

# Conservation Commission – Town of Spencer

## *Minutes*



Conservation Commission Meeting  
Wednesday, August 28, 2019 at 7:00 PM  
Town Hall, McCourt Social Hall

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The Meeting was opened at 7:00 P.M.

Commissioners Present: Charlie Bellemer, Margaret Emerson, Mary McLaughlin, Robert Perry, Warren Snow

Commissioners Absent:

Staff present: George Russell, Jane Green

Staff absent:

**Minutes Approved:** July 10, 2019  
July 24, 2019

**Signed:** Continuance form for 30 Roy's Drive from July 24, 2019 Conservation Meeting.

### **7:15 p.m. Continue the Public Hearing for the Request for Determination of Applicability for Peter Floss**

#### **Property: 30 Roy's Drive, Spencer, MA**

Ms. McLaughlin read the inspection report. Mr. Floss was present and explained the plans to replace the existing walkway. The Commission looked at the photos and discussed the plans.

*A motion to close the public hearing (Emerson/Bellemer) 5/0 passed.*

*A motion to issue a negative determination with conditions as noted on Agent's Report (Emerson/Perry) 5/0 passed.*

### **7:24 p.m. Continue the Public Hearing for the Request for Determination of Applicability for Stuart Howe**

#### **Property: 33 Pine Acres Road, Spencer, MA**

Stuart Howe was present. The Commission had requested a better drawing of the septic plan at the last hearing. Ms. McLaughlin read the inspection report. Mr. Russell discussed his observations when he went to the site.

*A motion to close the public hearing. (Perry/Emerson) 5/0 passed.*

*A motion to issue a negative determination with stipulation #3 in the Agent's Report (Perry/Emerson) 5/0 passed.*

**7:35 p.m. Open the Public Hearing for the Request for Determination of Applicability for Felice Kane-Scudder**

**Property: 15 West Ave, Spencer, MA**

Scott Jordan from EcoTec was present. Mr. Jordan brought revised plans. They delineated the BVW. They proposed a new septic tank and pump chamber. The closest work is 77 feet from the house. It was determined that because of the new location of the septic, they need a new well. Mr. Russell suggested using wattles but no silt fencing, there will be less land disturbance.

*A motion to close the public hearing (Snow/Perry) 5/0 passed.*

*A motion to issue a negative determination with Stipulation #13 and conditions on the last page of the Agent's Report (Bellemer/Perry) 5/0 passed.*

**7:40 p.m. Open the Public Hearing for the Notice of Intent for Bill Krukowski**

**Property: 190 Northwest Road, Spencer, MA DEP#293-0965**

Lori Benoit of Stantec was present to discuss the replacement of the deteriorated culvert. There is a perennial stream. It is designed with minimal BVW disturbance. There will be a sandbag cofferdam. Mr. Russell has been to the site a few times and has had discussions with the applicant. He recommends the conditions in the Agent's Report.

*A motion to close the public hearing (Perry/Emerson) 5/0 passed.*

*A motion to approve the plans with the conditions on the Agent's Report (Snow/Bellemer) 5/0 passed.*

**7:50 p.m. Open the Public Hearing for the Notice of Intent for John & Pauline Hatch**

**Property: 37 Lakeshore Drive, Spencer, MA DEP#293-0966**

Julian Votruba from New England Environmental Design was present to discuss the septic tank. It is in a very tight area. There is a cesspool which would be pumped by a septic hauler. It would be filled with flowable fill (a wet sand) and covered back up.

*A motion to close the public hearing (Emerson/Snow) 5/0 passed.*

*A motion to accept the plans as presented along with the conditions on the Agent's Report (Perry/Snow) 5/0 passed.*

**7:56 p.m. Open the Public Hearing for the Request for Determination of Applicability for Sunpin Solar – c/o William Behling**

**Property: North Brookfield Road, Spencer, MA**

**CONTINUED TO SEPTEMBER 11, 2019**

Mr. Russell made a point to address this project. There was a peer review and it uncovered a wetland that was not originally found. Therefore, plans need to be changed, and the applicant needs time to review them.

