



# TOWN OF PALMER CONSERVATION COMMISSION

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## MEETING MINUTES

**TUESDAY DECEMBER 6, 2016 @ 7:00 PM**

**Members Present:** Sarah Brodeur (Chair)  
Donald Blais, Jr (Vice Chair)  
Peter Izyk  
Dave Cotter  
Angela Panaccione (Agent)

**Members Absent:** All Present

**Also Present:** Peter Levesque, Wetlands Consultants, Inc  
Donald Frydryk, Sherman & Frydryk  
Brandon Ruotolo, B. Ruotolo Law Practice  
Jocelyne Bolduc, 1 Aspen Circle  
Richard Bernard, 1 Aspen Circle  
Audrey Bernard, 1 Aspen Circle  
Wayne Erickson, 12 Laurel Road  
Trevor Hermance, New Britain CT  
William Fay, Belchertown Land Trust  
Daniel Beaudette, Attorney (to Land Trust?)

**Meeting Opens:** 7:05 PM – Sarah Brodeur (Chair)

### **7:05 PM Public Inquiries: William Fay – Upper Bondsville Dam Repairs**

William Fay, of the Belchertown Land Trust (BLT) attended tonight's meeting to discuss repairs to the Upper Bondsville Dam (UBD), located in the Towns of Belchertown and Palmer. The Belchertown Land Trust (BLT) is the owner of the Upper Bondsville Dam (UBD) and was ordered by DCR Office of Dam Safety (ODS) to repair or remove the dam. Fay had a power point presentation to give to the Commission, but due to technical difficulties Fay verbally explained the history and proposed repairs to the Commission.

ODS considers the dam to be in poor condition, mainly due to the fact the existing spillway capacity is approximately 6,400 cfs. The spillway can only pass 85% of the 500-year recurrence interval flood. ODS requires BLT to upgrade the spillway capacity to safely pass 100% of the 500-year recurrence interval flood, or 7,425 cfs.

To achieve this Fay gave a summary of the repairs/upgrades required by ODS, including:

- Remove the remains of the canal head gates.
- Remove the brush from the south abutment.
- Repair the downstream corner of the south abutment.
- Repair the canal low level outlet.
- Remove the debris in front of the canal spillway.
- Stop the leakage through the canal spillway.
- Repair the vertical crack in the face of the north abutment.
- Fill in the scour hole in front of the spillway.
- Remove the trees and vegetation on the north abutment including the top, downstream and upstream slopes.
- Rebuild the upstream wall of the north abutment.
- Armor plate and restore the downstream slope of the north abutment's downstream face with riprap.
- Increase the spillway capacity by adding a row of concrete blocks to north and south abutments.

BLT has received their M.G.L. Chapter 253 Dam Safety Permit (Permit No. 306-2016-306) to perform work indicated on the drawings and supporting documentation titled: "Bondsville Upper Dam Repair Project NATDAM MA00560" as prepared by Fay Engineering Services dated July 19, 2016.

The Agent inquired about other permits needing to be obtained, such as a Chapter 91 License (Public Waterfront Act) or a 401/404 Water Quality Certification through DEP/ACOE. Fay stated none of the other permits have been applied for as of yet, but they will all be required as part of the permitting process.

The Agent followed up with inquiring if any portage around the dam is proposed as part of the Chapter 91 License, since the argument BLT is using in favor of repairing the dam is that fact that BLT felt removing the dam was counterproductive to its goal of creating open space and recreational opportunities for the local citizens. Attorney Daniel Beaudette, (to Land Trust) began to speak against portage due to safety concerns, but Fay interjected by saying he was looking into already on the Belchertown side.

The Commission will conduct a site visit prior to the filing of an NOI. The site visit is scheduled for Thursday December 15, 2016 at 9am, at the UBD.

**7:20 PM Administrative Hearing – L 21 Aspen Circle (Map 10-20); Land Clearing & Road Construction**

The Commission will hold an administrative hearing to discuss the violations that have occurred at L21 Aspen Circle. Violations include, but are not limited to failure to obtain a permit prior to conducting an activity subject to regulation under the MA Wetlands Protection Act & the Town of Palmers Wetlands Ordinance & Regulations.

Sarah Brodeur opened the Administrative Hearing on the Violations.

