

# Conservation Commission – Town of Spencer



## *Minutes*

Conservation Commission Meeting  
Wednesday, October 23, 2019 at 7:00 PM  
Town Hall, McCourt Social Hall

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The Meeting was opened at 7 p.m.

Commissioners Present: Charlie Bellemer, Margaret Emerson, Mary McLaughlin, Robert Perry (arrived 7:15 p.m.), Warren Snow

Commissioners Absent:

Staff present: George Russell, Jane Green  
Staff absent:

**Minutes Approved:** October 9, 2019

**Signed:**

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

#### **Property: 39 East Charlton Road Spencer, MA**

Mary Ann Dipinto was here to represent Peter Fabrycki and presented the project. Mr. Russell drove by the property and noticed that there were trees lying down in the buffer zone. Mr. Russell sent a letter requesting the applicant file an RDA. Mr. Fabrycki responded right away and retained Mary Ann Dipinto and she filed the permit. The plan is to plant 6 Highbush Blueberries and Mountain Laurel. Mr. Russell requested two conditions that are on his report.

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

*A motion for a negative #3 determination with conditions (Snow/Perry) 5/0 passed.*

### **7:23 p.m. Opened the Public Hearing for the Request for Determination of Applicability for David Schnare**

#### **Property: 68 Browning Pond Road, Spencer, MA**

Davide Schnare would like to take down four trees. They are encroaching on the house more and more every year. The Commission looked at the plans. Two trees are on the

pond side and two trees are on the street side. The stumps will remain per Mr. Russell's recommendation.

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

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

**7:27 p.m. Opened the Public Hearing for the Notice of Intent for Joseph Zalieckas  
Property: 57 Oakland Drive, Spencer, MA DEP#293-0974**

Mary McLaughlin recused herself because she is an abutter. Ms. Emerson became the acting Chair. Glenn Krevosky was here to represent Joseph Zalieckas. Mr. Krevosky discussed the plans to repair a wall. Mr. Snow wanted to know how the distance of the boom was figured out. Mr. Krevosky explained the calculations. Ms. Emerson asked if the tree on the plan would be removed. There was discussion about the tree and if the roots would affect the wall. Ms. McLaughlin, who was in the audience, recommended adding the tree to the plan if necessary. The Commission discussed the tree further and decided to allow a special condition to the permit to allow the removal of the tree.

*A motion to close the public hearing (Snow/Perry) 4/0 passed.*

*A motion to approve the plans with a special condition that the tree be removed if needed (Snow/Bellemer) 4/0 passed.*

**7:50 p.m. Opened the Public Hearing for the Notice of Intent for Lee & Jeannette Jarvis**

**Property: 59 Oakland Drive, Spencer, MA DEP#293-0975**

Mary McLaughlin recused herself from this hearing as well. Glenn Krevosky was here to represent Lee & Jeannette Jarvis. The project is very similar to 57 Oakland Drive, but there is no tree involved and the linear distance is shorter.

*A motion to close the public hearing (Perry/Bellemer) 4/0 passed.*

*A motion to approve the plans with special conditions (Perry/Perry) 4/0 passed.*

**8:00 p.m. Opened the Public Hearing for the Notice of Intent for Bill Krukowski  
Property: Donnelly Cross Road Right-of-Way, Spencer, MA no DEP file # has been issued.**

Mary McLaughlin rejoined the Commission as the Chair. Lori Benoit the Project Manager and a Wetland Scientist from Stantec, represented the town for the project. They propose 6 catch basins. Ms. Benoit gave Mr. Russell the certificate of mailing for the certified abutter notices. There are uncontrolled stormwater, flooding and drainage issues. The plan is designed for a 25-year storm event. Ms. McLaughlin wanted to know if Ms. Benoit was here for the bridge over Shaw Brook NOI. Ms. Benoit did not know about that project. An abutter, Tony Bonaventura, mentioned that he owned the piece of property where the outflow heads. Mr. Bonaventura wanted to know if the last proposal from the other Engineer will be used. Ms. Benoit does not know anything about that project. Mike Gaouette, an abutter, said that he talked to Bill Krukowski regarding the Donnelly Cross Road bridge project and it is a separate project that is going to be done next year. Mr. Bonaventura preferred the other drainage plan because the road is banked.

