

FINAL- Approved by the Conservation Commission at their March 8, 2016 meeting

**Town of Lakeville
Conservation Commission
Tuesday, February 23, 2016
7:00 PM – Lakeville Town Office Building**

On February 23, 2016, the Conservation Commission held a meeting at 7:00 PM at the Lakeville Town Office Building. The meeting was called to order by Chairman Bouchard at 7:00 PM. Members present: Robert Bouchard, John LeBlanc, Joseph Chamberlain, Peter DeFusco, Mark Knox, Derek Maksy, and Martha Schroeder, and Katherine Goodrow-Robinson, Associate. Sarah Kulakovich, Associate, was absent, Nancy Yeatts, Conservation Agent and Christine Weston, Recording Secretary. LakeCAM was recording the meeting.

7:00 PM

NOI – 22 Montgomery Street – Pat McGonigle

Chairman Bouchard read the legal notice into the record. *Jen Silva, Outback Engineering Wetland Scientist, was present for the discussion, along with Patrick McGonigle, Robert & Susan Dunn.* Ms. Silva had provided new plans to the Agent earlier in the day, which, were now provided to the Commission to be reviewed.

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

**VOTED: To approve the viewing of the new plans for 22 Montgomery St.
Unanimous in favor**

Ms. Silva went over the plans with the Commission. She stated that all the plant species that will be used for the replication were found in the wetland. Any soil dug up from the driveway will be stockpiled and used in the replication area. Any soil taken from the replication area will be used to bring up the elevation near the house. Mr. McGonigle will be doing the replication himself and Outback Engineering will be doing inspections. The spacing and protocol for the replication is on the second page of the plans. Chairman Bouchard asked if it is anticipated that there will be heavy equipment in the replication area itself? Ms. Silva responded that she was not sure. Chairman Bouchard stated that the Commission will need some specifications on that.

Ms. Yeatts then went over her report. She stated that a site visit was conducted on 2-18-16 with Ms. Silva. Several mistakes had been noted on the plan at that time. For example, the elevations on the plan were not consistent, the data sheets were taken at flag 9A, which was off the property, and there was no narrative of the project included in the filing. The filing fee was also short by \$500. The Agent stated that she would like to further review the project, thus recommending for a continuance of the hearing to the March 8th meeting of the Commission. This will also allow for the time necessary to write up the multiple conditions for the wetland replication as there are many that are not accounted for in the Special Standard Conditions. The Commission can then review the conditions before voting final approval. The subgrade that was previously noted as 94', is now at 114'. Data sheets for Wetland Flag 9A, which was off the property, are now taken at Wetland Flag #6. The DEP (Department of Environmental Protection) guidelines have been emailed to the Commission for their review. Hydro-seeding,

nursery stock, etc., will all need to be reviewed. If hay bales are used they need to be certified as seed free, so that the replication area is not being reseeded with invasive plants if the hay bales break apart. Ms. Silva stated that hay bales were not going to be used. Ms. Yeatts noted that the corrected plans still show an illustration of a hay bale for the silt fence protection area. Ms. Silva was not aware of the picture still being on the plans. Also, the corrected electronic plans and updated NOI need to be submitted since there have been changes. Ms. Yeatts noted that in the DEP guidelines for planting, spacing is different than what is being proposed. The entire replication area should be flagged. Regarding the "parking area" noted on the plan; does this actually mean driveway? If so, the wording needs to be changed. Ms. Yeatts asked how excavating will be done down to the subgrade of 114 feet since the lot is already at 114 feet and goes up to 116? The replication area is upland. Member Schroeder stated that they will have to take the area down from the replication area first. Ms. Yeatts stated that she will be asking for a schedule of when each step of the work will be done and ask to be included when the work is taking place so that she could monitor it when it is happening. Ms. Silva stated that she will be submitting all her reports. Member Schroeder stated that when accessing the replication area she would prefer that the driveway area be the access point rather than driving through the replication area. Ms. Yeatts stated that she will be addressing that in the Order of Conditions (OOC). Member Schroeder and Ms. Yeatts stated that they will both visit the site tomorrow.

