

**Town of Foxborough
Conservation Commission Minutes
November 15, 2010**

Members present: Robert Boette (Chair), Allan Curtis (Vice Chair), Harold Blomberg, Doug Davis, Judith Johnson and James Marsh

Absent: Eric Nelson

Also present: Jane Sears Pierce, Conservation Manager

Meeting Opened

Bob Boette opened the meeting, held in the Andrew A. Gala Jr. Meeting Room at 7:00 p.m.

Introduction of Kevin Paicos, Town Manager

Bob Boette welcomed Kevin Paicos, Foxborough's new Town Manager, and then introduced him to the Commission. Kevin reviewed his background for the Commission, including his early experiences in municipal government. He told the Commission that he shared their passion for conservation and considered himself to be an amateur conservationist.

Kevin informed the Commission that he had hired a part-time intern (working 20 hours per week, but paid for only 10) named Tim Cummings, who was working on his Masters Degree in Public Administration.

One of Kevin's early goals is to increase the Town's revenue, so he will be searching for new ways to generate income, particularly sustainable income. Tim's first project as Kevin's assistant will be to review each department's fee structure to determine whether they could be increased to help defray costs. Kevin informed the Commission that he believed that filing fees belonged with each department and kept in their own separate account. There was discussion about the Commission's Bylaw filing fees going into the general fund (State fees now go into a separate account); Kevin planned to change this.

Kevin also brought up the past conflict between the former Town Manager and the Commission relative to town conservation lands (under Ch. 40). He said that, as Town Manager, he will never tell the Commission how to use their conservation lands.

Allan Curtis advised Kevin that there had been a wording error (i.e. "not inconsistent") in the approved Town Manager Act, and he wondered how to correct the situation. Kevin indicated that the Act could be changed at Town Meeting, adding that the Town Manager's Act is a Special Act Charter, which is the simplest kind to change.

Judi Johnson asked what would be involved in putting an article before town meeting to change Town Manager Act language. Kevin told her that the Commission should fill out a form, asking Town Counsel to write the article to change the charter to allow the conservation commission to have jurisdiction over their own land. It was Kevin's belief that the legislature intended conservation land to be kept under the Conservation Commission's jurisdiction. He advised that if Town Meeting votes to change the language, the legislature will pass it, but he did not believe there would be enough time to get it on the special town meeting warrant for January.

Discussion turned to the rental properties owned by the Commission, specifically the two buildings that are currently vacant and in need of substantial maintenance. The Commission reported that their past experiences in having tenants perform maintenance on the rental properties has had mixed results and that the extensive repair work needed in the two vacant properties is a major concern. Bob believed a subcommittee should be created to come up with a plan for these properties.

Kevin asked the Commission to talk to him about how to proceed. He said that in his hometown, Easton, the Commission has rental properties and probably have forms/models that Foxborough's Commission could use. Procurement laws speak to charging less than fair market value rent, but there are guidelines that would need to be followed.

Jane asked Kevin about administrative changes that she would like to make to the Wetlands Bylaw at the special town meeting Kevin advised her to get the final wording for a warrant article to his secretary by Thursday, November 18. Bob thanked Kevin for coming; Kevin indicated that he would be staying for the following discussion.

Mill Street Culvert Replacement Issues, Bob Swanson, Highway Department

Bob Swanson, Highway Department Superintendent, was present to discuss the Conservation Manager's 11/09/10 memo, which outlined the Commission's concerns about his department's recent culvert replacement work on Mill Street.

Bob B. stated that he was dismayed by the way that the Highway Department's culvert replacement work had directed the roadway's storm water runoff directly into the stream without any BMPs, allowing roadway pollutants to go right into the stream. He indicated that their work was in violation of the whole concept of the environmental laws.

Bob S. indicated that he had wanted to downsize the culvert's size, but he had used the larger (30") size, as required by the Commission. He believed that since the culvert replacement had been an emergency, it was covered under emergency regulations.

