



TOWN OF PALMER CONSERVATION COMMISSION

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Robert Ring, Chair
Donald Duffy, Vice Chair
Peter Izyk
Dennis Cote
Matthew Trybus

Agent: Angela Panaccione

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MEETING MINUTES

TUESDAY OCTOBER 15, 2013 @ 7:00 PM

Members Present: Robert Ring (Chair)
Donald Duffy (Vice Chair)
Matt Trybus
Peter Izyk
Angela Panaccione (Agent)

Members Absent: Dennis Cote

Also Present: Don Frydryk, Sherman & Frydryk
Nathan Olson, 1050 Baptist Hill Road
Zachary Cooper, 54 French Drive
Amanda Gittens, 54 French Drive

Meeting Opens: 7:00 PM – Robert Ring (Chair)

7:00 PM Administrative Matters: Minute Approval – October 1, 2013

Motion made by Peter Izyk to approve the minutes from Tuesday October 1, 2013

Motion seconded by Matt Trybus

No further discussion – vote taken: 4-0-0

Motion made by Donald Duffy to approve the executive session minutes from Tuesday October 1, 2013 as corrected

Motion seconded by Matt Trybus

No further discussion – vote taken: 4-0-0

7:05 PM Administrative Matters: Chair Report – Trail/Conservation Land ATV Violations

Ring informed the Commission that over the past weekend Environmental Police Officers (EPO) cited over 20 ATV operators, operating on Conservation Lands, for a variety of violations. Ring called the EPO twice about why the violators were not also cited for town owned land use violations. Ring also informed the Commission Dave Cotter, Palmer Trail Committee, expressed several concerns to both him, and the Agent, about all the “No Trespassing” and “No Unauthorized Vehicle” signs installed by Eagle Scout Alex LaMarshe are now missing or destroyed. Both Cotter and LaMarshe have photographs of the pre-existing signs that have been removed by ATV users. Ring also spoke with the Chief of Palmer Police to inquire about reinstating ATV patrols on the weekends. The detail rate is \$43.55/hour and the funds would be transferred from one of our accounts to the Police account. Matthew Trybus inquired about the Police still owing the Commissions hours from the last time this was conducted. At that time, the ATV patrol lasted only a short time before an officer had an accident with the ATV. Donald Duffy discussed what account the funds should be taken from, and if the expenditures could be used from the Wetlands Funds. The Agent stated she did not believe the Wetlands funds could be used for this,

since the regulation state it is for administering and enforcing the Wetlands Protection Act. She did suggest using funds from either the Bylaw Fee account or the Conservation Land Maintenance Account.

Motion made by Donald Duffy to authorize the expenditure of \$1000, from our Conservation Land Account or our Bylaw Fee's account, for the Palmer Police Department to conduct ATV patrols for the first two weekends in November, on Saturday and Sundays, for approximately six (6) hours/day

Motion seconded by Peter Izyk

No further discussion – vote taken: 4-0-0

7:10 PM RDA: Palmer Wastewater Treatment – Sewer Replacement Project

The applicant is requesting two Determination of Applicability for the proposed work that will entail the sewer replacement project in the vicinity of Chudy Street, High Street, Riverview Parkway, Brainerd Street, and South High Street in Palmer, MA. The proposed work will occur within the 100-foot buffer zone of various resource areas protected under the Wetlands Protection Act, but all work is located within previously disturbed paved public roadways and disturbed road shoulders. The location of the proposed project is within multiple public roads in Palmer, MA 01069, and is a Roadway Right-of-Way.

The RDA was submitted as two separate requests due to the project being divided between contractors.

The project is to replace aging deteriorated sewer infrastructure that is not fully functioning as intended. Several sewer reaches have sags, adverse slopes, cracked pipes, and offset joints which negatively impact the carrying capacity of the local collection system. The new sanitary sewer collection system will not substantially change or enlarge the current system; and includes the removal and proper disposal of the existing sewer piping and structures as warranted. The proposed work includes excavation, potential dewatering, installation of new structures, removal of old structures, backfilling, and restoration of work areas. Where sewer lines cross streams, the lines will be installed above or below existing culverts with no alteration to the stream or culvert. The proposed work is located within paved public roadways and existing disturbed road shoulders. No work will occur within BVW or Land Under Water and portions of the proposed work will occur within the 100-foot Buffer Zone.

This sewer replacement project is exempt from the requirements for Riverfront Area per 310 CMR 10.58(6)(h) and from the requirements for Areas Subject to Protection per 310 CMR 10.02(2)(a)(2) and MGL Ch. 131 Sec. 40.

