

FINAL – Approved by the Conservation Commission at their September 8, 2015 meeting

**Town of Lakeville
Conservation Commission
Tuesday, August 11, 2015
7:00 PM – Lakeville Public Library**

On August 11, 2015, the Conservation Commission held a meeting at 7:00 PM at the Lakeville Public Library. The meeting was called to order by Chairman Bouchard at 7:01 PM. Members present included: Linda Grubb, Robert Bouchard, Joseph Chamberlain, Derek Maksy, Martha Schroeder, Sarah Kulakovich, Associate Member, Nancy Yeatts, Conservation Agent, and Christine Weston, Recording Secretary. Hugh Rogers, Jr. and Ryan Trahan were absent. LakeCam was recording the meeting.

7:00 PM

NOI – 12 Priscilla Drive – Suzanne Sigman, Trustee/Read letter from Bartletts'

Chairman Bouchard read the notice into the record. Jonathan Pink was present from Azor Land Sciences, along with the applicants. Mr. Pink explained that the current home is relatively old and the clients have moved here year round and would like to live in the house. Thus, they would like to raze the existing house and build a new single family dwelling with a porch and deck and do associated grading. The foundation will be in the flood zone, thus some compensatory storage will have to be done. The deck is in the 25' buffer. Chairman Bouchard asked if Mr. Pink had explained the 25' buffer area to the clients. Mr. Pink responded that he had.

Ms. Yeatts stated that she was visited twice at the office by the neighbors. The neighbors had submitted a letter which was then read into the record.

Dear Members, We are unable to attend this hearing due to a previously planned vacation out of state at that time. Since we are unable to attend we are asking the following:

- 1. This letter be read at the hearing and be noted in the minutes of the hearing.*
- 2. Our concern is that the proposed project not negatively impact our abutting property at 14 Priscilla Drive in any way, specifically addressing any changes to water flow onto our property.*
- 3. Please make specific findings regarding our concerns.*

Thank you. Frank & Carolyn Bartlett

Ms. Yeatts stated that the Bartletts were very concerned about the line of trees. So, if the client does want to take down any trees in the future, it would require another filing. Ms. Yeatts asked that the silt fence be extended for better protective coverage purposes. Discussion then took place regarding the most appropriate way to protect the buffer zone. The silt sock will need to be dug in and staked every 2'. The Agent will need to be called when the silt sock is set into place for review. Ms. Grubb mentioned that the lot is very long, as many lots are, and she asked that in the future that they be completely shown on the plan. When the plan just trails off on the paper it appears that there is something missing and everything should be shown even if 2 pieces of paper are needed to completely show the plan. Mr. Pink stated that he has not supplied the plan to the BOH at this time since there will be no changes made with the septic system, only the pipes will be tied in. There were no comments from any other abutters. Mr. Pink stated that the Client has mentioned that the concrete piers are falling into the water, they are licensed. Since they are falling into disrepair, the applicant is considering restoring them. Could that be included or not? Ms. Yeatts stated that since that was not advertised in the paper, any abutters would not

know that that could also be taking place, that should be done separately from this hearing. The Agent asked if the repair would include pouring concrete? Mr. Pink responded in the affirmative. He added that there is a Chapter 91 license presently in place. Member Chamberlain asked that when the piers are redone that it be done during a low water time.

Upon a motion made by Member Maksy; seconded by Member Chamberlain it was:

**VOTED: To close the hearing and issue an Order Of Conditions for 12 Priscilla Drive subject to the Conservation Commissions standard conditions, pending a DEP (Department of Environmental Protection) filing number and notification from NHESP (Natural Heritage Endangered Species Program). The silt sock will be 12" in diameter and dug in, it will be staked every 2' and any trees to be cut will require an additional filing.
Unanimous in favor**

Ms. Grubb asked that in the future, the full lot to be shown on the plan.

Meet with J. Tjersland regarding 186 Main Street to discuss shed and fence

Ms. Yeatts stated that she had excused Jennifer Tjersland from the meeting. Ms. Tjersland is looking to establish a fence as a bit of a blind for privacy. The Agent then distributed information regarding; Exempt Minor Activities in Riverfront Areas and Buffer Zones, Under the Wetlands Protection Act. The information explained why minor activities have been created, where riverfront area and buffer zones are, activities that are not exempt and where to find additional information. The Commission then discussed various forms of fencing and what could be done so as not to restrict the passage of animals or flow of water. Due to the information provided it was made clear that the applicant does not have to file an RDA with the Commission. Member Maksy stated that as long as the fence is kept off the ground at least 6" to allow for air flow and to allow for wildlife to travel under he was in approval. The Agent will write a letter to Ms. Tjersland explaining what the Commission discussed.