Judi Johnson explained how to correct the current issues, indicating that roadway runoff should be directed into a grassy swale to be cleansed by vegetation before being discharged into the stream. She stressed that before proceeding with any future culvert repair/replacement projects, the Highway Department needed to receive the Commission's review and written approval.

Judi indicated that she had anticipated that the culvert's pipe was going to be installed lower than it actually was. Bob S. told her that a water main, located under the replaced culvert pipe, had prevented them from installing it any lower. When asked about the percent of culvert replacements they performed in wet vs. dry streambed, he stated that approximately 50% of the culverts they have replaced were in dry conditions and 50% have been wet.

Bob asked Bob S. to correct the current stormwater issues and asked Jane to work with Bob S. to get this done. Jane recommended that, in the interim, Bob S. should install hay bales along the edge of the roadway to block the recently created stormwater discharge point (to the stream).

Jane recommended an inexpensive solution to the stormwater issues, that she had learned of at a stormwater workshop several years ago. She explained that stormwater could be directed to the side of the road via Cape Cod berms into a small (approximately 3'x3') paved pad, which would then drain into a grassed swale with small rip rap check dams to remove debris and slow down the water. Accumulated sand could easily be removed from the pad when full. She indicated that she could give a detailed diagram of this method to Bob S. for his review.

Bob S. then reviewed Jane's memo concerning his recent culvert work. He explained that he had planned to meet with Jane before starting the work (and that she had called and left him a message), but after he recently had a bicycle accident, he had been transitioning back to work slowly. He didn't call Jane on the day that they were working, since he was told that she had already stopped by.

Bob S. also stated that the photo of a large, recently cut down tree was not removed by his department. He explained that, in general, whenever his department is notified of a tree problem (request to cut it down, etc.), they needed to correct the problem within 24 hours for insurance purposes. Bob B. apologized about the assumption that they had cut down the tree.

Bob S. explained that most of the culverts in town have water that runs off to the side of the road using paved swales, adding “that is what we have lived with since I have been here.” He said that a culvert cannot be replaced without violating the law, that it was a limited project and that the Commission’s position concerning this project was discouraging for him. He thought he had a great relationship with the Commission.

Bill Hocking (former Commission Chair who was in the audience) referred to emergency culvert work that had occurred around five years before at Robinson Brook. He said that he had met with Tina Davies of the DEP to determine how work should be handled, indicating that the Commission might want to review and use the information from that project. He stressed that any runoff into a resource area should incorporate BMPs, suggesting that a “blanket” order of conditions might be issued to the Highway Department that indicated how they should proceed with any project that would occur in a resource area buffer zone.

Bob B. said that the Commission was not criticizing all ongoing work and agreed that the two departments have worked well together in the past, but indicated that this job not performed well. Bob B. again asked Bob S. to get hay bales in there and to start working on the stormwater issues.

Continued Hearing, Nadia Estates, off Morris Street, DEP #157-493

Bob Boette announced that on the advice of Town Counsel, the public hearing for Nadia Estates should start again from the beginning because an abutter was left off of the abutter notification list for the October 29th Nadia Estates hearing. He advised that the omitted abutter had been notified of tonight’s meeting and was present. Bob also read aloud from the Board of Assessors “Request for Abutters List” form which states:

“It is the responsibility of the petitioner to determine the abutters for a property. The map, parcel and address’ are to be provided and the Assessors Office will create the Abutters List” and, at the end of the document (in capital letters): “This is to certify that all names contained on this abutters list, as supplied to this office, are the true owners of the stated parcels. The Assessing Department is not responsible for any omitted abutters.”

Jim Pavlik provided the USPS certified mail cards and stated ‘for the record’ that he had sent an email to Jane referencing DEP Regulations from 310 CMR 10.05(4) (a) which state that the applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor. Bob responded by adding that the rest of this section states “The Conservation Commission shall determine whether the applicant has complied with abutter notification requirements,” or in other words, the Commission has the final say on the abutters list.