Ms. Silva pointed out that on the new plan there is a dashed square depicting where the stockpile will be put. Ms. Yeatts explained that the reason why twice the amount of area is being done for replication is due to the fact that 50% of wetland replication areas do not take. Ms. Robinson asked how many growing seasons will need to take place to determine if the replication is successful? Ms. Silva responded that it is two (2). Ms. Yeatts suggested that the red maple trees that will be staying on the property be marked so that they are not taken down accidentally when the work begins. Regarding note #4 the language should read that the loam and fill shall be stockpiled onsite outside, the 100' buffer zone. The words "if possible" should be removed. Chairman Bouchard asked if there were any questions? Mr. McGonigle asked if he was able to get an easement to go around the wetlands but still be in the buffer zone would that be satisfactory? Ms. Yeatts responded that the best possible solution, is to avoid the wetlands as the difficulty with replication is that it isn't always successful. Member LeBlanc suggested that Mr. McGonigle find that out soon. Member Knox stated that Mr. McGonigle can go next to the wetlands, if he can get an easement. Ms. Yeatts stated that they will have to prove that there will be no impact to the wetlands. Mr. Dunn (owner of the lot) explained that possible easement alternatives have been discussed; however, his attorney has not been in favor of it. He would prefer not having an easement.

Ms. Yeatts noted that the Plan of Record should be stamped by a Land Surveyor, Flagging should include both the wetland to be altered and the location of the replication site, the Agent should be included in all monitoring inspections, shrubs should be planted 8-10' on center not 5', the scale on page 2 should be 1" = 40' and all red maples that are to remain in the replication area should be clearly marked. Ms. Yeatts stated that the Commission did not approve the wetland flags in the area where an easement is proposed, this needs to be taken into consideration.

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

**VOTED: To continue the hearing on the NOI for 22 Montgomery Street to Tuesday, March 8th at 7 PM the Lakeville Public Library on 4 Precinct Street.
Unanimous in favor**

NOI – 18 Fuller Shores Road – John Douglas

Chairman Bouchard read the notice into the record. *Jon Pink, Azor Land Sciences, was present for the discussion.* Mr. Pink provided a new set of plans, noting that with the initial set, the buffer lines for 25' and 50' were off. The plans had been resigned with the newer date.
Upon a motion made by Member Chamberlain; seconded by Member LeBlanc it was:

**VOTED: To accept the new plans for 18 Fuller Shores Road as presented.
Unanimous in favor**

Mr. Pink stated that basically the project consists of taking up the old well and installing a new one. The only logical spot for the well is to put in between the lot and property line. A silt fence will be put up, there will be a mud pit and the area is controllable. Ms. Yeatts stated that the filing is in order and recommended approval by the Commission with their Standard Special Conditions.

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

**VOTED: To approve the OOC for 18 Fuller Shores Road with the Conservation Commissions Standard Special Conditions.
Unanimous in favor**

NOI – 3 Court Circle – George & Carla Damato

Chairman Bouchard read the notice into the record. The Agent stated that an email had been received from Prime Engineering, Jamie Bissionnette, asking for the hearing to be continued until the next meeting of the Commission.

Upon a motion made by Member LeBlanc; seconded by Member Schroeder it was:

**VOTED: To continue the NOI hearing for 3 Court Circle to March 8, 2016 at 7 PM at the Lakeville Public Library on 4 Precinct Street.
Unanimous in favor**

Ratify Emergency Certificate – Commuter Rail Station

Ms. Yeatts explained the reason for the Emergency Certificate at the Commuter Rail Station. There had been an oil spill at the Middleborough/Lakeville Commuter rail on January 27, 2016 and immediate response action had been required.

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

**VOTED: To Ratify the Emergency Certificate for the Middleborough/Lakeville
Commuter Rail Station.
Unanimous in favor**

7:30 PM

Keolis Commuter Services LLC

Clary Coutu, Manager of Environmental Compliance and William Betters, P.G., LSP, Director of Environmental Services at CDW Consultants were present to provide an update on the Emergency that had taken place at the Commuter Rail Station on January 27, 2016 at 7:30 AM. Ms. Coutu stated that as soon as the train was coming into the station, the engine blew. It was a dramatic scene, but fortunately, it happened where it happened. It was initially thought that the Middleborough Conservation Commission was to be contacted. Ms. Yeatts stated that the Lakeville HazMat (Hazardous Materials) Team responded quickly and contained the area immediately.

