

**Town of Foxborough
Conservation Commission Minutes
January 11, 2010**

Members present: Bob Boette (Chairman), Allan Curtis (Vice Chairman), Harold Blomberg, Judi Johnson, Doug Davis, Eric Nelson and Jim Marsh

Also present: Jane Sears Pierce, Conservation Manager
Bill Hocking, Temporary Conservation Manager

Meeting Opened

Bob Boette opened the meeting, held in the Selectmen's Meeting Room in Town Hall, at 7:00 PM.

Request for Determination, 33 Hayden Drive

Bob read the legal notice. Richard and Betsy Magnuson, the owners of 33 Hayden Drive attended the meeting. They are proposing to construct a 15-20 foot extension of their backyard, located within the 100 foot BVW buffer zone. Mr. Magnuson explained that they had recently removed some old oak trees that were in danger of falling onto the house. They plan to move an out building and will need to fill a narrow strip of land (left side of house) that drops off toward the wetlands to allow trucks to access the backyard (their septic system takes up most of the front yard).

Bill visited the site on 1/11/10 and reported that the area in question was covered with snow, so the wetland line could not be determined at that time. Bob advised the Magnusons to call the Office after their back yard is clear of snow so that Jane can visit the site. They agreed to continue the RFD until after the snow has melted.

Notice of Intent, DEP #157-485 (off) East Street, T-Mobile Northeast, LLC

Bob read the legal notice. T-Mobile's proposed project includes the installation of a cellular telecommunications facility and overhead utilities on Nat'l Grid's easement over conservation land.

When reviewing the property's deed (emailed to the Commission by applicant's representative, Josh Delman of Centerline Communications, LLC), Bob and Jane realized that it appeared that Norfolk County Commissioners owned the property, not the Commission. Bob determined that (1) the NOI needed to be revised to show the correct property owners (Norfolk County Commissioners), and (2) a letter from the owner, acknowledging T-Mobile's proposed project, would be required.

Earlier in the day, Leo Garneau (applicant's representative) had sent Jane an email requesting a hearing continuance to the next meeting so that he could address her emailed instructions (sent 12/30/09) relative to the following additional information that was still required:

NOI:

1. Section A: Property owner needs to be corrected.
2. Section B: buffer zone only (#1) was checked, but the site contains several other resource areas, so #2 should be checked instead of #1.
3. Resource areas need to be added/checked: b. BVW; f. Riverfront area (including f. 1-6)
4. Section C: complete numbers 4 and 6.
5. Section D: number 4, plan title and information needs to be expanded upon (attachment does not include the applicant's name, project location or the plan's date).

Plan:

1. The following resource areas need to be added to the plan: (a) Riverfront, including 100 and 200 foot resource areas, (b) floodplain elevation, and (c) Article IX 25 foot no disturbance area.
2. On Sheet EC-1, paragraph D, delete references to "tower" or "monopole" construction.
3. Total square feet of proposed 10 foot utility easement, 15 foot by 15 foot lease area and any other proposed easements must be calculated and shown on the plan and in the NOI.

The Commission discussed continuing the hearing to January 25th. Bill advised that (1) the hearing would need to be re-noticed with the correct property owner's name and (2) the filing fee (which had previously been waived) would also need to be paid. The Commission determined that since the applicant's representative had not submitted the requested revisions by the January 25 filing deadline, the hearing should be continued to February 1, 2010.

Motion made by Doug Davis to continue the hearing for DEP #157-485, T-Mobile, to February 1, 2010. Seconded by Allan Curtis. **Vote: 7:0:0**

DEP #157-484, Order of Conditions, Neponset Reservoir Dam Wetland Replication

Motion by Judi Johnson was made to sign Order of Conditions. Seconded by Doug Davis. **Vote: 7:0:0**

December 21, 2009 Minutes

Motion was made by made by Bob Boette to accept the December 21, 2009 minutes with Jane's minor corrections. Seconded by Allan Curtis. **Vote: 7:0:0**

Neponset Reservoir Dam Update

Bill informed the Commission that no muskrat activity had been observed and the NRC had reported that all of the voids, created by burrowing muskrats, had been filled with grout.

Bill stated that the reservoir's water level was rising, because seven of the dam's boards had been replaced. When he realized that the reservoir was at 268.3 feet, he asked the NRC to remove one board to avoid future flooding problems, adding that no water was currently flowing over the boards. Bob questioned how Crackrock Pond was doing and Bill indicated that it was fine.