Jim P. began his presentation from the beginning, as he had described during the first hearing. The proposed project, Nadia Estates, is a 36 unit condominium which will be located on a 19 acre parcel off of Morris Street and Mechanic Street. The project has gone through the 40B process and has received a comprehensive permit from the Zoning Board of Appeals. Bordering vegetated wetlands are located along the western and northern portions of the site and a certified vernal pool is located in the center of the site.

Jim P. explained that he had revised the project’s plans, based on comments received from the Commission during the October 25th meeting; he then reviewed the revised plans.

Jim P. indicated that the entire site would be served by Town water and an on-site septic system. The proposed septic system will include several septic tanks that will collect sewerage from the three buildings. Pumping chambers will pump sewerage to a central leaching area, which will be outside of resource area buffer zones.

The site’s stormwater system incorporates underground drainage basins, which are designed in compliance with the State WPA’s stormwater management requirements. He explained that the

Maguire Group, the Town's engineering consultants, has indicated that they still need to file the required Stormwater Management Report, which they will do.

He explained that since the Commission was primarily concerned about potential alterations to the areas that abut the certified vernal pool (ILSF), the proposed project had undergone a number of changes and now provided a smaller environmental impact to the wetland resource areas.

The applicant will adhere to a 25 foot no disturb zone (NDZ) around the boundary of the vernal pool, with the exception of the utility easement area. Bob asked whether they would also be running electrical lines with the sewer force main. Jim P. responded that they would be running electrical lines to service the Bioclear (septic) System, which required electricity.

Jim P. then reviewed the overall drainage system, which he said was designed to recharge water into the ground, adding that there would be no direct discharge to the vernal pool/ILSF.

Bob asked whether the animal crossing culvert was going to be high enough, or if it would act as a stormwater culvert. Jim P. answered that it was located at the highest part of the roadway, so would not act as a stormwater culvert.

Doug then asked where excess stormwater from Detention Basin 1 would go. Jim P. answered that they had included a lawn style catch basin over Basin 1 to collect any water at that low point, so that it wouldn't make it to the roadway.

Bob noted that some of the water quality inlet/catch basin details included descriptions and some did not, asking Jim P. to label all of them. Jim P. explained that all of the catch basins were the same and that the only difference was their size, but stated that he would label all of them.

Jim P. then reviewed his November 9, 2010 response letter to Jane's comment memo dated October 19, 2010 (document #5; please refer to this document for additional details), item by item.

The following items, as numbered in Jim P's letter, were discussed in further detail.

Plans:

FCC4. The perimeter berm's privacy fence along the northerly boundary will be four to six inches off the ground to allow for amphibian migration.

Discussions: Bob stated that since the berm near the Harris' property didn't include elevations, he was concerned that this barrier would channel water off of the project's property and into the Durst's back yard. Jim P. stated that this shouldn't happen since an infiltration swale along the edge of the nearby building will collect some of the runoff and that a nearby swale, which is connected to another swale, connected to the emergency access that has an emergency overflow to Mechanic Street. The catch basin near Oak Street will take most of the overflow.

Arlene Gramaglia, 242 Mechanic Street (corner of Hill and Mechanic Streets) stated that she was concerned that the proposed plans, as described by Jim P., would cause more stormwater to collect in the street in front of her house. She said that her house always floods after the Dursts start pumping their stormwater out into the street, so the plan's proposed overflow would be going to a catch basin that was already overburdened. Jim P. told her that there would be a tremendous amount of storage in the projects' swales, which would only overflow during a hundred year storm.

Arlene then stated that she never had any problems until the nearby subdivision (including Holbrook Street) was built and that flooding problems were made even worse after Morris Street was built. Bob B. asked Jim P. whether there were any catch basins on Morris Street and Jim P. stated that there were none.

Barbara Durst stated that in severe storms, water comes up to her bulkhead (showing photos from two years ago), adding that this has happened every year for the 30 years that she had lived there. She was concerned that the proposed project would cause additional flooding.

