

## PEPPERELL CONSERVATION COMMISSION

Minutes – November 17, 2009

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 7:00 p.m.

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

### Conservation Administrator's Report, Part 1

#### Requests for Extensions of Orders of Conditions:

Swift River Hydro had asked for an Extension of DEP File #259-655, their Recurring Preventative Maintenance Program for the dam on the Nashua River at Main Street. Rice commented that the timing of pond drawdowns should be carefully considered. All agreed that the timing of the last drawdown during spawning time had been unfortunate, and that the mill operators had been as concerned as the Commission about it once the fish spawning had been pointed out. On a motion from Elliott, seconded by Rand, all

VOTED: to issue a 3-year Extension.

Paul Jewett had requested Extensions of DEP File #259-673, -674 & -675 for construction of a common drive and 3 new single family houses at 146, 148 & 150 Jewett Street. Fisher reported that the Orders had been recorded, but no work had been begun. On a motion from Elliott, seconded by Rand, all

VOTED: to issue 3-year Extensions.

#### Review of on-going construction at 19A Powhatan Road

Fisher reported that construction had begun on the new single family house on this property, but she had a question about the need for erosion control for the installation of the water line from the well. The well was located within the Riverfront, but outside of the limit of work/erosion control barrier. She had told the contractor, Steve Millane, to delay installing the water line until she could discuss it with the Commissioners. All agreed that he should install a silt fence along the water line, minimize tree cutting, and fully restore the disturbed area before a Certificate of Compliance would be issued.

#### 7:10 p.m. Public Hearing re NOI filed by Anthony Franciosa for the construction of a single family house with associated driveway and utilities at 186 South Road

This property is also known as 5 Lakin Street. Jack Visniewski 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 is not excepted from the 50' setback requirement. Visniewski paid for the legal ad at the close of the hearing.

Visniewski said that the plans included a wetland delineation done in 2006 for the previous owner and that Fisher and Mike Turgeon had reviewed it recently. He said that the original plans submitted with this NOI had shown the house located within the buffer zone, but that the latest, revised plans had removed the house from the buffer. He said that he had included 5 markers along the 50' buffer line.

Visniewski said that the Commission had asked previous owner to restore the 50' buffer after that owner had cut trees and disturbed soil in preparation for building a commercial building on the site. The restoration had never been done. Fisher had inspected the site recently and found that native plant species had been filling in the disturbed site, but as yet there were no trees of any size. Visniewski said that the applicant proposed to add several red maples in the previously disturbed area to complete the restoration.

Visniewski said that the lot slopes from Lakin Street toward South Road and that there was to be some fill added in the front and back of the house to allow for the garage-under design. Fisher said that she had reviewed the wetland delineation with Mike Turgeon and also had carefully looked over most of the cleared portions of the lot since there were many clumps of sedges, rushes, and even some bulrushes throughout. After looking at the soils in various places, Turgeon had theorized that previous disturbance had compacted the soil, creating a nearly impermeable layer that allowed the herbaceous wetland plants to become established. Although wetland characteristics were apparently beginning to develop in the soils, Turgeon concluded that the lot did not contain a jurisdictional wetland except in the previously delineated southwest corner. Elliott agreed, saying that ground water was high in the area. He suggested that the Commission specify in the Order that the sump pump that would likely be needed outlet at least 75 feet from the wetland. Moody suggested that the same apply to any perimeter drain. On a motion from Elliott, seconded by Sauer, all

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

On a motion from Elliott, seconded by Rand, all

VOTED: to issue an "Invalid Order" Certificate of Compliance for DEP File #259-682, issued in 2006 for a commercial building on this property. The project was never started.

7:25 p.m.      Continued Public Hearing re Notice of Intent filed by Louis Berube of Shattuck Oil Company for replacement of fuel storage and containment structures and parking areas at 16 Groton Street

Jack Visniewski and Bruce Nickelsen attended the hearing. Visniewski said that he had submitted revised Drainage calculations for the revised plans, as requested by Bob Lee. He also said that comments on the revised plans from Natural Heritage had been received with no change to the original comments. In addition, a planting list for the restoration areas had been sent to the Conservation office by Mike Turgeon.

Elliott asked about plantings shown on the plan above the retaining wall. Visniewski said that these were not part of the restoration. Elliott also asked how the large tank was going to be transported to this site. Fisher reminded the Commission of a request made several years ago by the Walsh Brothers to move the tank at the Co-Gen plant next to the Pepperell Paper Mill over the Conservation Land near the covered bridge, although no discussion of this had occurred since the NOI was filed. Elliott also asked about the land surrounding the containment structure. Visniewski said it would not be disturbed, but would remain natural as it was presently.

