

Conservation Commission – Town of Spencer

Minutes



Conservation Commission Meeting
Wednesday, October 9, 2019 at 7:00 PM
Town Hall, McCourt Social Hall

The Meeting was opened at

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

Commissioners Absent:

Staff present: George Russell, Jane Green
Staff absent:

Minutes Approved: September 25, 2019

Signed:

**7:15 p.m. Continue the Public Hearing for the Request for Determination of
Applicability for Sunpin Solar – c/o William Behling
Property: North Brookfield Road, Spencer, MA**

Caitlin Nover from Beta Group Inc. and William Behling from Sunpin Solar were present to discuss the wetland review. A resident, Matt Defosse was concerned that the stonewalls were not on the plans. The Commission stated that stonewalls are not within their jurisdiction. Mr. Bellemer wanted to know if the isolated area near the road will be disturbed by trucks. Ms. Nover stated that the trucks will be coming in from the other side of the site.

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

A motion for a negative #4 Determination (Snow, Bellemer) 5/0 passed.

7:25 p.m. Opened the Public Hearing for the Notice of Intent for Michael & Michelle Elliot

Property: 12 Ledge Avenue, Spencer, MA

James Tetreault from Thompson Liston Associates was present along with Michael & Michelle Elliot to discuss the septic. The Elliots are considering living at this address year-round but the septic needs to be upgraded. There is an existing cesspool.

They received the Board of Health approval on 10/7/19. An abutter, Todd Gatto, wanted to know what the retaining wall was going to look like. Mr. Tetreault said that they will use the same wall material and incorporate boulders. Cheryl Gatto, an abutter, wanted to know if the roots of the tree will impact the septic. Mr. Tetreault said that they are getting bids to cut down the tree but leave the stump. Gordon Bird, an abutter, wanted to know how close the leach field is to the water. Mr. Tetreault said that the nearest spot is 15-ft. Mr. Snow indicated that he believes that even though it is close, it is an improvement over what was there. Ms. Gatto wanted to know what type of tank they are putting in. Mr. Tetreault said that it will be either fiberglass or concrete. The plans show a fiberglass tank. Ms. Gatto wanted to know if the leach field will go into the property line. Mr. Tetreault told her that the leach field will be 14-ft away from the property line. Ms. Gatto asked if that was the closest it could be. Mr. Tetreault said that it can be as close as 5-ft away.

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

A motion to approve the plans with the conditions noted (Perry/Snow) 5/0 passed.

7:44 p.m. Opened the Public Hearing for the Request for Determination of Applicability for Michael Sliwoski

Property: 43 Jolicoeur Avenue, Spencer, MA

The applicant, Michael Sliwoski, told the Commission that he wanted to surface an existing gravel driveway. Mr. Russell discussed the inspection and recommended issuing the permit with a negative #3.

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

A motion to issue the determination with a negative #3 (Emerson/Snow) 5/0 passed.

Other Business:

40 Thompson Pond: Mr. Russell inspected the site and recommended that the CofC be issued.

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

4 Bellevue Drive: Mr. Russell inspected the site and recommended that the the CofC be issued.

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

19 Sherman Grove: Mr. Russell informed the Commission that the applicant has been ill and that is why the work has not been done and recommended a 3-year extension.

A motion to issue a 3 Year Extension (Snow/Perry) 5/0 passed.

109 Smithville Road: Mr. Russell inspected the site and recommended that the CofC be issued.

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

Conservation Meeting: There was a discussion to change the meeting time to an earlier time such as 6 or 6:30 p.m. Mr. Russell would like the Commission members to think about this and discuss it at the next meeting.

53 East Charlton Road: The applicant was not present. Mr. Russell discussed the Notice of Violation. The Commission recommended that the applicant file an RDA. *A motion to file a Request for Determination of Applicability (Perry/Snow) 5/0 passed.*

Agent's Report:

Removal of material from jurisdiction: Mr. Russell would like the Commission's guidance on the removal of fill, brush, etc. from jurisdiction. This is based on the Mass SJC Case of "Commonwealth vs. John G. Grant & Sons CO. Inc." "403 Mass. 151. Mr. Snow stated that he would like to look at each individual case. Mr. Bellemer said that it depends on what the fill is. Ms. Emerson said that in the past it has been done under an Enforcement Order. Mr. Perry suggested that everyone should meet with the Commission regarding fill in jurisdiction. The members all agreed with Mr. Perry.

Guidance Documents: Mr. Russell would like the Commission to adopt Conservation documents to educate the public. They would be available on the Town of Spencer website. The Commission would like to discuss this at the next meeting and delete all reference to "Conservation department".

Website postings: There was a discussion about adding the permits to the Spencer website in a PDF form. That would give the public the chance to look at the plans on their own. Mr. Russell suggested a drop box. Mr. Russell mentioned that some of the filings that come in are very large. There needs to be research on the capacity the website can handle, the drop box idea, the time it would take, cost, etc., There was discussion on getting a laptop for the Agent.