Meet with Jenn Silva of Outback Engineering to discuss 5 Harding Street

Jenn Silva of Outback Engineering was not present this evening. It was thought that both Jeff Youngquist and Jenn Silva were to attend the meeting this evening. The discussion for 5 Harding Street was tabled with the consensus of the Commission.

7:30 PM

Meet with Mike Redlon regarding 71 Highland Road

Mike Redlon was present for the discussion. He stated that he had looked at the area after the rain today. He had taken pictures, which he will email to the office. He has put into place a board so that the gravel and other material will not fall off of the 'bridge' area. The plan is to pave the road and the boards will remain in place after the road is paved. Chairman Bouchard asked if the pavement would extend to the edge or would the area be sloped? Mr. Redlon responded that the road is 12' wide and the pavement would extend 10'. Chairman Bouchard expressed his concerns with the gravel washing out. Mr. Redlon explained that he had taken out

the rocks that had fallen in; he will also pack the area down and do whatever it takes to comply, such as putting in a railing, etc. Ms. Yeatts stated that the area needs to be safe and the Commission needs a plan for how it will be made safe, contained (gravel and/or topping) and stabilized. Another consideration is what will take place during the winter with the snow and plowing. What will be done needs to be drawn on the plan. Then, if it doesn't work, there needs to be a plan from the engineer of what will be done in order that it will work. Member Chamberlain asked about access to the property. Mr. Redlon explained that the neighbors are currently allowing access through their property. Ms. Grubb pointed out that the stream depicted on the topography map shows it as perennial. The Commission has decided that the stream was intermittent, but not off of the property. Therefore it should be specified that only in this area it is intermittent, but not any other part of the stream.

Meet with Lyman Lokken regarding 9 Charbonneau Street to discuss change in plan

Mr. Lyman Lokken, owner was present, along with his wife Vivian. Mr. Lokken stated that he has come up with a revised plan which includes adding a toilet and a small sink inside the shed. He stated that the BOH is acceptable with this. He had mentioned about having an outside shower and the BOH recommended that the Conservation Commission be consulted. The fixtures will all be piped and have very light use. A shower may not be installed; there just may be a faucet for people to wash off their feet when they come out of the pond. Mr. Lokken provided a letter to the agent with the proposed drawings. Mr. Lokken stated that the shed is exempt from the building code and he will continue the non-conforming setback for that. It will go into the septic system; there will not be a French drain. Ms. Yeatts asked if the Commission would want these new plans provided on the as-built if the toilet, sink and shower will all go into the line. Member Maksy noted that there is no code against an outside shower. Chairman Bouchard agreed, having this type of area would be no different than an outside tap. Member Chamberlain suggested just some cedar waffle boards to stand on. Mr. Lokken stated that he could carve out an area and have it cemented. Member Chamberlain recommended that the water just be allowed to re-enter the soil. It was the consensus of the Commission to allow the changes to be put on the as built. Mr. Lokken stated that the area has been inspected and the hay bales are in place.

Ratify Enforcement Order for 33 Shore Avenue

Manny Bugginga, Owner, was present for the discussion. Member Chamberlain provided an update on the Enforcement Order for 33 Shore Avenue. Ms. Yeatts then provided additional information regarding the Enforcement Order that the Commission will need to ratify. The Agent had received a phone call from a neighbor stating that a concrete wall was being poured without a permit on Manny Bugginga's property. The Agent went with the Building Commissioner to inspect the property. The Agent then showed pictures of the wall and patio that had been poured on the property. Mr. Bugginga was asked to stop any further work on the property.

Upon a motion made by Member Grubb; seconded by Member Maksy, it was:

VOTED: To ratify the enforcement order for 33 Shore Avenue.