The water goes east not west. There have been water problems for years. Mr. Bonaventura wanted to know how much rain is in a 25-year storm. Ms. Benoit said that the road has a crown and it will sheet off into an adjoining vegetative area. Some of it will be captured in each of the six 4-ft catch basins. There was further discussion on the water issues and how much water is considered a 25-year storm. There was no DEP number.

*At the request of the applicant, the hearing has been continued to November 13, 2019.*

### **Other Business:**

**3 R Jones Road:** Mr. Russell inspected the site and recommended that the Cof C be issued.

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

**81 Wilson Avenue:** Mr. Russell said that the permit has expired but we received certification per the new policy. He recommends that the C of C be issued.

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

**20 & 32 McCormick Road:** Stormwater Bond acceptance.

*A motion to VOTE for the Stormwater Bonds for 20 & 32 McCormick Road (Emerson/Snow) 5/0 passed.*

**Discussion – James Jenese – Enforcement Order:** Mr. Russell discussed the latest information regarding citations and communication with Mr. Jenese. Mr. Jenese has been cited by Mr. Russell three times with a total of \$450.00. Mr. Russell has heard from Mr. Jenese's Attorney, and his sister who said she would pay the fines. The Attorney asked for a sixty-day request to market the property. Mr. Russell recommended that it not be granted since this has been going on for almost a year. There was discussion amongst the Commission members. It was decided amongst the Commission that they should not grant the sixty-day request.

*A motion not to extend the deadline on the Enforcement Order (Snow/Bellemer) 5/0 passed.*

**Conservation Meeting:** There was discussion amongst the Commission about changing the time to 6:00 or 6:30 p.m. The Commission would like to discuss this at the next meeting.

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

**Guidance Documents:** All the documents have been revised. Mr. Russell asked if the Commission would agree to put these documents on the Spencer website. The Commission voted to put them on.

**Minor Projects:** Mr. Russell mentioned that people come to the office and want to do minor repair projects. Mr. Russell asked the Commission if there could be a regulation to approve minor repair projects. Mr. Snow said that the previous agent did that. Mr. Russell stated in his opinion, this should be codified in the regs with specific criteria.

**25 Foot No Touch Zone:** Mr. Russell would like a creation of a 25-ft no touch zone with a provision that the Commission could grant a variance to that when necessary. Ms. McLaughlin said that it would have to go in the bylaws. The Commission likes the 25-foot no touch zone idea.

*The Commission instructed Mr. Russell to develop these regulations.*

Mr. Russell suggested a requirement for submission of both paper copies and digital copies. Eventually they will be available online. The Commission would like a power point presentation for all NOI's submitted. This way the audience will be able to follow along with the plans during the hearing and this will be put in the NOI checklist.

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

New Applications:   43 Point Eastalee, RDA  
                              Ash Street, NOI  
                              40, 80, & 96 Clark Road, NOI  
                              53 Jolicoeur Ave, Amend OofC  
                              195 Charlton Road, RDA  
                              97 Wilson Ave, NOI  
                              8 Bellevue Drive, RDA

*A motion to adjourn the meeting at 8:55 p.m. (Snow/Bellemer) passed 5/0.*

Respectfully submitted by:

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Jane Green, Senior Clerk  
Development & Inspectional Services

Documents Reviewed at the 10/23/19 Spencer Conservation Commission Meeting:

Agenda 10/23/19

Minutes 10/9/19

17 GH Wilson Graves site visit report

Application checklists

Case Law: Statement of Jurisdiction

Jenese Enforcement Order

Informational Enforcement Status

Guidance Documents:

Applications for Spencer Conservation Commission

Cutting/Removing Trees in A Wetland

Vegetative Debris resulting from Storm damage

ConCom Policy on vegetative debris in a jurisdictional area

Why dumping yard waste into wetlands is harmful

Cutting & removing trees in wetlands



# 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: 10-23-19

#### 4.0 PUBLIC HEARINGS:

**Item 4.1.** RDA 39 E. Charlton Rd.: This RDA has been filed as a result of non-permitted tree cutting and bush "storage" within a buffer area. Letters and photos will be available at the meeting. I recommended the RDA since the work is all in the buffer and the applicant has offered to plant replacement plants. Therefore, I would recommend a negative #3

**Item 4.2.** RDA 68 Browning Pond Rd.: This RDA is for tree removal and given that the stumps will not be removed, I would recommend a negative #3.

