

PEPPERELL CONSERVATION COMMISSION

Minutes – March 2, 2010

The Pepperell Conservation Commission (PCC) held a regularly scheduled meeting under the Massachusetts Wetlands Protection Act, MGL Ch. 131, §40 and the Pepperell Wetlands Protection By-Law. The meeting was held in the Town Hall at 6:30 p.m.

Members present: Elliott presiding, Rice, Rand, Sauer, and Steeves; members absent: Moody and Masterson.

6:30 p.m. Public Hearing re NOI filed by the Pepperell DPW for installation of sewers on Brookline, Park & Prescott Streets, Paiute Place and Cheyenne Road, including a pump station at 112 Brookline Street

Town Engineer Bob Lee attended the hearing to explain the project. Under the Pepperell Wetlands Protection Bylaw, the Commission determined that the project area involves BVW, and the proposed activity is excepted from the 50' setback requirement as a Limited Project. Lee explained that Weston & Sampson had designed the project for the Town and done the wetland delineations. Wherever the proposed sewer lines are within 100 feet of BVW, the engineers had specified that the edges of the road be lined with staked haybales as an erosion control barrier. Lee said that Fisher had looked over the project area and agreed with him that at least 2 areas shown as wetlands on the plans are just drainage ditches next to the Right of Way, rather than protected BVW.

Lee said that the pump station needed to be located at the lowest point in the project area. He pointed out the location that had been found for it on the west side of Brookline Street, just south of the intersection with Cheyenne Road. Erosion control for the pump station site was designed to be haybales backed by silt fence. The Commissioners reviewed the plans for the pump station site. Elliott asked whether the leaching basin had an overflow. Lee pointed out that it was only for drainage of the pump station site building and driveway and was big enough without an overflow. Lee also reviewed the specifications for dewatering during construction of the 20-foot deep wetwell. Elliott commented that dewatering in that area was essentially going to be a drawdown of the nearby wetlands. Bob Lee agreed, but said that it was time-limited (he estimated it would take no more than a week), it would be done during a dry period of the year, and any water removed would be pumped back into the wetland anyway.

Rice asked about the possibility of ground water flowing within the trenches dug for the sewer lines, which could drain wetlands. Lee said that the plans specified that there would be Ripley dams or trench dams every 500 feet or at least one between each pair of catch basins. The Commissioners discussed 2 special conditions to be added to the Order, 1) adding language to the erosion control condition allowing the Commission or its agent to waive the use of haybales adjacent to non-wetland areas, and 2) a permanent condition prohibiting the use of salt or de-icing chemicals on the driveway at the pump station. On a motion from Elliott, seconded by Rand, all

VOTED: to issue an Order of Conditions with Special Conditions as described above.

6:45 p.m. Discussion of the Superior Court Decision on the appeal under the Pepperell Wetlands Protection By-Law by Cross Brook Realty Trust of the Conservation Commission's denial of an Order of Conditions for DEP File #259-706 for the construction of a driveway at 23 Heald St

Town Counsel Ned Richardson met with the Commissioners to discuss how to proceed in complying with the Superior Court's Order to reconsider the denial under the By-Law as listed above. Richardson reviewed the meaning of a *certiorari* appeal. It is an appeal on the record of the proceeding. In this case, the judge asked the Commission, in effect, to start over again and review the application in full, as if for the first time. In addition, the decision included several questions about which the judge asked the Commission to make specific findings.

Elliott asked how the Commission would issue its decision. Richardson said to issue an Order that is specifically under the Town By-Law. Fisher said that Pepperell's By-Law says that the forms used for the WPA apply, and there is a section of the DEP Order of Conditions form that addresses decisions under municipal by-laws.

Sauer asked how the process would go. Richardson said that the Commission should consider all documents that had been previously submitted and note that they were considered in the minutes. After due consideration, the Commission should issue a Finding under the By-Law. Rice pointed out that the Commission needs to be careful to make it clear that the review is only under the By-Law. Richardson agreed that the applicant should request a hearing, and he said that he would contact the applicant's attorney about this. Richardson also said that there should be Notification of Abutters and a Legal Notice published, at the expense of the applicant. Fisher was asked to check with MACC attorneys to find out how other towns had handled the hearing procedure and the format for issuing Findings in similar cases.

