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2021 APR 29 AM 11:19

Bryan L. Johnson

Conservation Commission – Town of Spencer

Minutes



Conservation Commission Meeting
Wednesday, April 14, 2021 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.

Please join the meeting from your computer, tablet or smartphone.

<https://www.gotomeet.me/tmiller4/conservation>

IN ORDER TO CALL IN, PLEASE CALL: 1-571-317-3122 AND USE ACCESS CODE: 454-205-589

TO LISTEN TO THE MEETING ONLY GO TO SCATV.ORG

PLEASE MUTE PHONES & TV'S AT ALL TIMES EXCEPT WHEN SPEAKING!

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: Jane Green

Staff absent: George Russell

2.0 Minutes Approved: *A motion to approve the minutes of March 24, 2021 as amended (Perry/Bellemer) passed 5/0 with a roll call vote: Bellemer-yes, Perry-yes, Snow-yes, Emerson-yes, McLaughlin-yes.*

3.0 Signed:

4.0 Public Hearing/Meetings

4.1 7:15 p.m. Continued the Public Hearing for the Notice of Intent for Bertin Engineering

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

The applicant's representative Steve Pikul joined the hearing. Mr. Pikul said that there was a field meeting with BSC Group. The applicant has not received comments about the Peer Review.

At the request of the applicant, the hearing has been continued to April 28, 2021.

4.2 7:10 p.m. Continued the Public Hearing for the Notice of Intent for David Cronin

Property: 24 Oak Lane, Spencer, MA DEP#293-1009

There was no representative for this project. The Commission recommended continuing until the next hearing.

At the request of the Commission, the hearing has been continued to April 28, 2021.

4.3 7:12 p.m. Continued the Public Hearing to Amend the Order of Conditions for Louis Mattei

Property: 96 Pleasant Street, Spencer, MA DEP#293-0961

Louis Mattei joined the hearing. Mr. Mattei said that he submitted the updated map including distance, proximity, and total square footage. Ms. McLaughlin said there were four stipulations that will remain in perpetuity. Ms. Emerson wanted to know where the fire pit was going to go. Mr. Mattei said it was going to be on open soil and away from the propane tank. Ms. Emerson was concerned that it was close to the brush. Mr. Mattei said there was no brush just some sticks that were pruned from a tree. Mr. Bellemer asked if the fire pit was approved by Chief Parsons. Mr. Mattei said that he would check with Chief Parsons.

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

All in favor: Emerson-yes, Bellemer-yes, Snow-yes, Perry-yes, McLaughlin-yes.

A motion to Amend the Order of Conditions with stipulations from Agent's report (Perry/Snow) 5/0 passed.

All in favor: Snow-yes, Bellemer-yes, Perry-yes, Emerson-yes, McLaughlin-yes.

4.4 7:20 p.m. Continued the Public Hearing for the Notice of Intent for John

Kennedy

Property: 48 East Charlton Road, Spencer, MA DEP#293-1010

The applicant's representative, Jason Dubois of D.C Engineering joined the hearing. Ms. Emerson wanted to know if we received an amended plan of the change in the house location. We received updated plans of the changes. Mr. Dubois said that they were able to do the changes without cutting any additional trees.

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

All in favor: Bellemer-yes, Perry-yes, Snow-yes, Emerson-yes, McLaughlin-yes.

A motion to approve the Order of Conditions with stipulations in the Agent's report (Perry/Emerson) 5/0 passed.

All if favor: Emerson-yes, Snow-yes, Perry-yes, Bellemer-yes, McLaughlin-yes.

4.5 7:25 p.m. Opened the Public Hearing to Amend the Order of Conditions for Harry & Maureen Hatch

Property: 7 Sycamore Avenue, Spencer, MA DEP#293-0954

Maureen & Harry Hatch joined the hearing. Ms. McLaughlin confirmed that the applicant would move vegetation by hand, and if there were any gullies they must be eliminated.

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

All in favor: Bellemer-yes, Perry-yes, Snow-yes, Emerson-yes, McLaughlin-yes.

A motion to Amend the Order of Condition at 7 Sycamore Avenue (Perry/Snow) 5/0 passed.