Motion made by Peter Izyk to close the Public Meeting(s) for the Sewer Replacement Project and issue a Negative Determination, Box 5&6, finding the work is exempt from both the WPA and the PWO

Motion seconded by Matthew Trybus

No further discussion – vote taken: 4-0-0– Motion Carries

7:15 PM Administrative Matters: Crystal Lake Village DEP # 256-194

A site visit was scheduled with David Foulis (Mass DEP), Southbridge Savings Bank (property owner) and Commissioners at 3:30 pm, Monday, 23 September to discuss the status of the property and to resolve any conditions that exist to facilitate issuance of a Certificate of Compliance (COC) on this property. The project is under the jurisdiction of DEP, under a Final Superseding Order of Conditions (SOC), and is therefore regulated by Mass DEP. DEP must issue the COC.

David Foulis identified areas of concerns during his visit; including: the four car parking lot and corresponding 6-foot access lane to Crystal Lake, missing boundary markers required by the SOC and the lack of the required Conservation Restriction (CR) on the property.

Donald Duffy explained the issues with the CR arise from no party being willing to hold the CR. The CR would cover the wetland resource areas on site, the parking lot, public access to the lake and the beach area. The lake itself would not be included in the CR, only the beach up to approximately 3-feet from the lake. Duffy supplied the Commission with a draft CR for review.

Duffy recommended the Commission speak with Town Council about the Town holding the CR, since the area would provide public access for swimming, boating, etc. the town currently does not have. David Foulis agreed, and said if the Town decides to hold the CR then DEP would assume the responsibility of monitoring and enforcing the CR. The Agent will pull the Crystal Lake file and schedule a meeting with the Town Manager, sometime Monday-Thursday.

Motions made by Matthew Trybus to schedule a meeting with the Town Manager to discuss the town holding the Conservation Restriction for the parking lot, path and beach

Motion seconded by Peter Izyk

No further discussion – vote taken: 4-0-0

7:30 PM Request for Certificate of Compliance DEP # 256-0229 & 256-0249: 213 Warren Rd

The Commission received a request for a COC for 213 Warren Road. Upon investigation, the Agent discovered there were two separate Orders of Conditions for the property. The original DEP # 256-0229 was for a larger subdivision off Katie Lane, and the second OOC, DEP # 256-0249, was issued to New Future Developments and was for the actual house construction. The Order was never recorded against the deed, but it was for the house construction, septic and driveway. The Commission decided to send the applicant a letter requesting they record the Order, DEP # 256-0249, at the registry of deeds. The Commission will not issue either COC, until the second is recorded. If the applicant no longer possesses the original Order, the Commission will re-issue the Order with original signatures.

7:37 PM Enforcement Order DEP # 256-0272: Nathan Olson – Baptist Hill Road

Donald Frydryk, of Sherman & Frydryk attended the meeting tonight with Property owner Nathan Olson to discuss the Enforcement Order issued against Mr. Olson, on October 15, 2013. Frydryk supplied the Commission with a document outlining the various violations and prescribing mitigation measures to address each violation.

The Enforcement Order resulted from the Commission receiving several complaints about unauthorized work occurring on Baptist Hill Road, at the property abutting the Turnpike. The Agent conducted a site visit on both September 25, 2013 and again on October 1, 2013 and noted work had indeed begun and several violations to the existing OOC were present.

The property is covered by an Order of Conditions, DEP File # 256-0272, but the current work occurring is in violation of the previously issued OOC. The work on this project began without prior notification to the commission and no pre-activity meeting was scheduled. The applicant and the contractor never contacted the Commission.

Upon first entering the site the Agent documented the DEP file # was not posted on site, no erosion controls were installed anywhere on the site and the resource area flags required by the OOC were missing. Frydryk informed the Commission the DEP sign is currently posted and all the erosion controls required per the plans are now in place.

Upon further investigation the Agent noted piles of slash, brush and logs in the Riverfront Area (RFA) of Calkins Brook. Additionally, the culvert proposed for replacement had already occurred without the wetland replication area being constructed. No signs of a replication area were documented on site, according to their location per the plans. Additionally, there were no erosion controls in the area the culvert was replaced. Frydryk informed

the Commission Mr. Olson is currently removing all slash, brush and debris from the RFA and BVW, as well as ensuring all equipment will not be parked or left in either area as well.