Mr. Betters provided an update regarding what had taken place. CDW Consultants responded to the incident about 9 AM. The Lakeville Fire Department had been there directly and had put down oil absorbent booms. Any free oil on the engine was absorbed, then, after the engine was cleaned and free of oil it was taken to a facility in Boston. A special oil vacuum extractor was used, which was able to take up half of the spill. The rest had seeped under the track and was too deep to get initially. This past weekend the remainder of the extraction took place during off hours. The rail had to be cut and the ballast removed in order to vacuum up the rest of the oil. Oil removal continued until clean sand was reached. Samples were collected. It appears that basically all the oil that spilled was recovered. At this point, lab results are expected back within 30-60 days. The results will be used to show that the soil/area is at non-significant levels and the findings will be submitted to DEP. The extracted material went to Aggregate Industries in Stoughton, MA where it will be used in making asphalt. Ms. Coutu stated that, the report will be issued and provided to the DEP and Commission as well.

Ms. Yeatts noted that Lakeville is a small town and the Fire Department does not run into these types of clean ups routinely, thus, would the absorbent kits be replaced that the Fire Department used? Ms. Coutu stated that they had not discussed that, but it is an interesting point and can be considered. Ms. Coutu will contact Chief Dan Hopkins about the kits.

Other Business

1. Wetland ByLaw Review

A revision of the shortened Wetland Bylaw had been emailed and distributed to the Commission for review and comment as provided below;

Wetland Resources Protection By-law for the Town of Lakeville, Massachusetts

Section 1: Under this bylaw the Conservation Commission of Lakeville, duly appointed by the Board of Selectmen of Lakeville, shall administer and enforce the provisions of the Wetlands Protection Act(MGL c. 131, s.40) and

any amendments made there to, following the current Code of Massachusetts Regulations promulgated by the Department of Environmental Protection (310 CMR 10.00) and shall also administer and enforce the provisions in this bylaw as specified in Section 2 and Section 3 as additional protections to the Town's wetland resources.

Section 2: In order to minimize changes to the natural quantity and quality of the flow of ground and surface water to wetlands and to provide a portion of adjacent upland necessary for the survival of most wetland-dependent wildlife, all new construction shall have a 25-foot no-disturbance zone (defined in Section 4) on the upland side of any wetland resource.

Section 3: Isolated land subject to flooding(as defined in Section 4)shall not be filled in and shall be given the same protection that bordering vegetative wetlands are given in the Wetlands Protection Act and in the Code of Massachusetts Regulations, including a 100-foot buffer zone with minimum disturbance.

Section 4: Definitions:

No-disturbance: The term no-disturbance shall mean no grading, no filling or dumping of yard waste or other debris, no paving or surfacing of any sort, and no removal or destruction of vegetation except for invasive exotic plants and no planting except for restoration of indigenous plants. The Commission may permit minor vista pruning, trimming for foot paths, or the placement of non-obtrusive boardwalks, railings, or stepping stones in a no-disturbance zone on a case by case basis as long as the impact is minimal.

Isolated land subject to flooding (ILSF): Isolated Land Subject to Flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water to a volume of at least ¼ acre-feet and to an average depth of at least six inches. The boundary of Isolated Land Subject to Flooding is the perimeter of the largest observed or recorded volume of water confined in said area.

Vernal pool: The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression.

Section 5: The same exemptions for agriculture, public utilities, and public safety as are granted under the Wetlands Protections Act (MGL c. 131, s.40)and the Code of Massachusetts Regulations (310 CMR 10.00) shall be granted under this by-law.