All in favor: Snow-yes, Perry-yes, Emerson-yes, Bellemer-yes, McLaughlin-yes.

4.6 7:27 p.m. Opened the Public Meeting for the Request for Determination of Applicability for Matthew Beers

Property: 6 Condon Drive, Spencer, MA

The Agent's report recommended approval with a negative #2. The Commission agreed to approve the permit.

A motion to close the public meeting (Bellemer/Perry) 5/0 passed.

All in favor: Bellemer-yes, Perry-yes, Snow-yes, Emerson-yes, McLaughlin-yes.

A motion for a negative#2 Determination (Perry/Emerson) 5/0 passed.

All in favor: Emerson-yes, Perry-yes, Bellemer-yes, Snow-yes, McLaughlin-yes.

Other Business:

5.1 35 Chickering Road – Request for Certificate of Compliance

All is ready for the release to be granted.

A motion to grant the CofC at 35 Chickering Road (Bellemer/Perry) 5/0 passed.

All in favor: Perry-yes, Bellemer-yes, Snow-yes, Emerson-yes, McLaughlin-yes.

5.2 Muzzy Meadow Pond Dam – Extension to Order of Conditions

The permit is to maintain the pond and includes the replacement of the control gate in the Muzzy Pond outlet structure off Maple St.

A motion to extend the Order of Conditions for Muzzy Pond Dam (Emerson/Bellemer) 5/0 passed.

All in favor: Emerson-yes, Perry-yes, Snow-yes, Bellemer-yes, McLaughlin-yes.

5.3 Bixby Trail

5.4 Work along ponds in Town

There was a discussion about how to get the word out on informing the public on work along ponds. The Commission decided to discuss this at the next meeting.

5.5 Electronic recording

There was a discussion on investigating the methodologies regarding electronic signatures for documents and enforcement orders with the Registry of Deeds.

A motion to accept electronic signatures (Bellemer/Perry) 5/0 passed.

All in favor: Perry-yes, Bellemer-yes, Emerson-yes, Snow-yes, McLaughlin-yes.

6.0 Agent's Report:

There are issues with applicants filing permits with Planning Board and not Con Com and vice versa.

A motion going forward to include the language stipulating that all relevant applications; Planning Board, ZBA, etc., are made and put in the application packets.

(Perry/Bellemer) 5/0 passed.

All in favor: Perry-yes, Bellemer-yes, Snow-yes, Emerson-yes, McLaughlin-yes.

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

New Applications: 21 Castle Lane – NOI
 49 Thompson Pond Road – RDA
 Ash Street U04- 15-1, 15-2, 15-3

A motion to adjourn the meeting at 7:42 p.m. (Perry/Bellemer) passed 5/0.

All in favor: Perry-yes, Bellemer-yes, Snow-yes, Emerson-yes, McLaughlin-yes.

Respectfully submitted by:



Jane Green, Senior Clerk

Development & Inspectional Services

Documents reviewed at 4/14/21 Conservation Commission Meeting

Agent's Report 4/14/21

Minutes 3/24/21

Agenda 4/14/21

Conservation Commission Packets

Continuance form Charlton & Bacon Hill Roads

Continuance form 24 Oak Lane

Amended Order of Conditions 96 Pleasant Street

Order of Conditions 48 East Charlton Road

Amended Order of Conditions 7 Sycamore Avenue

Determination of Applicability 6 Condon Drive

Certificate of Compliance 35 Chickering Road

Extended Order of Conditions Muzzy Meadow Pond Dam

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
Conservation Agent



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: 4/14/21

4.0 PUBLIC HEARINGS:

Item 4.1 Charlton & Bacon Hill Solar Project NOI: This application has still not been approved/acted upon by the Planning Board. Peer review is on-going, revised plans have been submitted to BSC and a site walk to finish the review of the wetlands delineation undertaken.

Also included in your packets is a copy of any correspondence concerning this application. This is being included since it has been alleged that there has been a lack of timely correspondence by my office as well as what was "said".

Again, I again want to go on record that for the last few months this item has been on the agenda and the Commission and the applicant have spent 20-30 minutes debating as to whether this application should be continued or denied. I expect this pattern to continue, and, in the end, we are no closer to a resolution to the outstanding issues. In fact, the Commission has never discussed the merits of the application. The delineation is not the final peer review on the application in toto and given history, I foresee no end in sight. I still recommend denial.