**7:58 p.m. Open the Public Hearing for the Notice of Intent for Lynn Ely**

**Property: 7 First Street, Spencer, MA DEP#293-0970**

MaryAnn Dipinto was filling in for Liz Dupree from Clear Water Environmental. The project is a septic repair. Ms. McLaughlin proceeded to let everyone know that there is no DEP # issued therefore it needs to continue to the next meeting. Jay Freedman an abutter to the applicant had concerns with the septic repair and location to his property. Mr. Russell told Mr. Freedman he needs to discuss that with the Board of Health Agent. *At the request of the applicant, the hearing has been continued to September 11, 2019.*

**8:07 p.m. Open the Public Hearing for the Notice of Intent for Cathy Holmes**  
**Property: 32 Shore Drive, Spencer, MA DEP#293-0967**

Jason Dubois presented the plans for the failed Title 5 on Thompson Pond. Mr. Dubois said the Board of Health Agent reviewed the plan. Mr. Russell discussed his suggestions. *A motion to close the public hearing (Perry/Bellemer) 5/0 passed.*  
*A motion to approve the plans with conditions listed on the Agent's report (Perry/Snow) 5/0 passed.*

**8:15 p.m. Open the Public Hearing for the Notice of Intent for John Kennedy**  
**Property: Lot B-21 I Capen Road, Spencer, MA DEP#293-0968**

Jason Dubois was present regarding the application for the proposed home. Mr. Dubois discussed the plans. Mr. Russell stated that the wetland line was very old. It has been reaffirmed that it is accurate. The Engineer has been very responsive to his requests and he recommends approval of the plans. *A motion to close the public hearing (Snow/Bellemer) 5/0 passed.*  
*A motion to approve the plans with the standard conditions listed in the Agent's Report (Bellemer/Perry) 5/0 passed.*

**Other Business:**

**Citizen's Petition:** Wilson Dobson discussed updates with the Citizen's Petition. It is to do with putting 10% of solar revenue into the Conservation department. Mr. Dobson has worked on this with his counsel. The Citizen's Petition has to be renewed yearly, but there is a way to go about it if the legislature passed it. Then it could occur automatically. Mr. Dobson wanted to know what kind of support he would get from the Conservation Commission because he feels there will be opposition. Folks will want to know what the Commission will do with the money. Some of the ideas that the money could be used for would be: Land Acquisitions, legal fees, appraisals, native species surveys, and educational purposes. Mr. Dobson recommended the Conservation Commission assist with the signatures.

**Solar Bylaw:** Ms. Emerson discussed what the committee would like to include in the Solar Bylaw. They want no waivers on 15% slopes. They would like to have a cap on tree cutting. They would like the applicant to plant native pollinators. They would like every permit authority to sign off on them prior to the electrical inspection.

**7 Washburn Drive:** Mr. Russell recommended to issue the CofC.

*A motion to approve the Certificate of Compliance (Perry/Snow) 5/0 passed.*

**56 Northwest Road:** Mr. Russell recommended approval for release of bond for the composting operation in the amount of \$6,900.00.

*A VOTE to release the rest of the Stormwater Bond (Emerson/Snow) 5/0 passed.*

**Route 9:** Emergency Certificate. Mr. Russell explained that he needed to act on the collapse over a drainage/stream channel on the side of the road.

*A motion to Affirm the Emergency Certificate for Route 9 (Snow/Perry) 5/0 passed.*

**6 Treadwell Terrace:** Mr. Russell said that he talked with the owner about the BVW in the buffer/wetlands. Mr. Russell did not go on the property regarding the Notice of Violation. The owner requested to discuss the issue with the Commission but was not present. Mr. Russell will wait another 30 days to issue another notice, if he does not hear back from applicant.

**Bixby Trail Connector:** Mr. Russell met with the Real Estate manager, Grant Buchanan, of the project. Mr. Russell recommended to Mr. Buchanan to submit revised plans that include the scope of the work the contractor will be doing, and how they are going to control the erosion. There are no jurisdictional issues.

**George's Report:** Mr. Russell would like to adopt the Policy on Expired Permits.

*A motion to adopt the new Expired Permit Policy (Perry/Snow) 5/0 passed.*

Mr. Russell developed a spread sheet on Enforcement to keep a tab of what is going on.