Jane and Bill reported that after last Wednesday's Neponset Reservoir dam site meeting, they had hiked the area to look for animal tracks in the snow. They found tracks in the vicinity of the dam and Crack Rock Pond that were made by the following animals: coyotes, rabbits, fishers, red fox, otters, deer, red and gray squirrels and various small rodents.

Discussion followed regarding the possibility that a different water level control system for the dam might be installed by the NRC, depending upon availability of funds next spring, after completion of the dam's repairs.

DEP #157-486, ANRAD, (off) Morris Street (site of proposed Nadia Estates 40B Project)

Bob read the legal notice. Present were the applicant's representatives, Jim Pavlik and Seth Dufort of Outback Engineering and Bob Gray, Sabatia, Inc. Mr. Dufort provided Proof of Notice to Abutters and a check for \$50.75 payable to the Foxboro Reporter for the legal notice posting.

Seth reviewed the site's wetlands delineations, indicating that during review of the previous (2002) ANRAD filing, Bay Colony had calculated the vernal pool's elevation to be at the 307.8 elevation, adding that the high water marks and BVW appeared to follow the 2002 Order of Resource Area Delineation. He explained that for every wetland flag, he had dug three or four holes to review the soils; the delineation was performed in November.

Seth referred to the site's Isolated Land Subject to Flooding (ILSF) as a potential vernal pool. Jane stated that it was, in fact, a vernal pool, explaining that on her first day on the job (August 25, 2009), she was asked to certify the vernal pool. Unfortunately, due to recent revised requirements, it is now virtually impossible to certify vernal pools after obligate species (wood frogs, spotted salamanders) have left the pool. Even though Jane had easily found two newly metamorphosed salamanders at the edge of the drying vernal pool, NHESP needed more information to certify it. Jane called Marea Gabriel (NHESP Aquatic Ecologist) on 10/5/09 to discuss the situation. Ms. Gabriel told her to resubmit her data and include additional details and aerial photos. To date, Jane has not received a response from Ms. Gabriel. A copy of Jane's NHESP vernal pool filings was given to James Pavlik, as he had requested earlier in the day.

Jane explained that she had traced the 2002 (approved) plan onto the current plan and noted that the 2002 wetland areas were larger than the newly submitted delineation. She briefly visited the site earlier in the day, but snow cover had made it difficult to see anything. She advised the Commission that in at least one low area, adjacent to the eastern swamp, the flags didn't appear to be accurate.

Seth explained that he had used vegetation and soils, which are two ways to determine wetland lines. When Jane asked about the site's soils, Seth indicated that they were mostly sandy soils. Jane stated that sandy soils can be very difficult to review and, in addition, it is well known that the wintertime is the worst time of year to perform or review wetland delineations.

She asked why the delineations were not done during the previous spring, when the 40B application was filed with the ZBA. Seth stated that wetland delineations could be performed during the winter and that the applicant wanted the wetland issues resolved as quickly as possible.

Bob wanted the Commission to review the site as a group. Judi and Bill are very familiar with the site and vernal pool, which was referred to as a "vernal pool" on the 2002 delineation. Bill indicated that he had recently walked the site, but did not agree with the locations of 12 flags, adding that the drainage ditch between the two swamps still needed to be delineated. He distributed copies of his site visit report with details of the flags in question.

Discussion ensued about 40B filings, specifically town bylaws waivers. Jane pointed out that the applicant's 40B application had asked for *zoning* bylaw waivers, but no request had been made for the wetlands (non-zoning) bylaw. Bob indicated that the Wetlands Protection Act still applied.

Bill would like to wait to review the delineations until the spring, advising that the Commission should not rush the wetland review since it is critical to the site's design. He suggested setting up a site meeting on February 1; Doug added that if snow was still on the ground at that time, then the site visit should be scheduled for a later date. The ZBA's review of Nadia Estates has been continued to February 18, 2010. The Commission planned to meet on site on February 1 (if the snow has melted) and would schedule the continued hearing on the February 22 agenda.

