlain seconded the motion.

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

James Dehner motioned to transfer the remaining funds for Conservation Consultant Account 041-26613 (Independence Center LLC) to the General Fund.

Sue Chamberlain seconded the motion.

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

Agent Updates:

- Route 27 – sedimentation to Howard's Brook

- Cole Avenue – site visit with Peter Fletcher revealed more yard waste and leveling of some previously existing yard waste and some new material that was graded to create a parking space. The property owner is going to try to find out who created the parking space and speak to his tenants regarding the disposal of yard waste
- 7 Baker Avenue – dumping yard debris/yard waste on Cole Avenue Lot 105
- 98 Main Street – property owner removed pipe that was discharging washing machine wastewater and connected it to town sewer
- 18 Brook Street – sedimentation to Lucas Pond

Sue Chamberlain motioned to issue an enforcement order and fine to Bill O'Brien for sedimentation to Lucas Pond.

William Underhill seconded the motion.

7:14p.m. VOTE: 5-0-0

7:14p.m. William Kavol arrived.

Agent Updates continued:

- 26 Shore Drive – seasonal staircase installed on coastal bank without a permit; notice of violation sent
- 8 Riverside Drive – installed a fence within the 100' buffer and the riverfront area of the Jones River; enforcement order sent
- 83 Howland's Lane – deadline set for August 12th to submit NOI
- 49R Main Street – new deadline of August 25th for completing excavation, seeding with conservation seed mix and submitting a revised planting plan
- 9 Smelt Pond Road – enforcement orders sent via certified mail went missing through the USPS
- Smelt Pond Bogs – cease and desist issued by Paul Armstrong for attempting to remove more than 1,000 cubic yards of fill from the Smelt Pond Bogs and for excavating within 10 feet of historic high groundwater
- 8 Cedar Lane – removed everything from the 25' no disturb buffer zone, planted 6 high bush blueberry bushes and need about 6 more
- Old Orchard Lane – more cutting has occurred on vacant lot, verbally told to cease and desist, the commission agreed to send an Enforcement Order

- Ben Wierman – Eagle Scout – would like to install a boardwalk on Sampson Park
- Open Space and Recreation Plan updated, comments due by September 5, 2008
- 45 Howlands Lane – Clive Beasley asking Commission to determine if 41 and 43 Howlands Lane is buildable according to the wetland line that was approved.
Maureen Thomas read the letter dated August 15, 2008 from Clive Beasley to the Conservation Commission.

The Commission agreed to draft, review and sign a letter to be issued to Clive Beasley.

7:33p.m. Continued a Public Hearing for a Notice of Intent for 24 Sunset Road, Map 59, Lot 8 & 10

Present: Andrew Watsky, Esq., Greg Morse, Dr. & Mrs. Harlow, Brian Cauffield, Lenore White

Maureen Thomas stated that the Commission hired Brian Cauffield of Woods Hole Group to review the delineation.

Brian Cauffield stated that he reviewed the mapping of the flood zone, delineation of the coastal bank and the delineation of the velocity zone. He stated that he did not find any discrepancies in the flood zones or the coastal delineation. The proposed deck within the coastal zone buffer could be designed to meet the FEMA flood zone requirements.

William Underhill asked how a cantilevered deck would be attached to the dwelling.

The chairman stated that the deck would be attached to the house above the velocity zone.

Brian Cauffield stated that a certificate of lowest adjacent grade would certify that the structure is outside of the flood zone.

Maureen Thomas stated that if the deck was attached as designed it would still be 2' above the flood zone for the Mass Building Code.

Brian Cauffield stated that the lowest member of the structure would have to be above elevation 15.

The chairman asked if there was any new information to present to the commission.

Andrew Watsky stated that the plan as shown was what the applicant was proposing. He asked Commission Consultant Brian Caulfield if construction of the design as presented would cause any adverse impact to land subject to coastal storm flowage.

Brian Cauffield stated that there shouldn't be any issues if the plan adhered to the Mass. Building Code.

Andrew Watsky stated that the coastal bank was already heavily modified and reasonably stabilized. He stated that the pier members would not modify or affect the area.