Mr. Russell talked about an appeals court decision that was just handed down which would allow a Conservation Commission to deny a septic if the applicant can't meet the tests in 310 CMR 10.00

A plant list was given to the Commission members to review. The list consisted of wetland, native and non-invasive plants. Mr. Russell hopes to be able to use this for all mitigation plantings.

The Agent's Report is appended to and made part of the minutes.

**Executive Session:**

*A motion to go into Executive Session (Emerson/Perry) 5/0 passed.*

The Commission went into Executive Discussion regarding pending litigation.

*The Commission came out of formal Executive Session (Snow/Perry) 5/0 passed.*

New Applications: 101 Clark Road, NOI  
24 Oak Lane, RDA  
81 Wilson Ave, RDA

*A motion to adjourn the meeting at 9:12 p.m. (Emerson/Snow) 5/0 passed.*

Respectfully submitted by:

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Jane Green, Senior Clerk  
Development & Inspectional Services

## Documents reviewed at the 8/28/19 Spencer Conservation Commission Meeting

Agenda for 8/28/19

Agent's Report

Minutes from 7/10/19 meeting

Minutes from 7/24/19 meeting

Letter from Grant Buchanan re: Bixby Connector Trail Repairs

Wetland Peer Review of North Brookfield Road

Letter from National Grid re: summer foliage and fall stump treatment

Continuance form 30 Roy's Drive from 7/24/19 meeting

RDA file for 30 Roy's Drive (signed)

RDA file for 33 Pine Acres (signed)

RDA file for 15 West Ave (signed)

NOI file for 190 Northwest, including OofC (signed)

NOI file for 37 Lakeshore Drive, including OofC (signed)

Continuance form North Brookfield Road

Continuance form 7 First Street (signed)

NOI file for 32 Shore Drive, including OofC (signed)

NOI file for Lot B-2 Capen Road, including OofC (signed)

7 Washburn Drive, CofC (signed)

Route 9 MASS DOT, Emergency Certificate (signed)



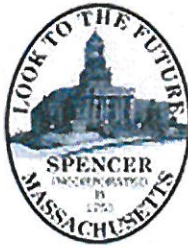
# Town of Spencer, Massachusetts

## Office of Development & Inspectional Services

Planning Board  
Zoning Board of Appeals  
Conservation  
Board of Health

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Town Planner  
Inspector of Buildings  
Health Agent  
Wetland/Soil Specialist



Memorial Town Hall  
157 Main Street  
Spencer, MA 01562

Tel: 508-885-7500 ext.  
180

TO: Conservation Commission

FM: George Russell, AICP  
Conservation Agent

RE: Agent's Report

DATE: 8/28/19

#### **4.0 PUBLIC HEARINGS:**

Item 4.1. NOI 30 Roys Drive: I have inspected the site and have had e-mail "correspondence" with the property owner in regards to the Commission's requirements for a plan on the proposed activity. New plans have been submitted and contain the details requested by the Commission. I would recommend the following conditions be attached to the Orders:

1. The Commission must receive a written report with respect to the project's conformance to the Order of Conditions every April and October from a professional consultant (e.g. civil engineer or wetlands scientist) until a certificate of compliance is issued.
2. At least every other week, beginning with the first week in which there is any land disturbance or construction, and for as long as thereafter as the ground remains destabilized, the Commission must receive a report from a professional consultant (e.g. civil engineer or wetlands scientist). This report must include weekly erosion control inspection logs, details of any necessary site remediation taken and any deviations from the approved plans.
3. No land alteration, save for the installation and repair of erosion control, may begin and no building permit will be signed by the Conservation Office until such time as the Orders are recorded and the erosion controls are installed.

NOTE: For applications submitted after 8/1/19, the new "Standard Conditions" format will be used. A copy is attached for your edification. This incorporates all of the new and old conditions and eliminates the current conflict (#30) with the Commission's regulations.

Item 4.2: RDA 33 Pine Acres: We were waiting for information on the location of the septic system on site. This information has been submitted and the septic system is not in the area of construction. I would recommend a negative #3 with erosion barriers between the construction and the isolated wetlands and said barriers to be approved by my office prior to any land disturbance and the conditions on the last page.

