

# Conservation Commission – Town of Spencer

## *Minutes*



Conservation Commission Meeting  
Wednesday, September 25, 2019 at 7:00 PM  
Town Hall, McCourt Social Hall

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The Meeting was opened at

Commissioners Present: Charlie Bellemer, Margaret Emerson, Warren Snow

Commissioners Absent: Mary McLaughlin, Robert Perry

Staff present: George Russell, Jane Green

Staff absent:

**Minutes Approved:** September 11, 2019

**Signed:** Rt 9, 391 East Main Street - Emergency Certification  
Continuance forms - North Brookfield

**7:15 p.m. Opened the Public Hearing for the Notice of Intent for John Knight**  
**Property: Washburn Drive, Spencer, MA DEP#293-0972**

Jason Dubois presented the plans for the culvert replacement. The Commission looked at the plans. Mr. Russell recommended approving the plans.

*A motion to close the public hearing (Snow/Bellemer) 3/0 passed.*

*A motion to issue the Order of Conditions with the standard Conditions noted on Agent's Report (Snow/Bellemer) 3/0 passed.*

**7:20 p.m. Opened the Public Hearing for the Notice of Intent for James Mullen**  
**Property: 41 Oakland Drive, Spencer, MA DEP#293-0971**

Mr. Russell reported that the Abutter Notifications came in. Mr. Dubois discussed the work to be done. The plan was approved by the Board of Health. The Commission looked at the plans. Mr. Snow read the inspection report. Mr. Bellemer wanted to know what would happen to the tank. Mr. Dubois told him that whatever is in the tank will be pumped out, and either crushed in place or filled with sand and material. Mr. Russell inspected the property and would recommend approval.

*A motion to close the public hearing (Snow/Bellemer) 3/0 passed.*

*A motion to issue the Order of Conditions with stipulations from the Agent's Report (Bellemer/Snow) 3/0 passed.*

**Other Business:**

**Cranberry Well Beaver Dam 17 South Spencer Road:** Bill Krukowski discussed the request. Mr. Bellemer suggested putting a heavy fence in the water. The Beavers do not like the fencing. Mr. Russell recommends the request to extend the OofC.  
*A motion to issue the Extension for 3 years (Bellemer/Snow) 3/0 passed.*

**Lot 1 North Spencer Road:** Mr. Russell inspected the site and recommends extending the permit another year.  
*A motion to issue the Extension for one year (Bellemer/Snow) 3/0 passed.*

**Lot 3 North Spencer Road:** Mr. Russell inspected the site and recommends extending the permit another year.  
*A motion to issue the Extension for one year (Bellemer/Snow) 3/0 passed.*

**74 Donnelly Road:** Mr. Russell inspected and recommends issuing the CofC.  
*A motion to issue the Certificate of Compliance (Bellemer/Snow) 3/0 passed.*

**6 Treadwell Terrace:** Scott Morrison of EcoTec and Peter Strand, the owner, were present to discuss the Notice of Violation. Ms. Emerson read the inspection report. The Commission didn't see any issues with the gardening. Mr. Russell said that at the last meeting, the applicant took the position that gardening can be an agricultural use. Mr. Russell said that an agricultural use must be commercial. Mr. Snow said that when they inspected, it looked like a very organized private garden with minimum disturbance, away from wetlands. The compost looked like it was out of the buffer zone. They did see some pvc pipe. Mr. Strand said he removed the pipe and the rabbit cages and clay pots. Mr. Russell suggested an RDA be filed to accept the wetlands line. Mr. Morrison thought that was unfair. The applicant already spent money on hiring Mr. Morrison, who provided a report. There was no impact. Mr. Snow suggested that if Mr. Strand decides to add anything, to check with the Commission first. Mr. Strand wanted to know if he could still use his compost and move his hoop house. Mr. Bellemer told him that if it is not anchored to the ground, he can move it. The Commission told him he may use his compost.  
*A motion that the Notice of Violation is no longer applicable, but if the owner changes anything, an RDA must be filed (Snow/Bellemer) 3/0 passed.*

**20 & 32 McCormick Road:** James Schwartz, from Independent Solar, was present to give the Commission a phasing update and request some minor changes to the plans. Mr. Bellemer wanted to know what were the reasons for the changes. Mr. Schwartz said that it will reduce disturbance during the construction process and allow them to move more

quickly, which will help with stormwater control. Mr. Schwartz said they are only asking to change the sequence on 1 of 7 phases. Mr. Russell suggested they change the perimeter erosion controls to 12" in diameter stake wattles, instead of haybales, which can carry invasive species that can take root very easily. The plan is to pre-drill the anchors prior to putting them in.

*A motion to approve the sequence changes as proposed (Bellemer/Snow) 3/0 passed.*

### **Agent's Report:**

Mr. Russell would like to add Guidance Documents to the website to help educate the public on Commission policies. He would like the Commission members to review the documents and vote on this at the next meeting.

6.2 Drainage Structures: Mr. Russell would like the Commission's interpretation of the wetlands bylaw that does not exempt manmade drainage structures and facilities, e.g. detention basins, from jurisdiction. The local bylaw and regulations do not contain this exemption. This would mean that any detention basin in town that starts to show wetlands characteristics, e.g. wetlands indicator plants, would in fact be a jurisdictional area with a buffer zone. There was discussion about this and that applicants should maintain these drainage structures, which are in the Order of Conditions. These structures are jurisdictional if they become fresh water wetlands. There needs to be more monitoring of the drainage structures.