Jim P. reviewed the proposed project plans, explaining that certain design standards needed to be met and that their design was designed to handle a 100 year storm event, so it would provide a tremendous amount of stormwater storage. He assured Ms. Durst that their design was not going to make her situation worse. Bob B. added that the proposed plan might actually make her situation better by capturing the stormwater before it flowed off site.

FCC6. Re: lighting - Jim P. stated that the lighting will meet anti-pollution standards, as recommended by Metropolitan, no fluorescent or mercury vapor lamps will be used. They will use metal halide.

Discussions: Jane stated her concerns regarding potential light being directed towards the vernal pool, which would disrupt the vernal pool species life cycles. Jim P. indicated that they would use globe style lanterns and no lights would be near, or directed towards, the vernal pool. The only lights in the rear of the buildings would be deck lights.

Doug recommended that language should be included in the condo documents regarding lighting, specifically for Building B, which backs up to the vernal pool. Mr. Itani stated that condo residents are not allowed to put flood lights on the outside of their buildings.

FCC9. Re: preventing vernal pool species from becoming trapped in catch basins - Jim P. indicated that the intent of catch basins is to collect runoff.

Discussions: Judi was concerned that curbing would direct migrating amphibians (to or from the vernal pool) into the catch basins, which would act as death traps.

Jane stated that the easterly side of Roseland Street includes specifications for vertical curbing, and asked whether the areas that were near the vernal pool could instead have Cape Cod berms, to allow amphibians to climb over the curbs, rather than being funneled into the catch basins.

NOI Package:

FCC2b. Re: Stormwater Management Report calculations - Jim P. stated that they had submitted a revised NOI page 2 to the Commission and the DEP. Jane indicated that more information was still needed. Jim P. agreed, adding that they planned to file a Stormwater Management Report, as recommended by the Maguire Group.

FCC2c. Re: Certified Vernal Pool - Jim P. stated that the NOI information will be updated to indicate that the ILSF is a certified vernal pool.

Discussion: Jane asked that the NHESP map (included in the originally submitted NOI) be substituted with the NHESP's vernal pool certification letter, which (the NOI) should then be resubmitted in its entirety to the Commission and to the DEP to avoid future confusion.

FCC6. Re: Wildlife Habitat Evaluation - Jim P. stated that during the previous meeting they had received the Commission's consensus that rather than submitting a Wildlife Habitat Evaluation, they would perform baseline water quality testing of the vernal pool's water to show pre-existing water quality conditions. These baseline water quality tests could then be compared to post construction conditions, prior to the issuance of a Certificate of Compliance for the project. Jim P. indicated details of the protocols for the initial baseline sample were included in a letter from Seth Dufort (Outback Engineering) dated 11/15/10.

Discussion: Jim M. asked whether the Commission would be receiving more detailed water testing protocols, including who the responsible parties would be. Jim P. replied that water testing

would be the responsibility of the condo association and they would be required to take corrective measures, if necessary.

Drainage Report

FCC3: Re: Stormwater drainage system maintenance - Jim P. stated that the developer will initially be responsible for the drainage system, which will then be turned over to the condo association.

Discussion: Jane advised that she wanted temporary stormwater stilling/settling basins installed during construction to prevent silt from entering into the underground detention basins.

ZBA Permit

FCC1: Re: no disturb zone around the vernal pool.

Discussion: Bob mentioned that one of Maguire's comments stated that the proposed plans show hay bales placed at the *edge* of the vernal pool. Jim P. stated that this was inaccurate and that the hay bales would be at least 25 feet away from the vernal pool's upper boundary (with the exception of the temporary utility installation area in the pool's northern upland). Jim P. stated that he would provide additional information regarding the 25 foot NDZ.

Bob asked about some other areas that might encroach into the 25 foot NDZ, including gas utilities to the rear of one of the buildings. Jim P. indicated that they could shift the gas utilities over a bit to maintain the 25 foot NDZ.