Item 4.23 RDA 15 West Ave.: I have reviewed the file, made a site visit and corresponded with the property owner's representative. I have requested a map revision showing the linear distance from the resource area to the work area and a 100' buffer zone line. This has not yet been received. Based on what I have seen and reviewed, I would recommend that a Negative #3 be granted with the conditions on the last page (not counting the policy page) of this report.

Item 4.4. NOI 190 Northwest, DEP #293-0965: I have undertaken two site inspections and I would recommend the following conditions be attached to the Orders in addition to the regular conditions the Commission already uses (**EXCEPT #30** {see last paragraph below}):

1. The Commission must receive a written report with respect to the project's conformance to the Order of Conditions every April and October from a professional consultant (e.g. civil engineer or wetlands scientist) until a certificate of compliance is issued.
2. At least every other week, beginning with the first week in which there is any land disturbance or construction, and for as long as thereafter as the ground remains destabilized, the Commission must receive a report from a professional consultant (e.g. civil engineer or wetlands scientist). This report must include weekly erosion control inspection logs, details of any necessary site remediation taken and any deviations from the approved plans.
3. No land alteration, save for the installation and repair of erosion control, may begin until such time as the Orders are recorded and the erosion controls are installed.

Item 4.5. NOI 37 Lake Shore Drive DEP NOI #292-0966: I have inspected the site and discussed the permit with the Health Agent. One of the "big" issues" is what is going to be done with the cesspool. I have requested information on this from the applicant and it has been provided: it will be filled with sand. I would recommend the following conditions be attached to the Orders in addition to the regular conditions the Commission already uses (**EXCEPT #30** {see last paragraph below}):

1. The Commission must receive a written report with respect to the project's conformance to the Order of Conditions every April and October from a professional consultant (e.g. civil engineer or wetlands scientist) until a certificate of compliance is issued.
2. At lease every other week, beginning with the first week in which there is any land disturbance or construction, and for as long as thereafter as the ground remains destabilized, the Commission must receive a report from a professional consultant



(e.g. civil engineer or wetlands scientist). This report must include weekly erosion control inspection logs, details of any necessary site remediation taken and any deviations from the approved plans.

3. No land alteration, save for the installation and repair of erosion control, may begin until such time as the Orders are recorded and the erosion controls are installed and inspected.

Item 4.6 RDA for North Brookfield Rd. This application is asking the Commission to accept the wetlands line on site. If accurate, the line will place the upcoming solar project outside of jurisdiction. I am recommending peer review for this line and have discussed this with the applicant. The cost has been developed and forwarded to the applicant.

I would recommend the hearing be opened but not closed until such time as the peer review is complete.

Item 4.7. 7 First Street NOI: A site inspection was conducted and a review e-mail generated to the applicant. There are some deficiencies in the application/plans which need to be addressed. These revisions and deficiencies have been addressed and if we receive a NOI # from DEP the application is ready to go forward. If approved, I would recommend the following special conditions: 20, 21, 23-24, 27-30, 34, 35, 37, 38, 40, 41, 44 & 47-54.

Item 4.8 32 Shore Dr. NOI DEP #293-0967: A site inspection was conducted and a review letter generated to the applicant. There are some deficiencies in the application which need to be addressed. Based on revised plans submitted to my office, all of my concerns have been taken care of. I would recommend approval with the following special conditions: 20, 21, 24, 27-30, 33-35, 37, 43, 44, 47 & 51-57.

Item 4.9 Lot B-2-1 I Capen Rd. NOI DEP 329-0968: I have reviewed the application, conducted a site visit and generated a review e-mail to the applicant's engineer. There are some deficiencies in the application and the wetlands flagging which need to be addressed. Revised plans and narratives were submitted that addresses all of the issues. I would recommend approval with the following special conditions: 20-29, 34, 37-39, 41, 46, 47, 51-53 & 57

#### **OTHER BUSINESS:**

Item 5.1 COC 7 Washburn: This is an expired OOC that was originally issued in 1965. The permit was prepared by a licensed surveyor and thus the requirements of 310 CMR 10.05 (9) (d) kick in. The required statement was not submitted and I strongly doubt that it can or would be. Given that there is realistically no way to technically comply with the legal requirements for the release.