*Agent's report is appended to and made part of the minutes.*

New Applications:

*A motion to adjourn the meeting at 8:07 p.m. (Snow/Bellemer) 3/0 passed.*

Respectfully submitted by:

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Jane Green, Senior Clerk  
Development & Inspectional Services

## Documents reviewed at 9/25/19 Conservation Commission Meeting:

Agenda for 9/25/19

Minutes from 9/11/19 meeting

Agent's Report

Emergency Certification – Rt 9, 391 East Main Street

North Brookfield- Continuance

Washburn Drive -signed OofC

41 Oakland Drive -signed OofC

Lot 1 North Spencer Rd – Extension OofC signed

Lot 3 North Spencer Rd – Extension OofC signed

74 Donnelly Road – CofC signed

Cranberry Well Beaver Dam – signed

Spencer Conservation Commission Enforcement Status

Vegetative Debris Resulting from Storm Damage - Guidance Documents

Cutting/Removing Trees in Wetlands – Guidance Documents

Conservation Commission Policy on Vegetative Debris in a Jurisdictional Area

Application procedure for the Spencer Conservation Commission

Why Dumping Yard Waste into Wetlands is Harmful – Guidance Documents

EPA&DEP Annual Report May 1, 2018-June 30, 2019

Memorandum from Fuss & O'Neill re: Assessment & priority ranking of Catchment

Sanitary Sewer Overflow/Bypass Notification form

Map of Spencer Catchment Delineation

Letter from EcoTec re: 53 East Charlton Road dated 9/9/19 from Scott Jordan and another dated 9/23/19

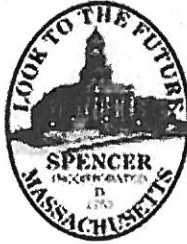
National Grid Pole replacement on Ash Street 9/20/19

# Town of Spencer, Massachusetts

## Office of Development & Inspectional Services

Planning Board  
Zoning Board of Appeals  
Conservation  
Board of Health

Town Planner  
Inspector of Buildings  
Health Agent  
Wetland/Soil Specialist



Memorial Town Hall  
157 Main Street  
Spencer, MA 01562

Tel: 508-885-7500 ext.  
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TO: Conservation Commission

FM: George Russell, AICP  
Conservation Agent

RE: Agent's Report

DATE: 9/25/19

### **3.0 To be signed:**

3.1. Emergency Cert: I have issued a "new" emergency certification for work on Rt. 9 since the erosion/degradation of the roadway and the bank has not yet been sufficiently stabilized and the "old" emergency cert. has expired.

### **4.0 PUBLIC HEARINGS:**

Item 4.1. NOI Washburn Drive: I have inspected the site, which is a culvert under a one lane private road, and have had e-mail "correspondence" with the project engineer. All of my comments have been addressed. I would recommend the following conditions be attached to the Orders: 20-24, 27-30, 33-35, 38, 41, 47, 51-53 and 56.

Item 4.2: RDA 41 Oakland Ave.: I have inspected the site and have had e-mail "correspondence" with the project engineer. All of my comments have been addressed. I have been informed by the applicant that all abutter notices went out via certificates of mailing. It is my opinion, confirmed by an ALJ, that the statute controls and the mailing must be certified mail and must go out at least 7 days before the hearing. This requirement is also in the "NOI Checklist" and the Commission's regulations. If the abutter requirement notification requirement can be met, I would recommend approval with the following conditions attached to the Orders: 20-24, 27-30, 33-35, 38, 41, 47, 51-53 and 56.

If the abutter notice cannot be met, I would submit there is a procedural defect and new abutter notices should go out for the date to which the hearing is continued.

## **5.0 OTHER BUSINESS:**

5.1. & 5.2: Spencer Road, lots 1 & 3: I see no reason why the extension should not be granted.

5.3. 74 Donnelly Rd. Request for a COC: the original silt fencing is still in place and in many areas has been partially buried and/or fallen and will be buried. I would recommend the COC be denied and re-applied for when the silt fencing is removed. I am only recommending denial since the COC must be acted upon within 21 days and that time frame cannot be extended. (310 CMR 10.05 (9) (a))

5.4. Cranberry Well Beaver Dam Request for an extension: I see no reason why the extension should not be granted.

5.5. 6 Treadwell Ter.: There is an obvious difference of opinion on whether the "work" at this address is a violation or is exempt agricultural activity. I would submit that the deposition of vegetative matter is not an exempt activity but rather constitutes "fill" which is not exempted from permitting. In addition, "gardening" is not an exempt activity, since under 310 CMR 10.04, "agriculture" means that the land in such a use is for "commercial purposes".

5.6. Solar Array McCormick Rd.: I have discussed with the applicant the changes that are proposed and I am in agreement that they would significantly decrease the project construction time-frame without adversely impacting the resource areas. Further, by decreasing the construction time-frame, the time that the soils will be subject to erosion will decrease.

Under the new policy to modify Orders, it would appear that the three "tests" for an administrative approval have been met.

## **AGENT REPORT:**

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. I have developed some "guidance documents" that I would request the Commission review. These will be available at the meeting. I would eventually like to put these on the website to help the community understand a little more about wetlands and to help navigate the process to get a permit and when one is needed.

6.2. I would request the Commission's interpretation of §3.1 and 4 in the wetlands bylaw and §1.5 of the Commission's regulations. 310 CMR 10.02 3 (c) exempts man-made drainage structures and facilities, e.g. detention basins, from jurisdiction. The local bylaw and regulations do not contain this exemption. This would mean that any

detention basin in town that starts to show wetlands characteristics, e.g. wetlands indicator plants, would in fact be a jurisdictional area with a buffer zone.

Is this the Commission's interpretation and/or practice?