Amended 2-22-16short b'law M.Schroeder

Member Schroeder went over the history of the wetland bylaw, explained about false statements and false concerns when the longer version had been provided at Town Meeting and was voted down. It was decided years ago that a wetland bylaw was needed, since then the need has grown even greater. One of the pressures of putting it into place is that there were people who did some egregious things and the Commission has no way to stop or enforce these violations. There are two (2) ways to look at a bylaw. It could be as a regulation of the Commission having more local control. The Commission can then enforce what is required if there is a bylaw. The Commission could also regard the bylaw as an additional layer and not that they have more control. The original group of Commissioners had wanted to extend coverage to vernal pools, the first 25' and the ILSF (Isolated Land Subject to Flooding). Since the composition of the Commission has changed it needs to be decided if the present Commission wants a bylaw. Member Maksy stated that he does not want a local wetland bylaw. Member Chamberlain stated that he does. Member DeFusco stated that he felt there should be one. Discussion ensued on the pros and cons of having a local wetland bylaw and past project examples were discussed.

Member LeBlanc asked if the Commission had the budget or the personnel to enforce a local bylaw. Member Chamberlain stated that it depends on how it is written and who would have the enforcement. Member Schroeder asked, if these things can be worked out, does the Commission want a bylaw? Should a vote be taken whether to proceed with this or not? Ms. Grubb stated that the Commission voted to move ahead with a bylaw when she was on the Commission. The Bylaw Study Committee recommended to move it forward. It has not been to town meeting since 2006. At the October 2015 Commission meeting the discussion turned towards having a shorter version of the original local wetland bylaw. This would only be the second time that it has been proposed. Member Schroeder explained that she was just trying to extract the two or three issues that would be a little stricter than the Wetland Protection Act. The term, ILSF (Isolated Land Subject to Flooding), is now more commonly used than the term Vernal Pool. The definition in of Vernal Pool has been included though just for people to see.

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

VOTED: To not use the older eight (8) page version, last updated May 26, 2014 (highlighted in yellow) of the proposed wetland protection bylaw any more.
Unanimous in favor

A motion made by Member Chamberlain to send the shortened local wetland bylaw as drafted by Member Schroeder to the Board of Selectmen for inclusion to the warrant at the Annual June Town Meeting. The motion was not seconded and after brief discussion it was withdrawn by Member Chamberlain.

Member Chamberlain stated that the bylaw then is not ready to present to the BOS. Member Knox stated that the Commission has to start somewhere. Member Maksy suggested to take what has been drafted, and ask to have an informal meeting with the BOS to discuss it. Member Schroeder stated that she would like to define new construction better. Chairman Bouchard suggested that Member Schroeder come up with the draft and the Commission can submit it as a whole to the BOS and if it needs to be reviewed by Town Counsel then it can be. Member Schroeder stated that she will take out vernal pool and provide it to the Commission for another review. Member Maksy suggested that one of the Commissioners request to meet with the BOS. Ms. Yeatts stated that it should be the Chair requesting to meet with the BOS on behalf of the Commission.

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

VOTED: To authorize Commissioner Chairman Bouchard to present the draft local Wetlands bylaw with amendments to be made to be included on the warrant for the next Town Meeting.
In favor 4, Oppose 2, Abstain 1 (motion carried)

Chairman Bouchard will request an audience with the Selectmen.

2. Update on Lot 7 Mark Twain (Robbins Lane)

Ms. Yeatts passed around pictures of Robbins Lane for the Commission to view and explained erosion controls have been put in place.

3. Approve meeting minutes of 1-12-16

Discussion took place on the minutes and the additional pages that were provided by Associate Member Kulakovich regarding her update on the Vigers property and whether to change the minutes to reflect what Ms. Kulakovich proposed. Member Maksy stated that Christine does a great job on the minutes and he was fine with them as they are. He stated that he will make a motion to approve the minutes as written. Member Chamberlain stated that a way to avoid this type of situation would be to simply say that a spirited discussion took place. It was further noted that the email from Ms. Kulakovich was now public record. Member Chamberlain seconded Member Maksy's motion.

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

**VOTED: To approve the Conservation Commission meeting minutes of January 12, 2016 as presented.
Unanimous in favor**

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

**VOTED: To table approval on Sarah Kulakovich's Vigers update of the same meeting.
Unanimous in favor**

Schedule next meeting.

The next meeting of the Conservation Commission was scheduled for Tuesday, March 8, 2016 at 7 PM at the Lakeville Public Library, 4 Precinct Street.

Adjournment

Upon a motion made by Mr. Chamberlain; seconded by Mr. LeBlanc it was:

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

ConComm2-23-16final