Property owners Jocelyne Bolduc & Richard Bernard, of 1 Aspen Circle were present, as well as their daughter Audrey Bernard; their Attorney Brandon Ruotolo, of B. Ruotolo Law Practice; and their consultants Peter Levesque, of Wetlands Consultants, Inc and Donald Frydryk, of Sherman & Frydryk.

Wayne Erickson, of 12 Laurel Road was also present at the Administrative hearing.

Brandon Ruotolo began by asking the Agent to present her finding from the initial inspection to the Commission and those present at the hearing.

The Agent began by stating a complaint was received on Tuesday November 16, 2016 at 12:00pm in the Conservation department, stating individuals were operating ATVs in the Riverfront Area, BVW, and within the depression that is Certified Vernal Pool 175. The Agent inquired if the activities were occurring as they spoke, and the complainant stated they were. He invited the Agent to his property to investigate the activities.

This complaint was in addition to several other complaints received in both the Conservation Department and the Building Department during the time period of 11/7/2016-11/16/2016. The other complaints received were “anonymous”, but they varied from residents inquiring about new road construction, to concerns about several truck loads of fill being brought into the forested area of the property. One complaint received in the building department stated the possible construction of two (2) houses.

The Agent met Mr. Erickson and conducted a site investigation Tuesday November 16, 2016 at 1:00pm from his property, at 12 Laurel Road. The site visit revealed the following:

1. Several individuals were cutting down trees throughout the property and two ATVs were being used to transport cut wood
2. Land clearing and tree removal was occurring within the BVW, RFA, CVP 175 and Buffer zone.
3. All the understory was being cleared of vegetation and slash, in an effort to clean up the property
4. The existing forest roads were being widened and graded on site
5. There was evidence of vehicle travel directly around the perimeter of the CVP 175, as well as vehicle tracks directly into the actual depression of the CVP 175.

Overall, it was clear to the Agent that within the property the wetlands, including but not limited to, River Front Area, bank, an intermittent stream, Bordering Vegetated Wetland, Land Under Water and a Certified Vernal Pool had been significantly disturbed from direct vegetation cutting and removal, soil disturbance, compaction and rutting from ATV use and other heavy equipment moving throughout the property. The Agent requested all work stop immediately and did get into a minor confrontation with Mr. Richard Bernard.

In response to the Agents summary, Brandon Ruotolo supplied the Commission with several maps of the area, showing resource areas on site (per Mass GIS data layers), as well as several maps of the “existing” roads dating as far back as the 1938 USGS topo map. Ruotolo also discussed the approved FCP issued to the previous owner, and the bad logging conducted under it. Ruotolo insisted Mr. Bernard was only trying to clean up his land from the poor short term commercial harvest conducted by the previous owner, James Paull. Ruotolo also talked with DCR Service Forester Douglas Hutcheson, and Mr. Hutcheson even sent an email to the property owner praising his forestry efforts on the *upland* portions of the property.

The Agent stated the property owner could do whatever he desired in the upland areas, but not in the wetlands. She also implied the Service Foresters comments, specifically stating the *upland areas*, is normally a sign there is something more going on in the wetlands, which DCR has no jurisdiction over if the activities were conducted outside of an approved FCP.

Jocelyne Bolduc stated on the record that they, as landowners, were not aware a FCP was even issued to the previous owner. She inquired how they were supposed to know about it, and why it was not recorded against the deed. She also stated they were unaware of the vast amount of wetlands on the property, especially since this summer was so dry. She also asked why no one from the Commission spoke to her, the property owner.

The Agent responded that MGL Chapter 132 (Forest Cutting Practices Act) does not require plans be recorded against the deed to the property. A 10-year forest management plan would be recorded, but not an individual permit for a timber harvest. The Agent also stated she was unaware of the property changing ownership, as the Town of Palmer still has James Paul listed as the owner of record.

Wayne Erickson, of 12 Laurel Road stated that yes the trails were always present on the property, but they are now actually graded roads. He also stated, on the record, that he witnessed several (20+) truckloads of fill being brought on site from the access road at the beginning of Aspen Circle. Erickson could not say for certain where the fill was being placed on the property.

Ruotolo cited the Agricultural exemption for maintaining permanent roads under 310 CMR 10.04 Agriculture (b)(16): The construction of new temporary access or the maintenance of existing legally constructed access for forestry activities described in 310 CMR 10.04: Agriculture(b)14 or 15 provided that: a) every practicable effort shall be made to avoid access, including stream crossings, and the construction of landings through and in resource areas; and b) where access, including stream crossings, through resource areas cannot be avoided, every practicable effort shall be made to minimize impacts resulting from construction of new access including, but not limited to, maintaining and improving (but not enlarging) existing access.