Therefore, the Commission has a couple of options: (1) Do not grant the COC until such time as the applicant can produce a document from an RLS that "to the best of his/her knowledge" the permit conditions were met. (2) If #1 cannot be obtained, have the applicant submit a statement to the effect that a good faith effort was made to obtain compliance with the regulations and it could not be done.

As it turns out, a statement from an RLS has been received and based on this I would recommend the release be approved.

The Commission may recall I briefly touched on this issue at the 7/10/19 meeting.

Item 5.2. 56 Northwest Rd. Stormwater Bond release: I conducted a site inspection on 7/30/19 and all is ready for the bond to be released.

### **AGENT REPORTS:**

Item 6.0. Report from Agent: This report was sent to the applicants via e-mail and in draft form.

Other issues which I would like to discuss/consider are:

6.1. You will note that item 5.1 above raises the issue of an expired permit needing a certification. In light of this, which I'm confident will happen again, I would submit for the Commission's review and approval the policy attached to this report.

6.2 I am developing a spreadsheet on enforcement which I will be distributing at the last meeting of the month. It will not have "everything" on it, but it is a start.

6.3 An appeals court decision that was just handed down concerning the Georgetown ConCom denying a permit to locate a septic system within 100' of a resource area. In Brian Farmer v Conservation Commission of Georgetown 2019 WL 2323747, the court concluded the Commission's denial was proper given the application did not overcome the presumption of adverse impacts. *This decision can be a big deal given the number of lakes and septic systems in town.*

6.4 I will distribute at the meeting a "plant list" from a portion of a document which I helped write which I would request the Commission review with an eye toward requiring all mitigation planting to be drawn from this list. The reasons should be self-explanatory when you see the information.

6.5. I am requesting the Commission vote to into executive session to discuss pending litigation. See the attached "checklist" on this.

Name:

Determination of Applicability

Date:

Before work begins, the applicant shall furnish a copy of the Determination of Applicability and these conditions to the contractor. ***The Contractor must read these conditions, and sign and date the certification at the bottom of the page attesting that he has read and understood them.***

1. A copy of this Determination and the approved plan(s) must be kept on site during all construction and available to the Commission at site visits.
2. Biodegradable erosion control to be installed as on the approved plan and in accordance with Section 16.3 of the Spencer Wetland By-Law. No work shall commence until the protection measures are approved by the Commission. The applicant must notify the Conservation Commission for an inspection of the protection measures. The control devices shall be maintained and remain in place until the Commission authorizes removal.
3. When work is about to **begin**, the Conservation Commission must be notified by telephone or e-mail.
4. When the work is **complete**, the Conservation Commission must be notified by telephone or e-mail..
5. Failure to comply with these conditions or the Town of Spencer Wetland By-Law may be deemed reason to modify or revoke this Determination of Applicability.

I Certify that I have read and understood the conditions above.

Signature \_\_\_\_\_

Date \_\_\_\_\_

**POLICY ON EXPIRED ORDER OF CONDITIONS**

In order to help alleviate the expense and time required when an Order of Conditions has expired, and the permit requirements are not complete, e.g. required reports have not been submitted, the following policy will apply:

1. If actual site work is required to be completed, a new NOI/RDA must be submitted and the level of permitting required shall be made by the Commission based on the work to be done and the location of the work. If the work is in a resource area, an NOI shall be required. All current permit fees shall apply if a new permit is required.
2. If a new permit is required, it shall be approved by the Commission prior to any action on a certificate of compliance (COC) for the expired permit;
3. If stipulations attached to the approval have not be met, the applicant shall submit to the commission a narrative outlining what has not been completed, why it was not done and what attempts have been made to complete the requirements of the original/amended Orders. This narrative shall include any response to any correspondence from the Commission or the Conservation Agent concerning the project and any stipulations that have not been met;
4. If the stipulations cannot be met, the applicant shall submit a statement from a licensed professional or a professional wetlands scientist that the project was built in accordance with the approved plan as required under 310 CMR 10.05 (9) (d); If this cannot be obtained, the applicant shall submit to the Commission all the steps taken to get the necessary certification and the reasons why it could not be obtained.
5. Based on items 3 & 4 above, the Commission may grant the COC if in the opinion of the Commission the project is in fact complete and the lack of strict compliance with the stipulations attached to the Orders would not negatively impact the community or the neighborhood where the project is located.