Unanimous in favor

Ms. Yeatts stated that Mr. Bugginga was told that he would have to file, after the fact. Chairman Bouchard asked if Mr. Bugginga has spoken to an engineer? Mr. Bugginga stated that he has not done anything since he wanted to find out what the Commission wanted him to do. He stated that his daughter had fallen on some of the rebar that was sticking out of the wall that was in disrepair and was taken to the hospital. He did not want anyone else getting hurt so he had redone the wall and added a patio. He added that the neighbors also have a retaining wall at the same height as the one he has replaced/repared. Member Schroeder asked if there were pictures of the area prior to the changes that were made? Mr. Bugginga responded that he may have some pictures, he will look for them to provide to the Commission. Member Grubb suggested that an NOI be filed on what has been done and any further work that Mr. Bugginga is proposing to do. That way the Commission will know the extent of what has been done. Chairman Bouchard asked if there is much more work to do? Mr. Bugginga responded that he needs to put in stone (crushed) and trees in the patio area. Member Maksy noted that the pervious and impervious percentages have changed on the property. Mr. Bugginga stated that he did not extend the wall further than it had been, nor did he make it wider. It was noted that the abutters and DEP had not been informed that the work was to be done. A filing needs to be submitted so that the abutters are aware of what is taking place. Chairman Bouchard explained that normally just replacing and repairing the wall would not be so much of a concern, however, Mr. Bugginga went beyond that. The Commission needs a plan and Mr. Bugginga will need an engineer who is familiar with this type of project to do the plan for him. The Commission needs a complete filing as if the work had not yet been done. Including what the area had originally looked like and what the further plans for work are. Mr. Bugginga asked for the name of an engineer and Member Chamberlain recommended that he call the Agent for a list of engineers. Chairman Bouchard explained that if someone has an imminent hazard on their property, the Conservation Commission can issue the type of permit needed in such an emergency, however, this is after the fact. Mr. Bugginga asked about the amounts of impervious and pervious coverage and what was allowed. Ms. Grubb explained that the maximum amount of impervious, with no infiltration is 25%. The amount of pervious coverage is 75%. Concrete is considered impervious. Member Maksy asked that the Commission look into what the DEP allows for maintenance on walls on the ponds. Mr. Bugginga was provided a copy of the Submittal Requirements.

RDA cont'd – Churchill Shores Lot – end of Sandy Point Road – Craig Cabral

Cheryl Bernard, Attorney, was present on behalf of Mr. and Mrs. Cabral who were also present. Abutters Sandra & Mark Haworth were also present. Attorney Bernard stated that she brought proof of ownership for Mr. Cabral's share of the property however she did not think it was necessary to determine applicability. Chairman Bouchard explained that the project has to be viable, the person needs to have the resources to do the work. Attorney Bernard stated that this is a determination of if the Wetlands Protection Act applies. There is no request to build anything. It is a yes or no. The Board does not determine ownership. Member Maksy explained that the Board was informed that Mr. Cabral does not have 100% ownership. He then read the

DEP regulations, Part D - Signatures and Submittal Requirements, of the WPA Form 1- Request for Determination of Applicability:

I hereby certify under the penalties of perjury that the foregoing Request for Determination of Applicability and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Member Maksy added that the Commission had asked if that had happened (the owners being provided with a copy of the request) since the Commission was informed by the applicant that he was not 100% the owner. Typically the Commission does not have ownership questions and does not ask for proof of ownership. Attorney Bernard stated that by law Mr. Cabral has the right to do things on the property whether he owns 25% or 50%. He is an owner and has the right to get a determination of what he can do with the property. Chairman Bouchard explained that in similar experiences where ownership was in question the Commission proceeded with caution so as not to get into a civil matter. Currently there is dispute of ownership and the Commission cannot be liable for going forward with conditioning something in this type of situation. When ownership is questioned this is typically what happens. Chairman Bouchard stated that since a site visit had been conducted he would like to set aside the legal issues for the moment and discuss the environmental issues.

The Agent then provided a summary of the property conditions. The first question is whether the property is subject to the jurisdiction of the Wetlands Protection Act. The Commission has not been provided with a plan of the resource areas. Mr. Craig explained that a print out had been provided to him. Ms. Yeatts explained that since the site visit had taken place (on or about July 12) it was found that there are wetlands on the property. Mr. Cabral has indicated that he wants to cut down a section of trees. Since it appears that there are wetlands, the property is subject to the jurisdiction of the Wetlands Protection Act. It will need to be indicated how many trees will be taken down. An engineer's plan would be required to show grading and elevation since that would impact the wetlands. The area is very uneven and one would not be able to put a camper there unless some grading took place. This was seen during the site visit. Mr. Craig stated that he did not have an exact count on the number of trees that would need to be removed, maybe 10-12. Member Maksy asked if the stumps would be removed. Mr. Cabral responded that he was hoping that he didn't have to remove any stumps. Member Maksy stated that if the stumps were to be removed then heavy equipment would need to be brought in to do that. Then fill would be needed to replace where the stumps were pulled and where would the brush go? Chipped up and taken away by a truck? Ms. Yeatts stated that initially when she had spoken with Mr. Cabral an RDA was sufficient, however, since a site visit has now taken place, the existence of wetlands has been seen, and the size of the trees, thus, the scope of the removal of trees has changed. Member Chamberlain asked about the size of the camper and explained that with his past experience with campers Mr. Cabral will need a sufficient amount of space for turning around in the area. Mr. Cabral stated that he was only going to back in and drive out. Member Maksy pointed out that the only access to the property is through the right of way. Attorney Bernard stated that the ownership came from a deed from back in 1982, Book 5246, page 54. It may have been in a previous deed as well and gotten carried over. Member Maksy suggested that an onsite visit take place with the client, to show where the camper was being proposed to be, and what