The chairman stated that Coastal Zone Management's (CZM) opinion is that any structure within the buffer zone would cause adverse impacts.

Maureen Thomas asked if the applicant had proposed an alternative design due to the proposed work within the 25' no disturb buffer zone.

Andrew Watsky, Esq., stated that they had not proposed an alternative design because they did not believe there were any adverse impacts.

Maureen Thomas stated that she had felt that no one had addressed the 25' no disturb buffer zone and how it would be affected. She read section 6.01. of the Kingston Wetland Protection Regulations. She stated that the Commission always requires a 25' no disturb buffer zone unless there is an existing structure within the 25' no disturb buffer zone. She stated that there was no grandfathering for the deck and that she has not seen an alternative design from the applicant.

Andrew Watsky, Esq., stated that every interest was reviewed by Lenore White in the beginning of the public hearing process. He reviewed the interests of the Wetlands Protection Act.

The chairman stated that any encroachment to the coastal bank causes adverse impacts. He stated that he would like Coastal Zone Management to review this project.

Andrew Watsky, Esq., stated that in this specific location there was an arch stone revetment, a disturbed area, and then the house.

The chairman stated that when lawn is created it is not considered a disturbance.

Lenore White stated that she understood that the buffer zone was significant, but in this case it was concluded by Dr. Harlow's consultants that there would be no adverse impacts to those interests as a result of this project.

Maureen Thomas stated that it was a precedent setting opinion. She stated that if the Commission allows this than any other property owner could make the same argument.

The chairman stated that there were properties much higher in elevation with grass lawns that are not allowed within the 25' no disturb buffer zone.

Maureen Thomas stated that there was a portion of the deck outside of the 25' no disturb buffer zone and the portion of existing deck should not be an issue with the Commission. Other areas could be cantilevered and the applicant would have a majority of the deck that they are requesting.

The chairman stated that he believed that the project as proposed would set a precedent that the commission would not want to deal with.

Sue Chamberlain asked the applicant to consider an alternative design and stated that she would like to see one. She recommended to Andrew Watsky, Esq. to discuss with the applicant some of the suggestions that the Conservation Agent had made.

Andrew Watsky, Esq. stated that they had looked into cantilevering and it would not be possible to cantilever a 16' wide deck. Only a fraction of that size could be cantilevered.

Maureen Thomas suggested to the applicant to re-draw the plans without the decks within the 25' no disturb buffer zone. This would allow them to move forward with the reconstruction of the house and all other associated work. If they decided to pursue the decks within the 25' no disturb buffer zone, they could always re-file for that portion at a later time.

8:08p.m. Andrew Watsky, Esq. requested a recess to discuss these options with his client.

8:14p.m. Applicant returned from recess.

Andrew Watsky, Esq. stated that after consulting with his clients, they have decided to provide revised plans to the Commission with the house and cantilevered deck. He stated that the client wishes to be able to file a Notice of Intent at another time if they were to decide to expand the deck.

Maureen Thomas stated that they needed to discuss how far the deck would be cantilevered.

The chairman suggested that anything within the 25' no disturb buffer zone could be cantilevered up to 7', since there was some precedence for that distance.

James Dehner suggested he personally would not have a problem with 8'.

Maureen Thomas stated that it was a matter of what could physically be done.

Sue Chamberlain motioned to continue the Public Hearing.

James Dehner seconded the motion.

8:19p.m. **VOTE: 6-0-0**
Continued to September 23, 2008 @ 8:15p.m.

8:19p.m. Continued a Public Hearing for a Notice of Intent for 22 Evergreen Street, Map 35, Lot 28-2
Present: Dana Junior

Maureen Thomas stated that Dana Junior had submitted a letter for the Conservation Commission.

Dana Junior read aloud the letter dated August 18, 2008 that he had submitted to the Commission. He stated that in conversations with the Conservation Agent, there have been other applicants that had been approved with similar circumstances except that their connections lead to municipal sewer. He stated that he was asking for an approval on a conduit that would bring effluent from the house to the septic system which would be outside of the 100' setback.

Sue Chamberlain asked how far the pipe goes from 24 Evergreen Street to municipal sewer.

