

Conservation Commission – Town of Spencer

Minutes



Conservation Commission Meeting
Wednesday, June 24, 2020 at 7:00 PM
Town Hall, McCourt Social Hall

NOTE: THIS IS A REMOTE MEETING AND ALL PRESENTATIONS, QUESTIONS, COMMENTS AND/OR DISCUSSIONS WILL TAKE PLACE VIA TELEPHONE CALL IN. IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE CONSERVATION OFFICE BEFORE THE MEETING.

PERSONS SPEAKING CAN ONLY SPEAK WHEN RECOGNIZED BY THE CHAIR AND THEY MUST CLEARLY STATE THEIR NAME AND ADDRESS FOR THE MINUTES.

IN ORDER TO CALL IN, PLEASE CALL: 1-866-899-4679 AND USE ACCESS CODE 516-377-341

TO LISTEN TO THE MEETING ONLY GO TO SCATV.ORG

The Meeting was opened at 7:00 p.m.

Commissioners Present: Margaret Emerson, Mary McLaughlin & Warren Snow

Commissioners Absent: Charlie Bellemer & Robert Perry

Staff present: George Russell, Jane Green

Staff absent:

NOTE: ALL VOTES WERE TAKEN AS ROLL CALL VOTES

Minutes Approved: A motion to approve the minutes of May 11 and May 25, 2020 (Snow/Emerson) passed 3/0 with a roll call vote: Emerson-yes, Snow-yes, McLaughlin-yes

Signed: 102 Chickering Road – CofC (approved 3-25-20)

7:09 p.m. 4.1 Continue the Public Hearing for the Notice of Intent for Colin Derhammer

Property: 133 Ash Street, Spencer, MA DEP#293-0978 SW Permit

Mary McLaughlin opened the hearing.

Steve Pikul from Bertin Engineering, Thomas Recuperero from Recuperero Law office, and Jeremy Chapman from Melink Solar were part of the remote meeting. Mr. Rucupero asked for a Continuance until July 22, 2020. He said they had a difficult time coordinating between Peer review on the Planning side and on the ConCom side. In June they were asked to re-design the drainage.

Steve Pikul said that in the process of doing the soil investigation, they discovered several issues with the soil conditions on the site where the initial proposal for underground storage of stormwater was. They made the decision to go out and perform another round of test pit soil analysis. Today they did another round of soil analysis to help them propose a new and more sustainable design. Their updated plan is to propose infiltration above ground. They are proposing to put drywells on the site for a larger storm event. One of the methods they use is a BMP method (best management practice). They will use a porous pavement that will absorb stormwater and provide a way to drain through the soil media below the pavement. It will infiltrate the ground water table. They felt that all of those practices will make a better design.

Jeremy Chapman, the applicant, said that they are trying to commit to this new design, but it does require some more time. Mr. Russell said that because of the length of time, waiting on peer review and a new drainage system design, he recommends denial of the permit.

A motion to close the public hearing (Snow/Emerson)3/0

A motion to deny the application based on lack of information (Snow/Emerson)3/0

In favor of denial (Snow/Emerson/McLaughlin)3/0

7:29 p.m. 4.2 Open the Public Hearing for the Notice of Intent Colin Derhammer

Property: Charlton & Bacon Hill Roads, Spencer, MA DEP#293-0984

Mr. Russell recommended continuing this hearing because we have not received the final Peer review report. It has not been accepted by the Planning Board because it does not comply with zoning. Jeremy Chapman agrees with continuing the hearing. TJ Recuperero wanted to know what the status of streamlining the Peer Review between Planning and ConCom. Mr. Russell told him that they are in the process of interviewing for this.

At the request of the applicant, the hearing has been continued to August 26, 2020.

7:34 p.m. 4.3 Open the Public Meeting for the Request for Determination of Applicability for Raphelle M. Masterson

Property: 183 Paxton Road, Spencer, MA

Mr. Russell said that the applicant is the Town of Spencer. When the town was cutting down trees on Paxton Road, they deposited them, with the owners permission, in a jurisdictional area. The owner and the owner next door were notified by Notice of Violations. The town agreed to do the application in the owners name. Mr. Russell recommended approval.

A motion to close the public meeting (Emerson/Snow)3/0.

All in favor (Snow/Emerson/McLaughlin)3/0.

A motion to approve #3 RDA(Snow/Emerson)3/0.

