

**Town of Foxborough  
Conservation Commission Minutes  
April 25, 2011**

**Members present:** Robert Boette, (Chair), Allan Curtis (Vice Chair), Eric Nelson (Clerk), Doug Davis and James Marsh

**Absent:** Judith Johnson

**Also present:** Jane Sears Pierce, Conservation Manager, and Judy Leahy, Secretary

**Meeting Opened**

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

**Request for Determination, 15 Kendall Drive**

The applicant/homeowner, Roger Proulx, was present to discuss his proposed plan. He explained that he wanted to extend his back yard fence, clear out trees, fill, grade and extend his lawn.

Jane and Bob had visited site and found that the wetland was a vernal pool. The project, as proposed, would alter the vernal pool's upland habitat to within 60 feet of the pool, including off grading. Bob explained that vernal pools had a 100 foot no disturb zone under the town's wetland bylaw and that a large number of trees would need to be taken down in the no disturb zone for this project. Jim asked if it was isolated land subject to flooding (ILSF). Jane answered that she thought it was, but she hadn't walked around it; it was a large wetland, extending toward the back of the property.

Jane read excerpts of Article IX (Wetland and Groundwater Protection Bylaw) that stated there shall be no activity within 100 feet of vernal pools. She explained that although the Bylaw speaks to additions or renovations of existing residential structures, this filing was not for an addition or renovation; it was for extending a lawn area by cutting trees, filling, grading and adding lawn. All of the proposed work was proposed for the south facing slope abutting the vernal pool, which is the main non-breeding habitat of vernal pool amphibians.

Jane recommended issuing a Positive Determination for the filing. Bob asked "if he files a Notice of Intent and we deny it, should we have him file anyway?" Jane said that Roger had the right to file a NOI for his proposed project that included strong scientific evidence to demonstrate that the proposed activity would meet performance standards and would not create a negative environmental impact.

Al asked Jane how much the proposed work could affect the vernal pool. She explained that destroying one small area of upland habitat is not the problem; the real problem is the cumulative impact caused by several alterations. Jane added that it is a proven fact that vernal pool dependent species live for the majority of the year in south facing slopes that abut their breeding pools. The Bylaw's 100 foot 'no build, no disturb zone' serves as the first line of defense in protecting vernal pool species and maintaining the habitat's function, but it is only the minimal protection as it preserves just a small percentage vernal pool species' habitat.

The Commission had proposed adding the 100 foot vernal pool no disturb zone to the Bylaw due to construction activities' cumulative impact on the town's vernal pool habitats. Jane explained that amphibians migrate more than 200 to 300 feet from their breeding pools and the main places they live is in south facing forest slopes that abut vernal pools. She said that if the Commission allowed alterations to occur within 100 feet of a known vernal pool, it would set a negative precedent. Bob agreed, adding that if the Commission made an exception to their 25 foot no disturb and 100 foot no disturb zones, it would set a precedent and weaken the town's wetland bylaw.

Jane told the Commission that Roger had stopped by the conservation office during the previous fall to ask for guidance on his proposed project. She had looked on-line at an aerial photo of the site and saw that the abutting wetland was a probable vernal pool. She explained the bylaw's 100 foot no disturb zone from vernal pools, advising Roger that he would not need to file an application with the Commission if he kept his proposed project 100 feet away from the wetland.

Roger stated that at that time (in the fall) and even today, he knew that the ILSF was a *potential* vernal pool, but it wasn't certified. Jane explained that during her site visit she had briefly surveyed the pool and found/photographed wood frog tadpoles and spotted salamander egg masses in order to certify the vernal pool. She also caught a bucket full of tadpoles for Roger to give to his children.

Jim believed it would be appropriate in this case to issue a Positive Determination, explaining that a Request for Determination of Applicability is a preliminary review that can sometimes save an applicant having to go through the more formal Notice of Intent process. Jane stated that she had drafted two Determinations; one for the State and one for the Bylaw.