Bob also questioned the proposed snow stockpile area, proposed over detention basin 1, stating that this could allow de-icing chemicals to leach into the vernal pool without any pretreatment. Jane added that the weight of the snow could also alter the area's topography.

Jim P. advised that a lawn-style catch basin was proposed over Basin 1. He indicated that he would address the Commission's concerns with Steve Baker (Maguire Group) and thought that they could modify the plan by installing a small earthen berm on the down gradient edge of the basin, and re-grade the area to prevent melt water from entering the culvert near Morris Street.

Doug questioned whether there would be enough snow storage. Jim P. replied that this was reviewed with Mr. Itani and then compared the proposed plan to Mr. Itani's condos in Abington, stating that he believes the snow areas are sufficiently sized.

Discussion Re: Comment 13 (construction sequence): Bob stated that construction sequence items 6 and 8 should be completed before item 4. Jane further explained that #21 of her Manager's Report detailed his request as follows: "The construction sequence should be modified to require that the infrastructure, including stormwater basins, etc., should be constructed to the Commission's written satisfaction *before* any of the building construction is started."

Jim P. explained that the intent of the construction sequence is to provide a general guideline and that many of these tasks would be ongoing simultaneously. Jane reiterated that they would need to build the infrastructure first. Jim P. indicated that they could go over the sequence in more detail, adding that he hadn't seen Jane's Manager's Report, so she gave him a copy.

Bob asked for comments from the Commission, the Agent, or the audience. Jane indicated that she would like Jim P. to review and respond to her Manager's Report, which he then did, as follows.

Manager's Report Questions (referenced as numbered):

3. Re: Figure 1, showing potential and certified vernal pools. Jim P. stated that he will make a comment that it was since certified on plan.

6. Copies of the revised NOI package need to be submitted to the Commission and DEP with evidence of the mailing to DEP. Jim stated that one additional submission will be done.
7. Elevation datum: NAVD 1988; were the FEMA flood maps' (pre-1988) data revised to conform to the 1988 information? Jim P. stated that he will check on that; Jane will also look this.
9. Owner Unknown parcels, which are actually owned by the Town, should be corrected. Jane will give Jim P. a copy of the details relative to these lots to be revised on the plan.
13. Re: project's Snow Disposal Guidelines, particularly snow stockpile area to the west of Building "C" and emergency snow storage area; both should be relocated. Jim P. will speak to Maguire Group about the possible use of earthen berms, as previously discussed.
14. Details of Basin 7 include no off-grading, which could encroach into the vernal pool's 25 foot NDZ. Jim P. stated that he would take another look at this basin.
19. Detail Sheet with box culvert details should be dated (11/5/10) and numbered. Jim P. stated that even though this was a new plan, he had dated it to match the rest of the plans.
20. Jane asked Jim P. to clarify that the box (critter crossing) culvert would absolutely not act as a drainage pipe, which would direct stormwater into the vernal pool. Jim P. said that it would not.
21. The construction sequence should be modified to required that the infrastructure, including storm water basins, etc., should be constructed to the Commission's written satisfactory before any of the building construction is started. Jim P. indicated that this information should be included in the Order of Conditions (OoC). Jane asked him to make changes to the plans because contractors would be more likely to refer to the plans than to the OoC.
22. Jane wanted all of the plans stamped and signed.
23. The proposed overflow culvert needs to be removed from two of the plans.
24. Re: Maguire's remarks: please note (per ground water mounds plan) that ground water is one of the protected interests of the WPA. Jim P. will incorporate this information into plan.
26. Re: Section 2, Flood Zone: Jim P. indicated that the Flood Insurance Rate Maps of 1979 data had been converted to NAVD.

Additional Discussion: Doug asked whether they would be blasting on the site. Jim P. stated that they were not planning to do any blasting since there was no ledge on the property. Doug asked Jane to include language about blasting (i.e. if needed) and its effect on groundwater in the OoC.