The Agent determined Calkins Brook, its associated Riverfront Area and Bordering Vegetated Wetland had been significantly disturbed from improper culvert installation; resulting in soil disturbance, stream instability, and changes to the natural hydrologic regime throughout the property. It is evident Calkins Brook remains under threat of further damage from improper culvert installation. The culvert inlet is both perched and skewed, resulting in the inflow exceeding the outflow. The result has been erosion and head cutting upstream of the culvert. The improperly installed culvert serves as a physical barrier to fish and wildlife passage. Some trash and other debris present in buffer zone to the BVW, as well as in the Riverfront Area. The old rusty CMP culvert that was replaced is still on site and in associated Riverfront Area.

Frydryk informed the Commission the old culvert has been removed from the site and the work on the new culvert is yet to be finished. The culvert was installed according to the approved plans and is skewed to match the currently existing stream channel. The perched culvert is a result of the proposed riprap not being installed. Once the riprap is installed; the culvert will no longer be perched. Frydryk also recommended stabilizing the eroding stream banks with riprap as well.

Furthermore, under the previously issued Order of Conditions 140 sq. ft. of wetland will be altered and 400 sq. ft. of wetland was to be created and replanted with wetlands vegetation upon completion. There was no evidence on site that the 400-square foot replication area was ever completed. The work was not performed in accordance to the Wetland Replication Details presented in the Notice of Intent and the approved plans and documents. The wetland replication was also not performed in accordance with performance standards specified in 310 CMR 10.55 (4) (b). Frydryk stated the replication has yet to occur. The intent was to use soils from the stream bed to develop the replication area, but upon installation of the new culvert in kind no soils were required to be removed. The replication area will require the addition of outside soils and cannot occur until the spring.

Frydryk explained the original Order was issued in 2007 but due to economic circumstances work never began. With the addition of 4 years from the permit extension act, the permit will be valid until January 8, 2014. The work is currently occurring on site and the Applicant will be seeking an extension to the Order to finish the project. Frydryk did state the all brush and debris will be removed from resource areas and their buffer zones before winter. The riprap for the culvert and bank stabilization will also occur before winter. Frydryk will notify the Commission upon completion.

The Agent recommended the Applicant seek a three year extension for the Order, to ensure the replication areas can be installed and monitored for the required two growing seasons. Considering it is unrealistic to construct the replication area this time of year, the time frame for the replication will be extended to the spring. The replication conditions, incorporated into the enforcement order, will be followed and progress reports to the commission will be supplied until the issuance of the COC.

Mr. Olson did inquire with the Commission about removing a large dying tree from the RFA. The Commission granted the request contingent upon Mr. Olson leaving the stump in place and avoiding any ground disturbances.

Motion made by Donald Duffy to extend the replication deadline in the Enforcement Order, until 10/20/2014

Motion seconded by Peter Izyk

No further discussion – vote taken: 4-0-0

Motions made by Donald Duffy to lift the cease & desist order, and allow work to progress under both the Current Order of Conditions and the Enforcement Order

Motion seconded by Peter Izyk

No further discussion – vote taken: 4-0-0

8:10 PM Administrative Matters: Cooper Violation – 54 French Drive

Amanda Gittens and Zachary Cooper, of 54 French Drive., attended tonight’s meeting to discuss the status of an Enforcement Order on their property. The Commission set a deadline of October 15, 2013 for the Coopers to hire a Professional Engineer/Surveyor. The Coopers hired Roger Woods, who supplied the Commission confirmation of his services. The Commission agreed to continue the fines until the Coopers are in Compliance with the Act and the Town Ordinance, and supply the Commission with the requested as built plans.

The Commission discussed with the Coopers whether a NOI would still be required for compliance. Ring stated he believed an NOI should still be submitted. Gittens clarified she was under the assumption that only an as-built plan, to be recorded against the property at the Registry of Deeds was required.

Duffy stated he felt the Commissions intent was to receive a plan of record for the property, which can be recorded at the Registry of Deeds, and become a permanent record on the deed. Duffy agreed if said plan could be recorded without an OOC than one would not be required. The Commission wants to put this violation to rest, but the Coopers need to supply the Commission with something recordable.

The Agent expressed concerns about whether a site plan could be filed at the registry without an attached Order of Conditions, as is the normal mechanism for registry filings. The Agent said she would investigate further, to see if the plans could be recorded without such filing. Duffy recommended she speak with Roger Woods about the situation and see if he is able to record just the “as-built” plan against the deed.

