

Conservation Commission – Town of Spencer

Minutes



Conservation Commission Meeting
Wednesday, January 27, 2021 at 7:00 PM
Town Hall, McCourt Social Hall

2021 FEB 11 AM 8:44

RECEIVED
SPENCER TOWN CLERK

Benjamin J. Johnson

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: 1-877-568-4106 AND USE ACCESS CODE: 267-912-789

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 & Warren Snow

Commissioners Absent: Bob Perry

Staff present: George Russell, Jane Green
Staff absent:

Minutes Approved: *A motion to approve the minutes of January 13, 2021 as amended (Bellemer/Snow) passed 4/0 with a roll call vote: McLaughlin-yes, Emerson-yes, Snow-yes, Bellemer-yes.*

Signed: There were no items to be signed.

7:10 p.m. 4.1 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 representatives Steve Pikul and T.J. Recupero joined the hearing. Mr. Pikul gave a brief update. They want to do a field meeting. Mr. Recupero said that he hopes the work will not be held up because of the change order. Mr. Pikul discussed the fees and is concerned at how much they have spent already. Mr. Snow said that this financial discussion is not appropriate for this meeting. It was decided to continue to the next hearing.

At the request of the applicant, the hearing has been continued to February 10, 2021 (Bellemer/Emerson) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Snow-yes, Bellemer-yes.

7:23 4.2 Continued the Public Hearing for the Notice of Intent for Edwin & Christine Mullens

Property: North Spencer Road, Spencer, MA DEP#293-0986

Mr. Russell said that this item has been withdrawn by the applicant.

7:23 4.3 Continued the Public Hearing for the Notice of Intent for Edwin & Christine Mullens

Property: North Spencer Road, Spencer, MA DEP#293-0987

Mr. Russell said that we are still waiting for the final peer review for this project and the hearing should be continued.

At the request of the applicant, the hearing has been continued to February 10, 2021.

7:24 4.5 Continued the Public Hearing for the Notice of Intent for Peter Rourke

Property: 4 Wildwood Lane, Spencer, MA DEP#293-1000

Mr. Russell said the hearing was continued to allow the Commission to go visit the site, as well as to allow the applicants to deal with the issues that were raised. The office received the revised plans and Mr. Russell recommends the applicant can go forward with the project. Mr. Snow went to the site and agreed with Mr. Russell. Mr. Bellemer said that he saw the wetland plants growing on a slope, not in the hollow. That is evidence that it has been washing down there for a long time.

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

A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer -yes, Snow-bad connection (no vote).

A motion for approval at 4 Wildwood with stipulations in Agent's report (Bellemer/Emerson) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Snow-yes, Bellemer-yes.

7:29 p.m. 4.6 Continued the Public Hearing for the Notice of Intent for David Cronin

Property: 24 Oak Lane, Spencer, MA DEP no # has been issued

There is no DEP number. Mr. Snow said that this application has been pending since August. Mr. Russell said that there has been a lag in receiving all of the materials. There was discussion and it was decided to continue to the next hearing.

At the request of the applicant, the hearing has been continued to February 10, 2021 (Snow/Bellemer) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer-yes, Snow-yes.

7:31 p.m. 4.7 Continued the Public Hearing for the Notice of Intent for David Harris Property: 53 Highland Street, Spencer, MA DEP#293-1002

Mr. Russell recommend that we continue to the next meeting, because the applicant was not present to give input.

At the request of the Commission, the hearing has been continued to February 10, 2021 (Bellemer/Emerson) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer-yes, Snow-yes.

7:34 p.m. 4.8 Opened the Public Hearing for the Notice of Intent for Richard Leveille

Property: Hastings Road, Map 43, Parcel 16/1, Spencer, MA DEP no # has been issued

There is no DEP number. Richard Leveille joined the meeting along with his representative Mark Elbag, Junior.

At the request of the applicant, the hearing has been continued to February 10, 2021 (Bellemer/Emerson) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer-yes, Snow-yes.

7:36 p.m. 4.9 Opened the Public Hearing for the Notice of Intent for James Cooper Property: 3 Jolicoeur Avenue, Spencer, MA DEP#293-1006

Mr. Russell said that the applicant completed all the recommendations that needed to be done. James Cooper joined the hearing. Mr. Russell said that this was a result of an enforcement action. Mr. Russell said he visited the site, and the work was completed.

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

A roll call vote: Snow-yes, McLaughlin-yes, Bellemer-yes, Emerson-yes.