I would also like to point out in the e-mail dated 3/2/21 from the PB's peer reviewer, 6th line from the bottom, another independent reviewer has commented on the lack of responsiveness of the instant applicant.

The plan sets from the applicant's engineer have the letter "V" next to certain items on the map, e.g. the height of the solar panels, and the "V" is defined as "Needing a

variance". Variances are granted by the ZBA, NOT the Planning Board, which can grant waivers. These are legally distinct. As you will note in item 6.1 below, all variance requests must be submitted before, or at the same time, as the permit to the Conservation Commission. No variance request has been submitted to the ZBA and thus I would submit that based on the town attorney's opinion, the application can be denied based on procedural error.

Finally, I was copied on an e-mail to the town planner dated 4/6/21 where revised plans, including a revision to the wetlands plan, was forwarded to him, but NOT to the Commission or our peer reviewer, BSC. It is the applicant's responsibility to address this and it once again shows we are all NOT on the "same page".

Item 4.2: 24 Oak Lane, NOI: This permit was filed as a result of enforcement action based on complaints received from my office. (See material in your packets.) and continued from February to allow the members to visit the site after the snow melts.

In the meantime, based on input from DEP, an EO has been issued.

The application is for sand placed on the bank and under the water of Thompson Pond. The application indicates about 5 yd³ of sand covering about 60 ft² under the water and 240 ft² on the bank and in the buffer. The material is in place and this becomes a defacto "after the fact" NOI. Therefore, there is very little reason to attach stipulations. However, there are a couple which I think are appropriate: 24, 27, 29 and 30. These would help ensure that there are no additional changes without Commission approval.

It is important to note that there has been some confusion concerning the DEP number (See e-mails in your packet.) which has NOT been issued.

The Commission was considering a stipulation that would mandate a grass strip between the sand and the high-water mark. I would offer the following as a starting point:

A 3-foot-wide strip of vegetative material, e.g. grass, shall be planted and maintained for the length of the sand beach area and between the beach area and the high water mark of the pond so as to prevent erosion of the sand of any other unconsolidated material into the water body.

Item 4.3. 96 Pleasant St. NOI amendment: The Commission voted that the work done on the lot required an NOI amendment since a lot of the work is **in** the BVW. The whole lot is jurisdictional. The applicant has also asked for a shed and a fire pit via this amendment.

At the 3/24/21 meeting, the Commission requested the applicant revise the plan submitted to provide dimensions from the "activities" to the resource areas. I have reviewed a preliminary plan and made recommendation. (See e-mail in your packet.) I would call to your attention however, that the "edge of lawn" shown on the diagram in your packets, is the edge of the BVW and there are cut trees **IN** the BVW. These are shown on the photos in your 3/24/21 packets.

The material is in place, save the fire pit, fencing and shed and this becomes a defacto "after the fact" amendment. Therefore, there is very little reason to attach stipulations. However, there are a couple which I think are appropriate: 24, 27, 29 and 30. These would help ensure that there are no additional changes without Commission approval. I would also recommend that when the fire pit and shed are built, and the amendment recorded, the Commission can act on the pending request for the release from conditions and the above 4 stipulations should remain in perpetuity.

Item 4.4. 48 East Charlton Road NOI: There are a number of issues concerning this application which are outlined in your packet and need to be addressed. The most serious of these issues in my opinion is the lack of wetlands delineation/buffer lines. (See my e-mail of 2/24/21.) Finally, this lot has, or had an approved forest cutting plan (FCP) on the lot (the permit is still taped to a tree). Under §16.4 of the wetlands by-law, any tree cutting on the lot is prohibited for 5 years from the termination of the FCP, which will be in 2024 or 2025. Until these issues are resolved, and we receive an DEP#, I do not believe the application should go forward.

I have received an e-mail from the project engineer that states:

We have revised this plan so as to not need to cut any additional trees within the buffer zone. We are utilizing the existing cart path that was made for the logging operation and we also shifted the house back further so that we do not need to cut any trees in the buffer zone for that as well. I believe we had taken care of your comments and DEP comments prior to the last hearing.