The applicant was told that after the Commission received the revised plans and other requested information, they would prepare a draft Order of Conditions for the date of their continued hearing.

Reported Wetland Violation, VFW, 337 Cocasset Street

Erik McKenzie and Ken Olson, the owners of the VFW property, were present to discuss the dumping of soil that occurred in wetlands behind their property. Erik began by explaining that the Foxborough Highway Department and Larry Sobol were involved in the violation; the work had been performed without his or Ken's permission.

Bob explained to Erik and Ken that an Enforcement Order for the violation had been drafted for the Commission's review and signature, adding that he wanted the site's wetlands flagged. Jim Marsh advised that a restoration plan would also be required. Jane explained that the property owners would need to hire a qualified consultant, as described in the Enforcement Order, to perform the restoration work. Buffer Zone Restoration Guidelines were attached to the Order.

Jim asked about a timeline for the restoration work. Jane responded that by the next meeting, the property owners should provide the Commission with the name of a consultant, along with a temporary stabilization plan for the piles of dirt.

Bob stated that he was concerned about the amount of dirt that had been piled up around the existing trees, urging Eric to use caution to prevent further harm to these trees. Judi also expressed her concern that they be careful when pulling soil away from the base of the trees.

Erik asked Jane if she wanted to be present while the soil was being removed and Jane stated that his consultant would need to oversee the work, as described in the Enforcement Order.

87 North Street Rental Property

This property is still vacant. Allan stated that he had stopped by the house and had talked to Janna (former tenant), who told him that she had a friend who could remove metal scraps from property.

Bob stated that Janna must immediately be notified that only personal property could be removed from the house and that no structural elements could be removed. Judy Leahy was asked to call Janna to let her know.

Doug added that he would like signs put up stating that no parking for stadium use was allowed.

Open Meeting Law

Jane and Bob shared with the Commission information that they had learned during their attendance at the Open Meeting Law meeting, recently held by the Town.

2011 Meeting Schedule

Jane presented the proposed meeting dates for 2011.

Motion was made by Doug Davis to accept the 2011 Conservation Commission Meeting Schedule as drafted. Seconded by Harold Blomberg. **Vote: 5:0:0.**

Bylaw change

Jane will draft a warrant article as discussed and submit it to the Town Manager's secretary.

Motion was made by Doug Davis to put an Article on the Warrant for the Special Town Meeting. Seconded by Jim Marsh. **Vote: 5:0:0.**

Meeting Adjourned

Motion was made by Judi Johnson to adjourn the meeting at 10:30 p.m.. Seconded by Allan Curtis. **Vote: 5:0:0**

The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Eric Nelson, Clerk

Please see List of Meeting Documents on the following page.

List of Documents Reviewed during Meeting

1. 11/09/10 memo from Jane S. Pierce to Conservation Commission with a copy to Bob Swanson, Highway Department.
2. Form - Board of Assessors Town of Foxborough Request for Abutters List
3. 11/01/10 email from Jim Pavlik, Outback Engineering, to Jane Pierce Re: Nadia Estates NOI.

4. 11/05/10 rev. (original: 9/24/10) of Nadia Estate Plans by Outback Engineering
5. 11/09/10 letter from James Pavlik, Outback Engineering, to Conservation Commission Re: Response to Commission Comments dated 10/19/2010.
6. 11/15/10 letter from Seth Dufort, Outback Engineering, Re: Water Quality Sampling, Nadia Estates, DEP File NO SE157-493.
7. 11/15/10 Manager's Report from Jane S. Pierce to Conservation Commission with a copy to Jim Pavlik, Re: Review of Revised Nadia Estates Submissions.
8. 11/15/10 Enforcement Order for 337 Cocasset Street to Messrs. McKenzie and Olson.
9. Brochure - Foxborough Conservation Commission's Buffer Zone Restoration Guidelines

Draft minutes submitted by Judy Leahy: 11/26/10

Reviewed by Jane Pierce: 12/28/10

Approved by Commission: 1/3/11