All in favor (Emerson/Snow)3/0.

7:38 p.m. 4.4 Open the Public Hearing for the Notice of Intent for Nancy Paquette
Property: 129 Wilson Ave, Spencer, MA no DEP# has been issued.

Mr. Russell noted his report. The application was filed as a result of a NOV and a vote from the Commission to require an NOI to be filed. Mr. Russell said that the application does not appear to have been filed with nor received by DEP. This is a procedural problem. The land does not comply with the statute. The application should be denied and an Enforcement Order should be sent.

A motion to close the public hearing (Emerson/Snow)3/0.

All in favor (Snow/Emerson)3/0.

A motion to deny the application and direct the Agent to draw up an Enforcement Order for the next meeting (Snow/Emerson)3/0

All in favor (McLaughlin/Emerson/Snow)3/0.

7:42 p.m. 4.5 Open the Public Hearing for the Notice of Intent for Phyllis Brewer
Property: East Charlton Road, Spencer, MA DEP#293-0985

The applicant, Phyllis Brewer and Scott Jordan from EcoTec, were part of the remote meeting. Ms. Brewer said that after the land was destroyed by Kimball Moore, she hired Jason Dubois to flag the wetlands. Mr. Jordan was hired to make a restoration plan. It is family land, but Ms. Brewer has been handling all of the fines, taxes, etc., Mr. Jordan discussed the restoration plan. They plan on moving slash from the buffer zone. There will be erosion controls and seed mixed planted. They propose to rake out wood chips that were put in the landing area. They delineated the wetlands. Mr. Jordan wanted to know if they can avoid a Peer Review because of the financial burden. His suggestion is to walk the site with the Commission and show them all of the restoration plan. Mr. Russell said that because of the history, he thinks Peer Review is critical to accurately determine the boundaries. He feels the Commission should have a chance to look at the plans as a body and therefore continue the meeting.

At the request of the applicant, the hearing has been continued to July 22, 2020 (Snow/Emerson).

All in favor (Emerson/Snow/McLaughlin) 3/0.

7:56 p.m. 4.6 Open the Public Meeting for the Request of Determination of Applicability for William & Donna McElroy

Property: 20 Wilson Street, Spencer, MA

Mr. Russell told the members that this application was filed as a result of an observation of man-made debris in the riverfront. The owners plan to remove the debris and let the area revert back to its natural state.

A motion to close the public meeting (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

A motion for a negative #2 determination (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

7:59 p.m. 4.7 Open the Public Meeting for the Request of Determination of Applicability for CSX Transportation, Incorporated

Property: CSX Right-of-Way, Spencer, MA

Stephen Herzog of Wood Plc. joined the remote meeting. Mr. Russell said that this is a reoccurring application for herbicide application within jurisdictional areas, in the CSX Row.

A motion to close the public hearing (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

A motion for a negative # 3 determination (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

8:01 p.m. 4.8 Open the Public Hearing for the Notice of Intent for the Town of Spencer Highway Department

Property: Paxton Road over Shaw Brook, Spencer, MA DEP no file # has been issued. SW Permit

At the request of the applicant, the hearing has been continued to July 8, 2020. (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

8:05 p.m. 4.9 Open the Public Hearing to Amend the Order of Conditions for Robert & Catherine McDonald

Property: 51 Lambs Grove, Spencer, MA DEP#293-0949

Steve Comtois and Mark Farrell P.E. were representing the applicant.

Mr. Farrell said that the existing house is under construction. There are some changes from the original plans. They would like approval to make some changes. They want to put in a stone patio in place of the wooden deck. There is erosion near the bank, so they want to put riprap down on the slope to the water. There is run-off that comes from the

parking area, so they want to put down crushed stone. Mr. Comtois said that Mr. Russell wanted them to put the existing retaining wall on the new plan and the patio on the new plans. Ms. Emerson wanted to know how much of the bank is rip-rap, because you are not allowed to alter the whole bank. Mr. Russell said it's about 400 square feet. Ms. Emerson said only a certain percentage can be altered. Mr. Russell checked the regulations. A project may not alter more than 10% or 50-ft, whichever is less the length of the bank found to be significant for the protection of wildlife habitat. Mr. Russell said it was 80-ft. Glenn Krevosky, from EBT Environmental, said that he should fill out the form for a Wildlife Habitat Evaluation demonstrating that you're not affecting wildlife habitat.