Given this, I would recommend approval with the following conditions: 20-24, 27-30, 34, 35, 37-44, 46, 47-53 & 56.

Item 4.5. 7 Sycamore, NOI Amendment: This amendment has been filed as a result of a vote of the Commission requiring the amendment. The issue revolves around trees cut and placed in resource areas and the 25' no touch zone. In one of the pictures in your packet, you will see trees lying adjacent to a raft that will float when the water level comes back up. This would indicate that the trees are not only in the no touch zone, but bank and LUWB.

This debris is in three resource areas (the local by-law makes the 100' buffer a resource area) and the 25' no touch zone is impacted.

It is my opinion that the vegetation should be removed by hand, i.e. no vehicles, and any land disturbance which might contribute to erosion, e.g. gullies from dragging the trees, must be eliminated after all the debris is removed.

Item 4.6: 6 Condon Dr. RDA: This application has been submitted on a vote by the Commission to "allow" the drainage pipes in the resource areas. The RDA was recommended since the pipes were actually installed over 20 years ago.

I would recommend a negative #2.

PLEASE KEEP YOUR PACKETS FOR ALL CONTINUED ITEMS.

5.0 OTHER BUSINESS:

Item 5.1 35 Chickering COC: This is an expired permit that has come up in a title search for a pending sale. I have inspected the site and there are no issues and the COC can be granted.

Item 5.2. Muzzy Pond/Dan Repair NOI Ext: This permit is to maintain the pond and includes the replacement of the control gate in the Muzzy Pond outlet structure off of Maple St. The permit will expire this month and U&F has requested an extension to undertake the work on the outlet structure.

Item 5.3. Work along town water bodies: I have enclosed information on this including the current list of lake association contacts and some preliminary wording for possible putting on our website. While this is a somewhat pressing issue, I would recommend it be continued to the next meeting when we will be meeting in person.

I have also investigated the issue along Westland Drive. I cannot see the beach from the roadway, but the GIS system shows a beach at 15 Westland in 2019, and at 15 & 19 Westland in 2014. See photos in your packet. I have generated correspondence on this to the property owner, a copy of which is also in your packet.

Item 5.4. Electronic Recording: We are investigating the methodologies from recording documents, e.g. enforcement orders, electronically with the Registry of Deed. In your packets, please find information on a vote the Commission needs to take to effectuate this process.

6.0 AGENT REPORTS:

Item 6.1. We are having some significant issues with applicants filing permits with the Planning Board and not ConCom and vice versa, when in fact both land use bodies need to be in the mix. E.G. 10 Meadow Road has filed with ConCom but not PB.

We have been in contact with the town attorney on this issue, reviewed the statutes and looked at the local by-laws. The statute, M.G.L. Ch. 131 §40 and 310 CMR 10.05 (4) (e) require that anyone filing for a wetlands permit **must** have filed for all permits required under the local by-law before, or the same time, as filing for the wetlands permit. (See 3/17/21 e-mail from the town attorney included in your packet.)

The specific statutory language is:

. . . all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any information

submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the environment.

Therefore, it is my intention, with the blessing of the Commission, to change the packets for the RDA/NOI permit applications to place this language in them so that the applicant knows that this requirement exists. A proposed copy of this is below.

Counsel has also informed us, that applications such as 10 Meadow Road, that has yet to be filed with the PB can in fact be denied on the basis of the procedural error of not complying with the statutes and regs.

**TO ALL APPLICANTS FILING A PERMIT REQUEST WITH THE SPENCER
CONSERVATION COMMISSION**

Under state law, M.G.L. Ch. 131 §40, and the DEP regulations 310 CMR 10.05 (4) (e), if your application requires approval from the Spencer Planning Board or the Spencer ZBA, the applications to those boards MUST be filed before, or at the same time as, the application to the Spencer Conservation Commission.

Failure to comply with this requirement may result in the denial of your application, including the loss of all permit fees paid, based on a legal procedural error.

If you have any questions concerning this requirement, please call or e-mail the Conservation Agent at 508-885-7500 x 123 or grussell@spencerma.gov