A motion for the purchase of a laptop for the Agent and a motion to use screens for the audience (Snow/Perry) 5/0 passed.

Mr. Defosse wanted to know why the TV was not being used for the Conservation meetings. He also suggested copies for the audience to look at on the back table. The Commission will encourage the engineering firms to do a power point.

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

New Applications: 39 East Charlton Road, RDA
68 Browning Pond Road, RDA
57 Oakland Drive, RDA
59 Oakland Drive, RDA

A motion to adjourn the meeting at 8:15 p.m. (Perry/Snow) passed 5/0.

Respectfully submitted by:

Jane Green, Senior Clerk
Development & Inspectional Services

Documents reviewed at the 10/9/19 Spencer Conservation Commission meeting:

North Brookfield Road Final Wetland Peer Review Memorandum

40 Thompson Pond Rd Cof C signed

4 Bellevue Drive CofC signed

19 Sherman Grove Ext. of OofC signed

109 Smithville Rd CofC signed

Guidance Documents

North Brookfield Road RDA signed

12 Ledge Ave OofC signed

43 Jolicoeur Ave RDA signed

Agent's Report

Minutes 9/25/19

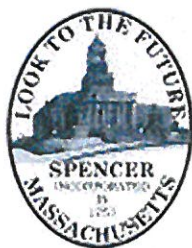
Agenda 10/9/19

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: 10/9/19

4.0 PUBLIC HEARINGS:

Item 4.1. 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 recommended peer review for this line and we have received the review. In that review, another small wetland was discovered on site.

The applicant requested the hearing be kept open until they could respond to the peer review findings and that was granted.

The applicant is now ready to proceed and I would recommend a Negative #4 be granted.

Item 4.2. NOI 12 Ledge SE 293-0973 I have inspected the site and reviewed the plans. I would recommend the following conditions be attached to the Orders: 20, 21, 23-30, 33-38, 41, 44, 51 & 53-57.

Item 4.3. RDA 43 Jolicouer: This permit has been filed as a result of a NOV from my office. I have met with the applicant who informed me that the grading and clearing has been in place for some time and all that is to be done now is paving. I recommend the RDA filing and would recommend a Negative #3.

OTHER BUSINESS:

Item 5.1. 53 E. Charlton: Based on an NOV, the property owner retained Eco Tech to delineate the wetlands. This has been done. Eco Tech has also submitted a report indicating that they do not believe that any wetlands violation exists. Both of these reports will be in your packets.

I would recommend that Mr. Sweet file an RDA to have the line "approved" by the Commission since technically, no delineated is valid until approved by the Commission. This would allow all parties to understand what is in fact jurisdictional and what is not.

In addition, the material noted in Eco Tech's report should, in my opinion, remain in place since I believe more damage would be done by removing it. This could also be approved as part of the RDA.

Item 5.2. COC 40 Thompson Pond Rd.: All is ready for the release to be granted.

Item 5.3. COC 4 Bellevue: All is ready for the release to be granted.

Item 5.4. 19 Sherman Grove, Request for extension: A three (3) year extension is in order.

Item 5.5. COC 109 Smithville: All is ready for the release to be granted.

AGENT REPORTS:

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

Item 6.1 Guidance Documents: At the last meeting, you were given some documents that I would like to get up onto the website and would like to know the Commission's take on these.

Item 6.2. I would like the Commission's guidance on the following issue: removal of "stuff" (fill, brush etc.) from jurisdiction. I have always treated the placement of fill and the removal of that fill as two separate actions, BOTH requiring a permit; i.e. if we uncovered an unauthorized filling, the removal of that fill would still require a permit. This is based on the statutory wording that both the fill and the removal of the fill would "alter" an area and the Mass SJC Case of 'COMMONWEALTH vs. JOHN G. GRANT & SONS CO., INC.'" 403 Mass. 151, note 5 from the court's opinion states:

One problem with making the continued presence of unlawfully placed fill either a separate daily offense or a continuing offense warranting a daily fine is that the removal of the material would also be a crime unless the owner complied with the permit provisions of Section 40 and obtained permission to remove the material. There was discussion in the sentencing phase of this case suggesting that the removal of any unlawfully placed fill might be more harmful to the environment than leaving it there. (emphasis added)

Please note that I am not trying to be a lawyer, nor "direct" the Commission on how they want to handle this issue. I only would like to know how the Commission has treated this issue in the past and how they would like to treat it in the future since it may become a very big deal.

Item 6.3. Plans on the website: In order to place plans on the website, the Commission would need to change their submission procedures to require a PDF copy of everything on a flash drive. We could then upload this to the website. For most projects this would not be an issue; for large involved project this would be very data intensive.