other areas would be affected, i.e. tree removal, etc. The Agent stated that the wetland area will have to be delineated. Mr. Cabral stated that he will contact an engineer and have the area delineated. Attorney Bernard suggested that the engineer also stake out the area where Mr. Cabral would want to put the camper and picnic table.

The Abutters (Hayworth's) now provided comments. It was asked if the Board was in a position to grant either an RDA or NOI for an owner who has a partial interest in the property if the other owners have an objection to it? They asked for clarification of an answer to that question since there are multiple owners to the property. Member Maksy stated that the Commission is not authorizing any tree removal. If Mr. Cabral cuts down trees then that is a civil matter. The Commission is not questioning ownership. Chairman Bouchard stated that the Commission is trying to determine if Mr. Cabral needs a full NOI, which might involve doing some wetlands delineation, but not work on the site. Until that process takes place, the Commission cannot authorize any work. Member Kulakovich suggested that since there seems to be a legal dispute, whether it is pending or implied, the Commission should condition what takes place based on property understanding that if there are any difficulties that they will have to be worked out civilly. That way it is on record that the Commission is not giving permission for something to be done that may or may not be allowed by the party in question.

The Hayworth's asked, if when there are multiple owners to a piece of property and someone comes forward to change the layout of the land, is the Commission in a position to allow that if the Commission knows with certainty that the other owners opposed the tree removal? Chairman Bouchard responded that the Commission can go forward with the NOI, the owners can come in with their opinion, however, the Commission would only be making a judgment on the environmental aspect. Ms. Yeatts stated that Mr. Cabral is asking for a determination on A, B, C, and D.

- A. *Whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.*
- B. *Whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated*
- C. *Whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.*
- D. *Whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance** or **bylaw** of Lakeville.*

The Agent stated that with A, it is a Positive 1 – it is an area subject to protection under the act and requires the filing of an NOI. Regarding the boundaries, this is a Positive 2b, since the boundaries are not confirmed. The work is subject to the WPA which is a Positive 4. The work is within the Buffer Zone and will alter an Area subject to protection under the Act, thus it requires an ANRAD or NOI to be filed. Under D, the Town of Lakeville does not have a wetlands bylaw. Mr. Cabral asked if his hearing could be continued so that he can consult with an engineer?

Upon a motion made by Member Maksy; seconded by Member Chamberlain, it was:

**VOTED: To continue the hearing for the Churchill Shores Lot (end of Sandy Point), Craig Cabral, at the applicants request to Sept 8, 2015 at the Lakeville Library, 4 Precinct Street at 7 PM.
Unanimous in favor**

Other Business

- a. Vote to issue duplicate copy of COC for LeBaron Residential

Ms. Yeatts explained that a Representative of LeBaron had called asking for a copy of their COC. Looking through the numerous files for the property a COC could not be found. It was found in the minutes of 2008 that the Commission had voted to issue a COC though. Judith Nitch Engineering was the engineer for the project and it was either Tara or Liz who was the Agent at that time. Member Chamberlain mentioned that one of the conditions was to clear the invasive's and it does not appear that that was done. Ms. Yeatts stated that she will check with the Planning Board of the ZBA to see if they may have an as built plan for the property. It will also be looked into to see if there is any inperpetuity, invasive control, etc.

Upon a motion made by Member Chamberlain; seconded by Member Maksy, it was:

**VOTED: To issue/re-issue a Certificate of Compliance for LeBaron SE192-399
Unanimous in favor**

- b. Discussion on Procedural Matters

Chairman Bouchard mentioned that the Commission has a meeting tomorrow night with the Board of Selectmen at 7 pm. Some items that have been brought up are; Job descriptions for Chairman and the Agent. In the past, the practice of the Chairman has been to do what everyone else has done before them. According to the Town Administrator and the BOS the Chair's only authority is to set the agenda and conduct the meeting. However, the Chair should have some guidance of what to do in a simple situation or not so simple situation in between meetings of the Commission and have the backing of the Commission. This is all to make sure that the applicant is not held up waiting for an answer in between Commission meetings. Typically the Board relies on the Agent, however there are times when the Agent has a question. Member Maksy noted that site visits should be more regularly scheduled and that everyone get in the habit of making the site visits, whether on their own or with members of the group. Discussion took place pertaining to the pros and cons of allowing decisions to be made, knowing that the Agent can also contact DEP and that whenever there is a matter in contention or that the Agent has a question on, she will, as she has always done, bring the matter before the Commission.