Dana Junior stated that the pipe was approximately 80' long.

Marilyn Kozodoy stated that the language of the by-law refers to Title V and not municipal sewerage.

Dana Junior stated that he failed to see the difference logically. He stated that pipe used in building sewer was made of the same materials and would have the same function. He stated that it made sense to keep the soil absorption system 100' away from the wetlands.

The chairman stated that he had concerns about the system and the volume of water.

Dana Junior stated that the Board of Health had sent a letter to the Department of Environmental Protection stating that there were issues with the Conservation Commission and with zoning according to the phone conversation that he had with Martha Sullivan of DEP.

Maureen Thomas asked if the pump used would be the same as for sewerage.

Dana Junior stated that the pump would be exactly the same.

William Underhill stated that the only difference he saw was that municipal sewerage accepted large amounts of flow versus a private septic system.

The chairman stated that his concern was that the effluent for a Title V system would not be physically and chemically treated as it would be in the town sewerage system.

Maureen Thomas stated that there seems to be inconsistencies with what portion is considered plumbing throughout the boards. She stated that she thought it makes a difference as to what is considered plumbing and what is considered Title V.

Discussion regarding possible future changes in setbacks in the regulations

Sue Chamberlain asked how long the pipe would be to connect to municipal sewer versus a Title V system.

Dana Junior stated that the pipe would be longer if it was connected to municipal sewer.

James Dehner stated that he thought that the septic system was what the Commission should be concerned about.

The chairman asked the applicant to look into wrapping the system.

Dana Junior stated that he could move the system as far as 65' away from the wetlands. He stated that other options would be to sleeve the pipe or dig a trench, place the pipe and encase the pipe in concrete.

The chairman stated that he would not want that type of impact (encasing the pipe in concrete) within the buffer zone. The chairman requested that the Conservation Agent look into the definition of plumbing from the Board of Health and Building Department.

William Underhill motioned to continue the Public Hearing.
James Dehner seconded the motion.

8:45p.m.

VOTE: 6-0-0

Continued to September 9, 2008 @ 8:30p.m.

8:46p.m.

Continued a Public Hearing for a Notice of Intent for Cole Avenue, Map 58, Lot 105

Maureen Thomas stated that Paul Natchtwey, Esq. submitted a letter to the Conservation Commission dated August 19, 2008. She read the letter aloud to the Commission. She stated that dependent on the intention of the letter submitted by Mr. Natchtwey, Esq., he may be requesting that four wetland flags be reviewed by our consultant Peter Fletcher that would not be impacted by the current filing and would not be relevant.

The chairman requested the Conservation Agent to send Mr. Natchtwey, Esq. a letter stating what was discussed.

The applicant's representative requested a continuation of the Public Hearing.

James Dehner motioned to continue the Public Hearing.
Sue Chamberlain seconded the motion.

8:52p.m. VOTE: 6-0-0
Continued to September 23, 2008 @ 8:45p.m.

8:54p.m. Continued a Public Hearing for a Notice of Intent for 18 Shore Drive, Map 38, Lot 222

Discussion regarding a cantilevered deck versus a permanent structure

The applicant requested a continuation of the Public Hearing.

Marilyn Kozodoy motioned to continue the Public Hearing.
James Dehner seconded the motion.

8:56p.m. VOTE: 6-0-0
Continued to September 23, 2008 @ 8:00p.m.

8:56p.m. Continued a Public Hearing for a Notice of Intent for 37 East Avenue, Map 49, Lot 114 & 115

Discussion regarding underground propane tank within the velocity zone

Applicant requested a continuation of the Public Hearing.

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

8:58p.m.

VOTE: 6-0-0

Continued to September 9, 2008 @ 8:00p.m.

Marilyn Kozodoy discussed a MACC workshop that she had attended (Unit 5 – Fundamentals for Conservation Commissioners). She stated that they had discussed basing decisions on functions, values, law and science.

Discussion regarding consistency in decisions made by the Conservation Commission

Marilyn Kozodoy motioned to adjourn.
James Dehner seconded the motion.

9:10p.m.

VOTE: 6-0-0