**Item 4.3:** NOI 57 Oakland: On both this application and the next one, I have conducted a site visit and generated correspondence to the applicant's engineer. These walls are in need of repair but there were issues with the application that needed to be addressed. This information has been received.

The applicant has also forwarded letters on both Oakland Ave. addresses indicating that the work will be done under expired OOCs. We have asked for clarification.

In addition, the abutter notices were **NOT** sent certified mail. I have had several e-mails with the applicant's engineer who believes that certificates of mailing are OK since the by-law allows them and the AG approved the by-law. I have taken the position that the statute does not allow them for abutter notices and the statute is controlling. This has been backed up by an ALJ that I have had the pleasure of being in front of.

If and when approved, I would recommend the following stipulations: 20-24, 27-30, 34, 37, 38, 40, 44, 46, 47, 50-54 & 56.

**Item 4.4.** NOI 59 Oakland: See above.

**Item 4.5** NOI, Donnelly Cross Road: This permit is for drainage and other road work on Donnelly Cross Road. I do not see any significant issues with the plans as submitted and would recommend approval with the following conditions: 20, 23, 24, 27-30, 33-41, 53 & 54.

## **OTHER BUSINESS:**

**Item 5.1** COC 3 R. Jones Road: All is ready for the request to be granted.

**Item 5.2.** COC 81 Wilson Ave.: This permit has expired. All is ready for the request to be granted.

**Item 5.3** 20 McCormack bonding: The Commission needs to vote to accept the bonding as proposed.

**Item 5.4** 32 McCormack: See above; it is the same project but on an adjacent parcel.

**Item 5.5** Jenese enforcement order: In your packet is a request from Mr. Jenese's attorney to extend the deadline for compliance with the Order. This would place compliance over a year from the issuance of the original order. This would seem to me to be an unreasonable time frame for compliance

Three citations have been issued and need to be addressed.

**Item 5.6.** Meeting time: this has been continued from the last meeting. If the Commission desires to change the time of the meeting, I would recommend it be effective the first of the year.

## **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.** The Guidance Documents have been redone and are in your packet. All references to the Conservation Department have been removed.

**Item 6.2.** There are many instances where property owners wish to undertake activities that are within jurisdiction, but are relatively minor in nature. As things stand now, there is no way to avoid filing a permit with the Commission and going through the hearing process to get said approval. Would the Commission be interested in a new section to the Regulations that would delegate authority to the Agent to approve minor activities such a tree or vegetative debris removal, or a new deck on piers etc. when said approval would not be allowed within 25' of a resource area.

If the Commission thinks this might be a good idea, I will draft something up for review.

**Item 6.3.** I have checked with the Town Administrator's office concerning the use of power point presentation at the meetings. There is a very strict prohibition of using a town owned computer to run a power point from or for a private client. There is too great a risk that plugging a flash drive into our system could compromise the system.

**Item 6.4. Application checklists:** In your packets, for your review and comment, are revised application checklists/instructions which include the requirement for a digital copy of the application which will allow us to put the application on the website. If the Commission wishes to have the digital copies submitted with an application, I would suggest this checklist be adopted. I believe this can be done by a consensus of the body.

**Item 6.5. Case Law:** In your packets will be a brief summary of some Massachusetts case law on the WPA. One thing that is common thru many of these cases is the concept of "alter" in a jurisdictional area. I believe it is very important that in determining whether to grant an OOC, the Commission make a statement for the record that the proposed use will or will not in fact alter the area in question.