A motion to approve with Agent's stipulation at 3 Jolicoeur Ave (Snow/Emerson) 4/0 passed.

A roll call vote: McLaughlin-yes, Emerson-yes, Snow-yes, Bellemer-yes.

7:40 p.m. 4.10 Opened the Public Hearing for the Notice of Intent for Gordon Letour

Property: 10 Meadow Road, Spencer, MA DEP#293-1007

Mr. Russell said that the applicant asked to continue the hearing. DEP has significant comments for the applicants regarding the site.

At the request of the applicant, the hearing has been continued to February 24, 2021 (Bellemer/Emerson) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Snow-yes, Bellemer-yes.

5.0 Other Business:

5.1 Amendment to 2 Gold Nugget Road RDA

The applicant filed a request to amend the RDA for the septic system. There have been 2 drains installed within jurisdiction that were not shown on the plans. Mr. Russell said that in his Agent's Report, there are three conditions that if met, could be approved with an Administrative Approval. The applicant should submit a map and narrative outlining the proposed changes. Mr. Bellemer said that the commission approved a very similar condition on Smithville Road, he agrees with this amendment.

A motion to approve the amendment to the RDA for 2 Gold Nugget (Snow/Bellemer) passed 4/0.

A roll call vote: McLaughlin-yes, Bellemer-yes, Snow-yes, Emerson-yes.

5.2 Discussion Section 16.4 of the Wetlands By-law

Mr. Russell said that this arose because of citizen input at 225 Charlton Road. The opinion of the Attorney representing that project said there is a problem. Town council looked at it and he agreed there is a problem. An amendment should be proposed to the town meeting for the wetlands' bylaws. They are outlined in the packets. Also, there would be an amendment to the regulations from the Conservation Commission. Mr. Russell would like a recommendation to the Board of Selectman by the Town Administrator to amend sections 16.4.

A motion to recommend the amendment proposed to the Town (Bellemer/Emerson) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer-yes, Snow-yes.

5.3 Smithville Rd-Old Meadow-7 Meadow – OOC Extension Request

A motion to extend the Order of Conditions for Smithville Rd-Old Meadow-7 Meadow for 3 years (Bellemer/Snow) passed 4/0.

5.4 Maple Street – Muzzy Dam

A motion to extend the Order of Conditions for Maple Street for 3 years (Bellemer/Snow) passed 4/0.

A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer-yes, Snow-yes

5.5 8 Valley View Drive – CofC Request

Mr. Russell said that all is ready for the CofC to be granted.

*A motion to grant the CofC at 8 Valley View Drive (Snow/Emerson) passed 4/0.
All in favor: McLaughlin-yes, Emerson-yes, Snow-yes, Bellemer-yes.*

5.6 17 GH Wilson – Bond Release

Mr. Russell said that at the last meeting the CofC was released. The applicant is requesting to release the stormwater bond.

*A motion to release the bond at 17 GH Wilson (Bellemer/Emerson) passed 4/0.
A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer-yes, Snow-yes.*

5.7 Amendment 96 Pleasant (AKA Lot 1 Valley View)

There is significant vegetative debris in the BVW (Bordering Vegetative Wetlands) and buffer zone. Mr. Snow wanted to know if we should put conditions on the Order of Conditions or discuss it at the next meeting. Mr. Bellemer said that he has been at the site and said there has been wetlands there since the beginning. Ms. Emerson wanted to know who does this fall under now. Mr. Russell said it is the property owners' responsibility. Ms. Emerson wanted to know if it was granted a Certificate of Compliance. Mr. Russell said it was not. Ms. McLaughlin said in her opinion the property owner should make an amendment to the Order of Conditions, including the shed and what is going to be done with the debris. Mr. Bellemer wanted to know if the owner should file a new NOI. If you do that, Mr. Russell said that would make 2 NOI's on the same site.

*A motion for an amendment to the Order of Conditions at 96 Pleasant Street and to require the expertise of the Conservation Agent (Bellemer/Snow) passed 4/0.
A roll call vote: McLaughlin-yes, Bellemer-yes, Snow-yes, Emerson-yes.*

5.8 Amendment 16 Stiles

This is similar to item 5.1. The applicant wants to put boulders on the property. They meet all 3 conditions outlined in item 5.1.