At the request of the applicant, the hearing has been continued to July 8, 2020.

A motion to continue (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

8:21 p.m. 4.10 Open the Public Hearing for the Notice of Intent for Merrill Sprague-Allen

Property: 41 Oakland Drive, Spencer, MA DEP no file# has been issued.

The chair is an abutter and that leaves the Commission without a Quorum.

The public hearing was continued to July 8, 2020.

8:22 p.m. 4.11 Open the Public Meeting for the Request for Determination of Applicability for Kenneth & Heidi Laliberte

Property: 14 Washburn Terrace, Spencer, MA

Mr. Russell recommended approval. Ms. Laliberte joined the meeting.

A motion to close the public meeting (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

A motion for A negative #3 determination (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

8:25 p.m. 4.12 Open the Public Meeting for the Request for Determination of Applicability for Barry Arsenault

Property: 11 Point Eastalee, Spencer, Ma

Glenn Krevosky represented Barry Arsenault to determine the wetlands. Mr. Krevosky wants to make sure the small BVW stays intact. Mr. Russell recommended a positive 2A.

A motion to close the public hearing (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

A motion for a positive # 2A determination (Snow/Emerson) 3/0.

All in favor (Snow, Emerson/McLaughlin) 3/0.

8:30 p.m 4.13 Open the Public Meeting for the Request for Determination of Applicability for Brian Buenacosa

Property: 4 Kingsbury Road, Spencer, MA

Mr. Russell originally submitted a request for Administrative Approval but it far exceeded 150 square feet.

A motion to close the public meeting (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

A motion for a negative #3 determination (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

8:33 p.m. 4.14 Open the Public Hearing for the Notice of Intent for Audrey Martinez Property: Lot 1 Marble Road, Spencer, MA DEP no file# has been issued.

Mr. Russell said that there was a serious procedural defect. The application was submitted with two different addresses and the DEP has issued a number for the wrong address. Based on the recommendation of the Town Attorney, the application should be denied. On May 20th Mr. Russell sent an email to the Engineer of the project letting him know the problems with the application. He has not received any response.

A motion to close the public hearing (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

A motion for to deny this NOI (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

Other Business:

5.1 17 South Spencer Road: Mr. Russell said that all is ready for the request for bond release and the CofC.

A motion for the CofC and Stormwater Bond release (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

5.2 Briarwood Lane: Mr. Russell does not recommend approval for an Extension of the Order of Conditions. There are significant issues. He thinks the developer should start from ground zero.

A motion to deny the extension on the Oof C (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

5.3 27 Holmes Street: Mr. Russell said that all is ready for the release.

A motion to release the Stormwater Bond (Snow/Emerson) 3/0.

All in favor (Snow/Emerson/McLaughlin) 3/0.

5.4 Lot 3 North Spencer Road: Mr. Russell said that the original Order of Conditions is still in force. It is issued to Caruso. The property has been purchased by new owners and

they have requested their name to be on the Order of Conditions and a bonding instrument. The Commission has never seen that request before. Mr. Russell would like to request permission from the Town Administrator to get a legal opinion.

5.5 54 School Street: Mr. Russell said that the work was never done. An invalid CofC is recommended.

*A motion to issue an invalid CofC (Snow/Emerson) 3/0.
All in favor (Snow/Emerson/McLaughlin) 3/0.*

5.6 72 Donnelly Road: Mr. Russell said all is ready for the CofC to be granted and the bond be released.

*A motion to grant the CofC (Snow/Emerson) 3/0.
All in favor (Snow/Emerson/McLaughlin) 3/0.*

25 Kingsbury Road: There is a TV near the wetlands. Previously the highway department said they would pick it up. Mr. Russell will take a look at it again and get in touch with Bill K. from U& F.

Agent's Report:

6.1 100 Wire Village: There is an old school bus that needs to be removed from the side of the river. Mr. Russell issued an Enforcement Order.

*A motion to validate the enforcement order (Snow/Emerson) 3/0.
All in favor (Snow/Emerson/McLaughlin) 3/0.*

6.2 Bonding Policy: Mr. Russell would like to update the Bonding Policy, based on input from the Town Attorney. If the Commission needs to call a bond, it will be used as intended. Current town policy puts the bond money in the general fund to be used wherever.