8:30 PM Administrative Matters: Agent Reports

1. Blanket Trail Notice of Intent/Order of Conditions: The Agent presented the commission with a blanket NOI, received from the Weston Conservation Commission, for generic trail work and maintenance. The Commission reviewed the blanket NOI and decided to proceed with the filing. The NOI will be a joint filing between the Commission, Trail Committee and the Recreation Department. The Agent will draft and submit the Notice of Intent to DEP and will schedule a hearing for it at 7pm on 11/5/2013

2. Mohegan Sun Expanded Environmental Notification Form: The Agent reviewed the EENF submitted by Mohegan Sun, for the proposed Casino development. The major concern she found with it was the numerous other permits that will be required if the Casino comes to Palmer. The other permits necessary were identified as:
 - A NOI from Mass DOT for expansions to the Mass Pike
 - Several NOI’s from Palmer DPW for the various road improvements around town; including Thorndike Street/Rt.32, Intersection of Breckenridge and Park, intersection of Park/Stone, intersection at Stone/Main and all proposed work on Shearer Street
 - A NOI from Palmer Water District for new pump station at the reservoir and new water connection to Monson
 - A NOI from Palmer Wastewater Treatment for a new pump station on Shearer Street and a new sewer system along Shearer Street (which will include at least one Stream Crossing)
 - A NOI for any development that may occur on the “Triangle Parcel” as proposed in the EENF; including the installation of a gas station and convenience store

The Commission instructed the Agent to draft a letter to the Town Manager and Town Council, stating the extra work required for review and request the position be made full time. Ring stated even though the Commission reserves the right to hire outside consultants for a third party review of the filings; this review will not extend to the on the ground continuous monitoring of the various projects that will come as a direct result of the proposed Casino. This task will be charged to the Commission, and fall mainly upon the Agent

to ensure compliance with the various Orders of Conditions issued as a result of this project. Relying solely upon a third party reviewer will not suffice, considering the third party is only tasked with review the permit; not the continuous monitoring of the various projects for compliance.

The other issue the Agent found within the EENF was the applicant stating the project would be posed as a limited project under the WPA. She did not agree there was a limited project regulation that would satisfy the requirement of the WPA.

3. Henry Plant, 1564 Park Street: The Agent informed the Commission about the ongoing Plant situation. The DEP Stormwater management division has been contacted to view the area in question and concurs with the Agents findings that Mr. Plant would not have such serious erosion issued if the bank of the stream was allowed to naturally revegetate. The mowing of the lawn, up to the stream bank, has been exasperating the erosion issues Mr. Plant attributes to the Towns poor storm water management.

The Agent attended a meeting today (10/15) at noon with Craig Dolan (DPW), Charlie Blanchard (Town Manager), the Towns Attorney, Mr. Plant and his Attorney. The meeting lasted 15 minutes and consisted of Mr. Plant yelling at everyone present. No issues were discussed, nor were any resolutions reached. Mr. Plant refused to conduct the recommended planting previously supplied to him due to the costs. Mr. Plant alleges the problems on his property stem from the lack of storm water infrastructure at the upper Mason Street developments. The Agent went through the files and supplied the Town manager with the NOI, OOC and COC for the development in question; along with all relevant documents pertaining to the drainage and storm water structures for the subdivision.

The Agent also stated that upon a drive by today (10/15), at the request of Craig Dolan and Charlie Blanchard, she noticed Mr. Plant was mowing even further up the stream channel than previously. Peter Izyk suggested she view Google earth or satellite photos from the past few years to see if there is a noticeable change in stream bank vegetation.

The Commission discussed issuing a possible Enforcement Order to Mr. Plant for the continuous mowing of the bank, but decided to consult with the Town Manager before any action is taken. Mr. Plant has been instructed by the Commission on several occasions to stop mowing to the edge of the stream bank.

The Agent also stated for the record streams have what is known as dynamic stability. Flow rates are in constant flux and often result in stream channels deepening, moving and changing course over time. It is public record that over the past 10 years Massachusetts has experienced several record breaking rainfalls and stream flow velocities, with Hampden County experiencing a 3% increase in annual precipitation in the past 2 years alone (23% over 50 years).

Next Meeting Date: Tuesday, November 5, 2013 at 7 PM

9:00 PM Meeting Adjourned

Motion made by Donald Duffy to adjourn

Motion seconded by Peter Izyk

No further discussion – vote taken: 4-0-0– Motion Carries

Sincerely Submitted,
Angela Panaccione, Agent