Fisher asked if monitoring the remediation was Nickelsen's responsibility. He said yes. Masterson asked if an LSP would be on site during the entire process. Nickelsen said that either he or his associate (not an LSP, but works closely with Nickelsen) would be there. Rice cautioned against excavator errors. Nickelsen said that he would need to be there regularly in order to take samples and

to make decisions about how much work was necessary. Rice asked about how contaminated soil would be separated from clean material. Nickelsen said that there would not be piles of contaminated soil stored on site. All contaminated material would be loaded directly into trucks or roll-off containers. He also said that plans called for digging out and backfilling in the each section of the remediation area within the same day. Nickelsen also reminded the Commissioners that the mussel biologist would be on call during the remediation in case any problems affecting the river developed.

Elliott asked what time of year the remediation would be done. Nickelsen said it would be during dry, low-flow time, probably late summer or early fall. Elliott said that it was necessary to take into account the time needed for the restoration planting to be stabilized before winter after the remediation is complete. Nickelsen estimated that the remediation would take about 4 weeks. Fisher said that the special conditions in the Order of Conditions require that disturbed areas be stabilized by Nov. 1. Elliott suggested that timing consistent with that stabilization date be included in the Order.

Discussion continued about construction sequencing. Visniewski said that the exact order of construction of new facilities and removal of the old ones is still unclear. He said he thought that the new containment structure would be built first, then part of the retaining wall would be built behind it, then the remediation would be done, and finally the old containment structure would be removed and the area under it would be checked for additional contamination. Elliott asked how far it was from the retaining wall to the closest point of the existing contaminated area. Visniewski said about 10 feet. Elliot commented that if additional contamination were found after the restoration plantings had already been done and/or after some of the retaining wall had been constructed, that new work might need to be re-done. Masterson asked Nickelsen how his work would be coordinated with the other contractors on site. Nickelsen said that that had not been specifically decided, but he felt it was not important since the various parts of the project were independent.

Elliott asked about compaction of the clean fill in the remediation area. Nickelsen referred to the plan. Elliott asked how he would replicate the existing conditions in the flood plain. Nickelsen said that they would be filling the excavated areas with the same type of granular materials. That would avoid any big voids in the remediated area and would allow the same type of groundwater movement as exists now. Elliott asked who would oversee this filling. Nickelsen said it would be his firm in coordination with the contractor. He said he would approve the fill, based on a visual inspection. Elliott asked if DEP would oversee the project. Nickelsen said no, that DEP depends on the LSP to represent the state's interests.

Fisher noted that 310 CMR 10.58(5)(h) requires a permanent condition in the Order prohibiting further activity within the restoration or mitigation areas. On a motion from Elliott, seconded by Rand, a majority

VOTED: to close the hearing and to issue an Order of Conditions with special conditions as discussed at the hearing. Steeves voted against the motion.

8:00 p.m.      Informal Discussion with Russ Schott, representing the Nashoba Conservation Trust, re purchase of signs to mark trails

Schott proposed that the Nashoba Conservation Trust (NCT) and the Commission adopt and share the cost of standardized metal trail markers to be used on all trails owned by either NCT or the Town. All of the Commissioners did not agree that the markers would be preferable to painted dots. Rice

commented that metal in tree trunks that might be harvested could be a big problem. Schott suggested that aluminum nails might be a compromise with less impact on the trees. Steeves asked to see samples. Schott and Fisher showed examples from a website and catalog of Voss Signs. Rice asked if they would last longer than paint. Schott said that paint seems to last 2-3 years while the AMC estimates that aluminum signs (if not stolen or vandalized) last about 10 years. Sauer objected to signs, especially if they would be used too often along a trail. Advantages cited in the discussion were uniformity of markings and the way that this may encourage timid trail-users to enjoy Pepperell's public lands.

#### Conservation Administrator's Report, Part 2

Request for joint meeting from the Planning Board, Dec. 7<sup>th</sup>, re WRPOD

After discussing the WRPOD by-law problems, several Commissioners asked Fisher to get copies of the SEA report on which the current boundaries were based.

Review of Heald Street Orchard Management Plan next steps

This discussion was deferred to the next meeting.

Open Space & Recreation Plan update

Fisher reported that the current plan was due to expire in Feb. 2010, but that she had received a letter from DCS offering a 2-year extension if the Action Plan chapter of the current plan was updated.

#### Other Business

Upon a motion by Elliott, seconded by Rice, with Rand, Sauer and Steeves abstaining, it was

VOTED: to approve the minutes of the Executive Session of November 3, 2009 as amended.

Upon a motion by Elliott, seconded by Moody, with Rand, Sauer and Steeves abstaining, it was

VOTED: to approve the minutes of the public meeting of November 3, 2009 as drafted.

Fisher reported that she had consulted with Elliott, then had issued an Emergency Certification on November 10<sup>th</sup> for the Highway Division to repair a pair of collapsed culverts carrying Robinson Brook under the railroad embankment on the Nashoba Conservation Trust's "Hopkins Parcel" at 130 Shirley Street. The Commissioners agreed that they would ratify the Emergency Certification, and all signed it.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Ellen L. Fisher