Motion made by Harold Blomberg to continue the hearing for DEP #157-486, (off) Morris Street ANRAD to February 1, 2010. Seconded by Allan Curtis. **Vote: 7:0:0**

Request for Determination, CSX Railroad Right-of-Way

Bob read the legal notice. Stephen Herzog, AMEC, representing CSX, has requested a delineation of wetland resource areas for a new Vegetation Management Plan along the CSX Right-of-Way.

Steve explained that in the summer, during the height of growth, CSX hires a weed spray contractor who uses a truck mounted sprayer to control the spray pressure and direction from inside of the cab. The sprayed herbicides cling to leaves; only sensitive area herbicides are used along all of the right of way. Yellow markings are made on the railroad cross ties (per the approved plans) to denote no spray zones in areas that are adjacent to wetlands.

Jane and Bill pointed out errors in the submitted map which showed the proposed treatment areas and their proximity to the buffer zone and riverfront areas; particularly in the area of Gillette Stadium (the map predated the new stadium's construction and river restoration project). Mr. Herzog agreed to make the necessary corrections to the map, indicating that he would submit it to the Commission before the next meeting.

Mr. Herzog gave permission to continue the RFD meeting to January 25, 2010. The Commission informed Mr. Herzog that if the revised maps contained all of the requested corrections, he would not need to attend the meeting.

Motion made by Harold Blomberg to continue the meeting for the CSX Railroad Right-of-Way RFD to January 25, 2010. Seconded by Allan Curtis. **Vote: 7:0:0**

Town Hall Health Concern

Bob asked for an update on the health concerns, relative to the basement office areas in the Town Hall. Jane reported that actions have been taken to correct the situation, including the addition of dehumidifiers. She indicated that now that the building is being heated, the air quality seems to have improved.

No Motorcycle Posting Signs, to be Provided by Peter Fleming

Town resident Peter Fleming has offered to purchase and post No Motorcycle signs along the State and Town conservation land boundaries near Upper Carpenter Pond. The Commission agreed to allow Mr. Fleming to hang the signs, but only along his personal property's boundaries.

ZBA Referral, Nadia Estates (40B) - Proposed Project Review Letter

Jane provided the Commission with the first version of her draft 40B project review memo to the ZBA. She asked them to review the information contained in the memo and also gave them copies of reference materials about the Commission's role in assisting in the ZBA's review of 40B projects.

Bill indicated that the ZBA will give deference to the Commission's recommendations. Jane stated that she was particularly concerned about two proposed detention basins which would overflow directly into the vernal pool. The WPA requires that a vernal pool's water quality or quantity can not be altered; 401 Water Quality Certifications contains similar standards. In addition, the 7-10 foot high retaining wall and associated fill, proposed for the pool's south facing slopes (obligate species' upland habitat) would surely kill the pool. During Jane's site visit, she found the tracks of fox, deer, fisher, rabbit and small rodents, demonstrating that this is an active wildlife area, so a wildlife habitat analysis should be required for future NOI filings.

Possible Bylaw Filing Fee Increases and Regulations

Jane would like the Commission to consider raising their current application filing fees. She reminded the Commission that fees are intended to cover the Commission's operating costs. She would also like to discuss the drafting of bylaw regulations, but due to the (late) time, asked that the discussion be postponed until the next meeting.

Fairbanks Rent Delinquency Update

Kathleen Groves (tenant) called the office on 1/8/10 to say that the entire balance of rent would be paid on Friday, January 15, 2010. Judy reminded her that the Commission had informed them that the rent was due immediately. The tenant was also instructed that future payments must be made on or before the first of each month.

Court Case Update

Bob informed the Commission that after the recent meeting of the three-judge panel, they indicated that they would render a decision within two weeks to three months.

Requested Use of Cocasset River Park by Church Group on January 23, 2010

Bob Boette recused himself from this discussion, due to his personal relationship with group. The Lutheran Church in Foxborough requested the use of the Cocasset River Park on Saturday, January 23 for an ice skating social. After discussion, the Commission was in favor of allowing this activity but instructed Jane to consult with the Town Manager, Andy Gala, to get his opinion.

Motion was made by Allan Curtis to permit the Lutheran Church in Foxborough to use of the Cocasset River Park on Saturday, January 23 for an ice skating social. Seconded by Eric Nelson.

Vote: 6:0:1 (Bob abstained)

New Filing, Distributed to the Commissioners: RFD, 6 Carmine Avenue

Draft minutes submitted by: Judy Leahy on 1/25/10

Approved by Commission: 1/25/10