7:10 p.m. Public Hearing re NOI filed by Scott Morrison for upgrade of the septic system at 48 Harbor Street

Chris MacKenzie of Whitman & Bingham attended the hearing to represent the applicant. Under the Pepperell Wetlands Protection Bylaw, the Commission determined that the project area involves BVW, and the proposed activity must meet the 50' setback requirement to the fullest extent possible as a lot created before May 6, 2002. MacKenzie reviewed the design for the upgraded system. Fisher said that the design is under review by the Board of Health, with no decision yet issued. Sauer asked where the existing system was located. Rice asked why the new system is so far away from the house. MacKenzie explained that the steep slope behind the house would necessitate even more fill if it were closer. Elliott asked about an above ground swimming pool he had seen on the property previously. MacKenzie said that it had been removed and was not going to be replaced. Fisher said that there was landscaping debris stockpiled beside the shed, suggesting that the Commission include a special condition requiring that it be removed.

Abutters who lived at 46 Harbor Street asked several questions. On a motion from Elliott, seconded by Rand, all

VOTED: to issue an Order of Conditions with a Special Condition requiring that the debris beside the shed be removed.

7:20 p.m. Public Hearing re NOI filed by Laurie and John Blagdon for construction of a new single family house at 25 Heald Street

Jack Visniewski attended the hearing to represent the applicants. Laurie and John Blagdon also attended. Under the Pepperell Wetlands Protection Bylaw, the Commission determined that the project area involves BVW, and the proposed activity is not excepted from the 50' setback requirement. Visniewski said that the wetland delineation on this lot had previously been approved via an ORAD. He reviewed the project plan pointing out that the house is outside the buffer zone and the driveway is located at least 50' away from the BVW except for a small area within the ROW where the driveway is as far as possible away from the edge of BVW. He said that the house would have Town water and sewer. Erosion control shown on the plan was specified as silt fence or haybales or both. Fisher said that the Order generally requires both.

Elliott said that he felt the 50' buffer should be marked in 6 places. Visniewski made note of the suggested locations and said that he would submit a revised plan, showing the markers, before the Order is issued. On a motion from Elliott, seconded by Rand, all

VOTED: to issue an Order of Conditions with Special Conditions as described above

7:30 p.m. Public Meeting re RDA filed by Jayron Realty for construction of ten single family houses on Lots 12-14, 16-20, 26 & 27

Jaren Slattery, David Petropulos, and Frank Bicchieri attended the meeting to explain the project. Because this is a 40B project, the Pepperell Wetlands Protection By-Law does not apply, although a 50' no-disturb buffer is included in the Comprehensive Permit issued by the ZBA on April 15, 2008. The Comprehensive Permit allows restoration of disturbed areas within the 50' buffer, but after restoration, the 50' buffer is a no-disturb zone.

The 10 lots covered in this RDA have a very small amount of 50' buffer within each lot, if any, although they all had areas of the 100' buffer zone where work associated with the construction of single family houses was proposed. Slattery described his site visit with Fisher, where they determined that the existing erosion control barrier on lots 26 & 27 is farther away from the wetland edge than the plan shows. Bicchieri said that the swale for stormwater at the back of lots 19 & 20 was covered by 259-707, the Order for the roadway and drainage system. Sauer asked about the location of septic systems. Slattery said that they are in front of the houses.

Elliott said that he felt that the erosion control barrier on lot 13 should be moved up to the 50' buffer line. The applicants agreed to place 4 x 4 markers of composite lumber with 18" exposed above the ground at the 50' buffer zone line on each side property boundary of all these lots. On a motion from Elliott, seconded by Rand, all

VOTED: to issue a Negative 3 & 6 Determination.