*A motion to allow the amendment at 16 Stiles (Snow/Emerson) passed 4/0.
A roll call vote: McLaughlin-yes, Emerson-yes, Snow-yes, Bellemer-yes.*


Agent's Report:

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

New Applications: Request for CofC 32 Shore Drive

*A motion to adjourn the meeting at 8:07 p.m. (Bellemer/Emerson) passed 4/0.
A roll call vote: McLaughlin-yes, Emerson-yes, Bellemer-yes, Snow-yes.*

Respectfully submitted by:



Jane Green, Senior Clerk
Development & Inspectional Services

Documents Reviewed at January 27, 2021 Conservation Commission Meeting

Agenda 1/27/21

Minutes 1/13/21

Continuance Charlton & Bacon Hill Roads

Continuance North Spencer Road

Order of Conditions 4 Wildwood Lane

Continuance 24 Oak Lane

Continuance 53 Highland Street

Continuance Hastings Road Map 43, Parcel 16/1

Order of Conditions 3 Jolicoeur Ave

Continuance Meadow Road

Order of Conditions Extension 3 Smithville-Old Meadow-7 Meadow

Order of Conditions Extension Maple Street Muzzy Dam

Certificate of Compliance 8 Valley View Drive

Amended Order of Conditions 96 Pleasant Street

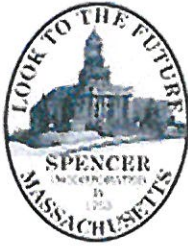
Amended Order of Conditions 16 Stiles

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: 1/27/21

I would ask the members to please bring the packets mailed for the last meeting to this meeting for all continued items.

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 nor the ZBA. Peer review is on-going, revised plans have been submitted to BSC and we have been researching a legal question that has arisen concerning this site and the local wetlands by-law.

The legal decision has been received and it says in part:

In my opinion, for the reasons that follow, the first sentence of Section 16.4 of the Bylaw underlined above may be applied to the project to the extent that the project proposes tree clearing within wetland resource areas protected under the Bylaw. In my opinion, the first sentence of Section 16.4 is, in effect, a no disturb provision for resource areas which are also "forest land." In my opinion, this interpretation is consistent with the "25' No Touch" provision of the Commission's Regulations. While "forest land" is not defined in the Bylaw or Regulations, in

light of the references in Section 16.4 to the Massachusetts Forest Cutting Practices Act and permits issued thereunder, in my opinion, to the extent the subject parcel is subject to a Forest Cutting Permit, the Commission may reasonably consider the property to be "forest land" for purposes of applying Section 16.4 of the Bylaw.

It should be noted that this site did have an approved forest cutting plan.

In your packets is a copy of the e-mails among all of the principals on this project. These speak for themselves. BSC cannot accurately determine the wetlands line on portions of the site due to the "winter conditions". This determination is also in your packet. Therefore, the hearing needs to be continued and I would again recommend to at least the 3/10/21 meeting.

Item 4.2. Continued Public Hearing for the Notice of Intent for North Spencer Road, Spencer, MA DEP#293-0986: This item has been withdrawn by the applicant.

Item 4.3. Public Hearing for the Notice of Intent for North Spencer Road, DEP#293-0987: We are still awaiting the final peer review for this project and the hearing should be continued. It should be noted that the initial peer review has been received and forwarded to the applicant.

Item 4.4. 4 Wildwood NOI: I have conducted a couple of site visits and a review of the application. Some changes were requested of the applicant's plans and those have been made. In your last packets were written comments from abutters concerning drainage and work on the roadway itself. I would caution the Commission that mandating work on land the applicant has no control over, will not stand up to any appeal and is truly unenforceable.

I also observed significant erosion on site, and it is transporting sand and other fines to the LUWB in the pond. There is also partially buried filter fabric as well as wetlands vegetation quite a way in from the bank. This would indicate that the resource area is further inland than the bank. Thus, the plans needed to be changed, and have been changed, to show the following:

- All filter fabric must be removed from the site;
- A new wetlands demarcation of possible BVW;
- Permanent provisions to stop all erosion that begins at the street pavement from transporting additional sand and soil into the resource areas; and
- I would recommend the plans be changed to reflect these items prior to final approval.

When approved, I would recommend the following stipulations: 20,23, 24, 27-30, 33-35, 37-41, 43, 44, 47, 50, & 52-54.

Note: at the 1/13/21 meeting, the applicant's engineer indicated that he had never been told of the issues outlined in my report. In your packet is an e-mail to him dated 11/24/20 with my comments. Ergo, he was notified with enough time to address the issues.