c. Discussion about Applicants

Brief discussion took place on the submittal of Ms. Kulakovich's letter of request to be considered to move from an Associate Member to full member of the Commission. It was noted that Ms. Kulakovich's letter was submitted after the fact due to three applicants writing letters of interest to the two open seats on the Commission. When it became known that there may be a third seat, Ms. Kulakovich had submitted her letter of interest. Member Maksy stated that the newest seat opening should be advertised by the BOS.

Upon a motion made by Chairman Bouchard; seconded by Member Chamberlain it was:

VOTED: To recommend to the BOS that Sarah Kulakovich be considered as a full member of the Conservation Commission.

All members of the Commission were in favor; however, one member abstained until the letter of resignation from Hugh Rogers is accepted.

d. Discuss Commission Size

Chairman Bouchard stated that another discussion topic presented to him by the BOS was the composition of the Commission. Should it be comprised of five members or continue with a seven member board? After the pros and cons were discussed it was decided that the Commission would like to remain with a full membership of seven.

e. Discuss 25' No Touch Zone for new construction which started approx. 2005

The Agent provided a handout regarding the 25' no touch zone.

Rationale for Lakeville Conservation Commission's 25' No Touch Policy

A 25-foot No-Touch Zone means that except for certain cases, no activity is permitted within this zone, including, but not limited to, grading, landscaping, vegetation clearing, cutting, filling, excavating, road construction, and driveway construction. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawns, depositing/dumping of yard waste, over grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation, all of which is prohibited.

From Lakeville's Master Plan: "Groundwater Protection is of paramount importance since most homeowners rely on private wells"

The benefits of the 25' no touch policy:

- *Buffer zones protect the water quality of wetlands/groundwater*
- *A small buffer (e.g. 25 feet) can remove over 50% of pollutants (Buchsbbaum & Jackson MassAudubon & UMass)*
- *Buffer effectiveness can be reduced by activities that destroy vegetation and compact or erode soils*
- *During flood events, buffers can slow runoff and absorb excess water, thereby lessening flooding*

- *A protected buffer from the wetlands is recommended by state agencies and environmental organizations*
- *Will align Lakeville's policy with neighboring towns*

Lakeville has opportunities to preserve its beauty and natural resources. We also have an obligation to protect our residents from flooding and to increase safeguards against groundwater contamination.

Lakeville needs stronger tools to protect wetlands & water resources. To date, we have not been successful in passing a local wetland by law. The commission has been implementing a 25' No Touch policy since 2006, as a small step toward better protection of the resource areas.

Chairman Bouchard explained that since this is a policy it will be another topic for discussion with the BOS tomorrow night. Member Grubb stated that this has been a documented policy since 2005. Ms. Yeatts mentioned that this came up when the Commission was working with McGee Chevrolet. The City of Taunton had one and Mr. Cahall had pointed it out. Member Chamberlain stated that the policy is for new construction. Minor further discussion took place on the policy of the Conservation Commission

- f. Approve meeting minutes of 5-26-15, 6-23-15 and 7-14-15

Upon a motion made by Member Grubb; seconded by Member Chamberlain it was:

**VOTED: To approve the Conservation Commission meeting minutes of May 26, 2015 as presented.
In favor 3, Abstain 1**

Upon a motion made by Member Maksy; seconded by Member Grubb it was:

**VOTED: To approve the Conservation Commission meeting minutes of June 23, 2015 as presented.
Unanimous in favor**

Upon a motion made by Member Maksy; seconded by Chairman Bouchard it was:

**VOTED: To approve the Conservation Commission meeting minutes of July 14, 2015 with minor changes as noted on page four.
Unanimous in favor**

- g. Pay Bills (if necessary)

There were no bills to sign. The Commission did sign other paperwork as accepted this evening.

Schedule next meeting.

The next meeting was scheduled for Tuesday, August 25, 2015 (tentatively) at 7 PM at the Town Office Building. If this meeting is not necessary the next meeting will be on Tuesday, September 8, 2015 at the Lakeville Library on 4 Precinct Street at 7 PM.

Adjournment

Upon a motion made by Member Chamberlain; seconded by Member Maksy it was:

VOTED: To adjourn the Conservation Commission meeting at 9:55 PM.
Unanimous in favor

Member Schroeder exited the meeting about 9 pm.
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