*A motion to adopt the bonding policy (Snow/Emerson) 3/0.
All in favor (Snow/Emerson/McLaughlin) 3/0.*

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

New Applications:

*A motion to adjourn the meeting at 8:55 p.m. (Snow/Emerson) passed 3/0.
All in favor (Snow/Emerson/McLaughlin) 3/0.*

Respectfully submitted by:

Jane Green, Senior Clerk
Development & Inspectional Services

Documents Reviewed at 6-24-20 Conservation Commission Meeting

Agent's Report 6/24/20

Minutes 3/11/20 and 3/25/20

102 Chickering Road – CofC

Charlton/Bacon Hill Road – Continuance Form

183 Paxton Road – RDA

East Charlton Road – Continuance Form

20 Wilson Street – RDA

CSX Transportation – RDA

Paxton Road over Shaw Brook – Continuance Form

51 Lambs Grove – Continuance Form

41 Oakland Drive – Continuance Form

14 Washburn Terrace – RDA

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11 Point Eastalee – RDA

4 Kingsbury Road – RDA

17 South Spencer Road – Cof C

54 School Street – CofC

72 Donnelly Road – CofC

Enforcement Order – 100 Wire Village Road

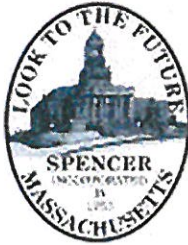
Conservation Packets

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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If you're going through hell, keep going.
Winston Churchill

TO: Conservation Commission

FM: George Russell, AICP
Conservation Agent

RE: Agent's Report

DATE: 6/24/20

4.0 PUBLIC HEARINGS:

Item 4.1. 133 Ash St. NOI: We are **still** waiting on the peer review report and the revised plans. I am leery to recommend the hearing be again continued unless we receive a final peer review report and final plans 7 days before the meeting

Given the length of time this has been pending (since October), I am recommending denial of the permit for lack of information or allow the applicant to withdraw the permit request. The downside to denying the application, is the amount of money the applicant has already spent on permitting fees and if it is appealed to DEP, the town loses all control. In the last few days, I have been informed via e-mail, that the proposed stormwater system will not work and a new system is being designed. It took since October to realize this!

Also see the memo in your packets from the Town Planner on this project, especially request for CR's and the last paragraph which echoes my recommendations. The failure to get this application to a level where it can be acted upon by the Commission is absurd.

Item 4.2. Charlton & Bacon Hill Roads, NOI: The DEP# has been issued but we have not received a final peer review report. Further, this item has not yet been accepted for filing by the Planning Board since it does not comply with zoning. Given this, I would recommend the application be withdrawn and refiled when the issues with the Planning Board have been worked out. If the applicant does not want to withdraw, the

Commission may want to consider continuing the hearing until sometime in August or September.

In addition, the initial peer review has found serious deficiencies that need to be addressed; e.g. the plans show the wetlands replication protocols that are from another project and do not meet the DEP minimums.

Item 4.3 183 Paxton Road, RDA: In your packet are a series of letters that I hope explain the history of the project. I would recommend a negative #3.

Item 4.4 129 Wilson Ave, NOI: This application was filed as a result of a NOV from my office and a vote of the Commission to require an NOI be filed. The issue concerns leaves placed in the stream channel at this address, thus impacting bank, LUWB, and flood hazard zones. I believe that removing the bottom layer of the leaves etc. will potentially do more damage than leaving them there. Therefore, I would recommend that the Commission should vote to grant the Orders to allow removal of the all but the bottom 6" of the debris and that no more be allowed to be deposited, unless via nature. All removal should be done by hand vis-à-vis by machine.

The DEP number has NOT been issued, I would recommend the following special conditions: 27-30, 34, 37,46, 47, 50, 52 & 53 when it is.

It is important to note, that DEP does not even list this NOI permit as being received and I have checked numerous times. All of the permits filed since the first of the year are listed save this one, which begs the question as to whether it was in fact filed. If it was not, I would recommend the Commission consider an enforcement order.

Item 4.5. Phyllis Brewer, E. Charlton Road NOI: This permit is for the now infamous Jenese property/violation on E. Charlton Road. There is a significant wetlands delineation involved and have thus requested the applicant to forward a copy of the application to a peer reviewer. I would recommend the Commission take no testimony/action until we have the completed peer review.

As a side note, there has been no contact with Mr. Moore who was also issued an enforcement order on this property. I have generated numerous pieces of correspondence to him and have not heard anything and started issuing citations.