It is strongly recommended that the members visit this site prior to the meeting.

Item 4.5: 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.) 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.

The hearing was continued was continued for an NOI # which has not been received.

Item 4.6: 53 Highland NOI: This permit was filed as a result of an enforcement action which is outlined in your packet. The activity has stopped, and the material removed. Like the permit above, 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.

The hearing was continued was continued for an NOI # which has been received: 293-1002.

Item 4.7: 3 Jolicoeur, NOI: this permit is also a result of enforcement action and a discussion with the Commission by the applicant as to whether an NOI filing was required. The Commission voted that it was. Like the permit above, 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.

We did not yet have an NOI # and thus the hearing was continued. We now have the number.

Item 4.8. Lot R43-16-1 NOI: This lot is not jurisdictional. However, work taking place on site caused significant erosion issues with sediment being transported into Turkey Brook. Once this happened, the work on this lot became jurisdictional and a SWO/NOI was issued. The instant permit is a result of that SWO/NOI. Information on the work is included in your packets. We do not yet have a DEP number. When approved, I would recommend the following special conditions: 20, 23, 24, 27-30, 33-35, 37-41, 43, 44, 47, 50, & 52 as well as the following:

All sediment from the site, that has settled in the drainage ditch between the site and #54 Hastings Road must be removed. Prior to beginning clean up coordinate equipment, means, methods and timing with Spencer Highway Foreman to confirm safety, protection of the road and to avoid conflicts with other ongoing work.

When this work is completed, the project engineer must certify, over his/her signature and stamp, as to its completion and any problems encountered. This may be part of the engineer's certification required as part of the request for a release from conditions.

It is strongly recommended that the members visit this site prior to the meeting.

Item 4.9. 10 Meadow Road, NOI: This NOI is for a 4,000 ft² building addition with associated parking addition. I have recommended to the applicant that this needs to go to BSC for peer review; especially given that the Commission will be the storm water authority and the applicant is working in a riverfront. (See information in your packets.) As of this report, it has not been submitted to them. Therefore, given the lack of action for peer review and the fact we do not have a DEP number, I would recommend this hearing be continued to 2/24/21.

5.0 OTHER BUSINESS:

Item 5.1 Amendment to 2 Gold Nugget Rd. RDA: In your packet is a request to amend the RDA granted for the septic system. There have been two drains installed within jurisdiction that were not shown on the plans.

Under the Commission amendment policy, which states in part:

If there is no immediate danger to health and safety, **AND** the following three conditions are met, the applicant shall submit a map and narrative outlining the proposed changes to the Commission for an administrative approval from the Commission:

1. There shall be no net increase in the amount of fill or excavation of material or vegetation removed;

2. The proposed changes shall not be any closer to the resource areas than originally proposed; and
3. The impact on the resource area(s) shall be no greater than originally approved.

I believe all these conditions have been met and would recommend the drainage structures be approved as outlined.

Item 5.2. Discussion Section 16.4 of the Wetlands By-law: In your packets is a legal opinion concerning this section of the by-law and in the next to last paragraph is a recommendation for an amendment to same. The amendment is outlined in your packets and a recommendation to the town meeting is necessary should the Commission agree with these amendments.

The are also suggested amendments to the regulations.

Item 5.3 Smithville Rd – Old Meadow – 7 Meadow Rd - OOC Extension Request: This request, as well as item 5.4 below are for routine maintenance of the indicated areas/structures. I would recommend both extensions be granted.

Item 5.4 Maple Street – Muzzy Dam: See above.

Item 5.5 8 Valley View Drive – CofC Request: All is ready for the release to be granted.

Item 5.6 17 GH Wilson Bond Release: The Commission approved the COC at the last meeting and the applicant has now requested the release of the bond.

Item 5.7. Discussion 96 Pleasant: In your packets, please find a SWO from my office and a response from the property owner. The Commission needs to decide if a new NOI is required or just an amendment to the existing NOI. I would recommend the members may want to visit the site prior to the meeting.

Item 5.8. Discussion 16 Stiles Ave.:The proposal is to amend the NOI at this address to install a boulder wall which will be for aesthetics only. It is my opinion that this meets the three tests outlined in item 5.1 above.

6.0 AGENT REPORTS:

Item 6.1. In reading the mission of the Commission on the Commission's webpage, a couple of errors were found, e.g., a word missing. We have taken the liberty of correcting this.