7:35 p.m. Public Hearings re four NOIs filed by Jayron Realty for construction of four single family houses at 10, 12, 14 & 16 Emerson Circle (Lots 22-25)

Jaren Slattery, David Petropulos, and Frank Bicchieri attended the hearing to explain the projects. Because this is a 40B project, the Pepperell Wetlands Protection By-Law does not apply, although a 50' no-disturb buffer is included in the Comprehensive Permit issued by the ZBA on April 15, 2008. The Comprehensive Permit allows restoration of disturbed areas within the 50' buffer, but after restoration, the 50' buffer is a no-disturb zone.

The Commissioners reviewed each plan, beginning with Lot 22, 16 Emerson Circle. Bicchieri said that these 4 lot plans have specific house footprints and locations, rather than the generic footprint and worse-case locations that were shown on the RDA taken up before these hearings. On Lots 22, 23 & 24, there is restoration proposed within the 50' buffer. Rice asked how the soils in the restoration areas would be prepared. Slattery said that they would cap the exposed sand with 4 to 6 inches of loam before planting. Rice said that the seed mixes should be specific for drought. She cautioned that some of the New England Wetland Plants mixes contain rare species.

Elliott observed that the plans show the erosion control barrier inside the 50' buffer. Slattery agreed and said that the no-disturb area would be marked by signs on 4 x 4 posts where the 50' line crosses each side property boundary, just as agreed to in the RDA above. Elliott said that Fisher could ask for field adjustments to the erosion control barriers if needed. On a motion from Elliott, seconded by Rand, all

VOTED: to issue 4 Orders of Conditions with Special Conditions as described above.

Conservation Administrator's Report

Discussion of Priorities for Projects in Open Space & Recreation Plan

This discussion had been suggested by Masterson. Since she was unable to attend the meeting, the discussion was deferred to a later meeting.

Discussion of possible warrant articles for Annual Town Meeting

The Commissioners considered two possible warrant articles for the ATM. They decided not to propose any increases to the filing fees under the Pepperell Wetlands Protection By-Law. They decided to submit a warrant article requesting that fees collected under the By-Law since last year be transferred into the Conservation Fund. Even if the Commission decides to move to pass over this article at the meeting, it was thought that it was important to keep this process in the public eye so that it could be brought back when economic conditions improve.

Review of proposed revision to WRPOD By-Law & the proposed Wind Energy Conversion Facilities By-Law

Fisher summarized suggestions for changes to the proposed WRPOD language that had been received from Masterson and Elliott. The Commissioners asked Fisher to write a comment to the Planning Board that included the suggestions. There was no comment about the wind energy by-law, but Rand said that he might comment as an individual.

Other Business

Upon a motion by Elliott, seconded by Rand, it was

VOTED: to approve the minutes of January 19, 2010 as drafted.

Fisher reported that the preliminary grant application to the Mass Environmental Trust for continuation of the water chestnut harvesting had not been selected to submit a complete application.

Fisher reported that Al Patenaude's attorney, Ray Lyons, had met with Town Administrator John Moak to discuss the timing of a submission of a Notice of Intent for the 40B project known as Leighton Village. Patenaude's engineer, Gary Shepherd, and Lyons had previously discussed this with Fisher herself. Fisher had consulted the Town Counsel and both agreed that an NOI is premature at this point. Fisher cited 310 CMR 10.05 (4)(b)3e, which deals with 40B projects, saying that all obtainable permits, variances, and approvals would be deemed to have been applied for when a Comprehensive Permit from the ZBA had been granted or denied and appealed. At the time of the meeting the project had not even been submitted to the ZBA. Moak said that Lyons asserted that the Commission had discretion over this issue and could accept an NOI if they wanted to. The Commissioners discussed the issue. They did not agree that they had discretion, and even if they did, they agreed that hearing an NOI before the ZBA made a decision on the Comprehensive Permit could confuse the issue and give the appearance that the Conservation Commission was endorsing aspects of the project which were in the prevue of the ZBA.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Ellen L. Fisher