**Motion** was made by James Marsh to issue a Positive Determination under the State Act (checking State form #5 and #6) and a Positive Determination under the Bylaw (checking Bylaw form #3) for 15 Kendall Drive; seconded by Douglas Davis. **Vote: 5-0-0**

#### **Certificate of Compliance, DEP #157-451, Shoppes at Chestnut Green**

**Motion** made by Doug Davis to sign a Certificate of Compliance for DEP #157-451, the Shoppes at Chestnut Green; seconded by James Marsh. **Vote: 5-0-0**

#### **Hersey Farm Lease/License Update**

Earl Ferguson, who volunteers at the Community Farm and had been helping Jane to get the Hersey Farm license extended attended the meeting. He informed the Commission that a license for Hersey Farm had been sent by the Mass Department of Agriculture (DAR), which Bob signed. A Land Management Plan and insurance certificate were required by the license.

Mr. Ferguson, who had reviewed the Commission's Hersey Farm files, reviewed some of the property's history. He explained that the original lease in 1988 had indicated that one of the eight parcels could be used for sports (now a soccer field), but a school couldn't be built on it. Parcel 2 (hay fields) is currently being seeded and mowed by Charlie McNamara and Parcel 3 is being partially used by the Farm Stand. The first lease term was 10 years, which then went to five year term. Initially, money generated by subleasing the property was put into a separate account to pay for maintaining the site's agricultural soils.

Jane suggested asking the newly formed Agricultural Commission to give the Commission advice about how they should maintain their agricultural fields.

#### **Highway Department Dumping Behind Igo School and Booth Park**

After Bob had been notified of ongoing dumping of grass, etc., behind the Igo School, he and Jane visited the site and observed several piles of yard waste, encroaching upon the wetlands. Jane asked for the Commission's input about how to deal with these ongoing issues.

Doug advised that the Highway Department must be notified in writing, when they are in violation of the WPA and needed to be held accountable. He asked Jane to develop a list of wetland issues that were related to the Highway Department's activities.

#### **E. Belcher Road Composting Area, Request for Determination, Highway Department**

Bob explained that he, Kevin Paicos, Jane, and Bob Swanson went to check out the potential compost areas near the capped landfill. Kevin wanted the compost facility operational by 7/1. The originally proposed area was located to the right of the landfill, if viewed from the road. This area

had been used by the Highway Department as a dumping area, with piles of loam which, reportedly were going to be sold by the Town. The loam had come from the Elm Street compost area.

### **Phone Conference with MACC**

On 4/15, Judi Johnson, Doug Davis, Al Curtis and Jane met in the Conservation Office for a conference call with Linda Orel, Director of the Mass Association of Conservation Commissions; Judi reviewed their discussions for the Commission.

The Commission wanted to ask Ms. Orel for the MACC's support, regarding their proposed warrant article to amend Foxborough's Town Manager Act. The amendment would correct the results of a 2008 Land Court decision which amended the Mass Conservation Commission Act and transferred the authority to manage conservation land from the Conservation Commission to the Town Manager. The Commission had voiced their dismay that MACC had not supported them during the Land Court lawsuit as the Commission had requested.

Ms. Orel advised that the Commission needed to focus not on the case, but on the intent of the Town Manager Act. She explained that the MACC is a nonprofit organization, not a law firm, adding that she was sorry for the Commission's troubles, but the bigger issue is the legislation that took their power away will be hard to get back. Ms. Orel explained that the MACC cannot give legal advice. However, she suggested that Attorney Ken Whitaker (a MACC volunteer) might be able to help the Commission by writing a letter about the legislation, since at this time, the fix is a legislative one.

Ms. Orel asked for background information about the Land Court decision. Judi suggested sending her a copy of the final appeal's audio tape, since it tells the whole story. The Commission would like to have town counsel's help, if possible, and also set up a time to have Ken Whitaker come in to meet with them.

### **Town Meeting**

The Commission's next meeting will be held from 7:00 p.m. to 7:30 p.m., since Town Meeting is scheduled for the same day and will start at 7:30 p.m.

### **Meeting Adjourned**

**Motion** was made by Allan Curtis to adjourn; seconded by Doug Davis. **Vote: 5-0-0**

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Eric Nelson, Clerk

Draft minutes taken by Judy Leahy  
Reviewed by Jane Pierce: 1/29/14  
Approved by Commission: 2/10/14

### **List of Documents, Reviewed during Meeting**

1. For the wetland applications reviewed above, please see the Commission's files.
2. Conservation Manager's Report, 4/25/11