Item 4.6. 20 Wilson St. RDA: this RDA has been filed as a result of an observation of mand-made debris in the riverfront. This can be seen from the photos in your packet. I have met with the owners and they plan to remove the debris and leave the area to revert back to "its natural state". I would recommend a negative #2.

Item 4.7. CSX RDA: This RDA is for a determination of the jurisdictional areas for herbicide application. It is a permit that is submitted every five years for the same activity. I have requested additional information from the applicant's representative, and it has been forthcoming. I would recommend a negative #3.

Item 4.8. the Town of Spencer Highway Department, NOI: This permit is for a bridge rehab project on Paxton Road over Shaw Brook. This project is also designed to improve drainage. Given that we do NOT have an NOI number, I would recommend the hearing be opened and continued. When approved, I would recommend the following stipulations: 20, 23, 24, 27-30, 34, 35, 37-41, 44, & 49-54.

Item 4.9. Proposed amendment to Orders for 51 Lambs Grove: This project was issued a SWO for significant deviations from what was originally approved by the Commission, The Commission voted to require an amendment to the existing Orders which is what is before you.

The stone rip rap which has been placed on the bank is a very effective erosion control/bank stabilization system and is currently functioning as such. The modifications may make sense from a construction standpoint and it is probably in everybody's best interests if the amendment to the Orders are modified approved with the original stipulations still applicable.

Item 4.10. 41 Oakland Ave. NOI: We do not have the DEP file number as of yet. This permit is to replace the wall on the bank of the lake and the wall is badly in need of replacement.

When ready, I would recommend the following stipulations: 20, 23, 24, 27-30, 34, 35, 37-41, 44, & 49-54.

Item 4.11. 14 Washburn Terrace RDA: I have inspected the site and I would recommend a negative #3.

Item 4.12. 11 Point Eastalee RDA: This RDA is to have the Commission "accept" the wetlands delineation. I would recommend a positive 2a since the delineation appears to be accurate.

Item 4.13 4 Kingsbury, RDA: This is a request to clear brush and encompasses an area larger than allowed via Administrative approval. I would recommend a negative #3.

Item 4.14. Lot 1 Marble Road, NOI: I have generated review correspondence on this application and have not heard back from the applicant. Until my concerns are addressed, I would recommend no action on the permit, especially given that they have a procedural defect requiring everything to be "redone". In addition, we have received an NOI number from DEP but it is my opinion that it is for the wrong address. This exacerbates the procedural problem I was fearful would come up. This procedural defect has been confirmed by the Town Attorney.

In light of the above, and the lack of response to my request for information, I would recommend the application be denied or withdrawn.

5.0 OTHER BUSINESS:

Item 5.1 17 S. Spencer Road Release of Bond and Release from conditions: All is ready for both to be granted/released.

Item 5.2. Briarwood Lane COC: The approvals from both the Conservation Commission and the Planning Board have expired. I would recommend the Commission not extend the orders and have the developer start again from the beginning.

Item 5.3. 27 Holmes Street – Stormwater Bond release: All is ready for the bond to be released.

Item 5.4. North Spencer Road, lot 3: The new owners of this lot have requested that the Orders and the required bond be place in their name. The Commission is being asked to approve these changes. I believe the former is unnecessary legally, but the attorneys wish to have a "cleaner" title.

Item 5.5 54 School Street COC: Note that this is an expired permit and the work was never undertaken. Therefore, the Commission needs to grant an "invalid" COC.

Item 5.6. 72 Donnelly Road: CofC: All is ready for the release to be granted.

6.0 AGENT REPORTS:

Item 6.1. Enforcement Order100 Wire Village: I have written several letters concerning this issue. All this correspondence has been ignored. Given the way the COVID-19 has interfered with the timing of Commission meetings, I have issued the enforcement order which I will request the members verify at the next meeting The Town Attorney had rendered an opinion that this process is legal. The Order will require an NOI be filed for all of problems enumerated in my letters which are in your packets.

Item 6.2. Bonding Policy: The town attorney has recommended the Commission adopt the bonding policy which is in your packets. This policy will ensure that if the Commission needs to call a bond, it will be used as intended. Current town policy puts the bond money in the general fund to be used ??????????.

Item 6.3. Amendment to section 2.4.2 of the regulations: I am requesting the Commission consider expanding the total area for an administrative approval from 150 ft² to 200 ft². I have had a couple of instances where the extra 50 ft² would have made all the difference.