The Agent stated, under the current WPA regulations, the property would not be considered in permanent agricultural use, as the FCP was for a temporary short term commercial harvest not for long term permanent forestry production. Additionally, the approved FCP did not permit any wetlands or stream crossings, therefore the roads are not lawfully permitted.

Ruotolo insisted the roads were installed by the logger for forestry, and that the roads have been fire roads since 1938 so there is no change of use of the roads and they can be improved upon for forestry access.

The Agent again stressed the fact that currently the property in question is considered rural residential, and not in permanent forestry. In order to qualify for the forestry agricultural exemption under both the State WPA and the Town of Palmers Wetlands Ordinance, the property must be part of the Current Use Program (Chapter 61) and there must also be a 10 year Forest Management Plan, (approved by DCR and on file with the Town of Palmer's Assessors Office), clearly delineating the access roads to qualify for being able to permanently maintain the forest access roads. Additionally, the maintaining of forestry access roads is usually limited to seasonal mowing; not grading and filling AND any wetlands crossing for forestry access is temporary (timber mats/frozen ground) and never would DCR approve a permanent wetlands crossing under a FMP or a FCP.

Ruotolo stated, under the Town of Palmers Wetlands Regulations, that the Commission did not follow proper protocol for enforcement. Under the PWR Sec III(N)(6): When the Conservation Commission determines that an activity is in violation of the Ordinance or a Permit issued under the Ordinance, the Commission may: (a) Make an effort to secure voluntary compliance with the Ordinance and/or a Permit by the applicant or landowner; (b) Issue an Enforcement Order; and/or (c) Hold an Administrative Hearing to consider whether the landowner should be fined for the violation. Ruotolo stated the

Commission did not make an effort to secure voluntary compliance; they jumped straight to an Enforcement Order and Administrative Hearing.

The Agent replied his statement was inaccurate. She did in fact request to speak with the owner on November 16, 2016 and the individuals working brought Mr. Bernard down. Had Mr. Bernard discussed the matter civilly with the Agent and acknowledged the Commission concerns she would have proceeded with voluntary compliance. Instead, Mr. Bernard was very hostile toward the Agent, stating there were no wetlands and no vernal pool; and that he could do what he wanted with his property. He demanded she leave and did not allow access to the rest of his property. He also informed the Agent she would be hearing from his lawyer. If the commission receives a complaint that a violation is occurring, they respond directly to the complaint and investigate. From there, if it is determined a violation has occurred they will contact the property owner to discuss it further.

The Agent requested access to the site, with the Service Forester Doug Hutcheson, to conduct a full commission site visit.

Ruotolo stated the property owners were not comfortable with a site inspection until the Commission dismissed the current Enforcement Order.

The Agent highly recommended against dropping the EO, but did recommend the Commission table ratifying it until after a site inspection can occur with the service forester

Commission Chair Sarah Brodeur stated she agreed with the Agent, and she was not at all comfortable with just lifting EO without conducting a site visit first.

The Agent reiterated the bottom line is any “existing” woods roads are not technically existing if they cross a wetland, especially if they have been discontinued by the Town or whomever constructed them to begin with.

**Motion made by Donald Blais, Jr to continue the Administrative Hearing and table the Enforcement Order Issued 11/17/2016, until 7:30pm on Tuesday December 20, 2016**

**Motion seconded by Peter Izyk**

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

**Motion made by Donald Blais, Jr to accept Peter Levesque as Wetlands Consultant under the Enforcement Order**

**Motion seconded by Peter Izyk**

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

The Commission will conduct a site visit prior to the next hearing. The site visit is tentatively scheduled for Thursday December 15, 2016 at 10:15am, at 1 Aspen Circle. The Agent will reach out to Doug Hutcheson to see if he is available as well.

**7:40 PM Administrative Matters: Other Projects, Monitoring, Enforcement and Violations**

1. Land Management Committee Reports: The Committee met Monday December 12, 2016, at 4:00pm to discuss and work on the Recreational Trails Grants (due date/deadline for all RTP grants is February 1, 2017). Alice Davey, from Community Development attended to assist the Commission in preparation of the grant application. The currently proposed project for Palmer is an Accessible Trail that will provide access for people of all abilities to a peaceful forest experience with views of the Swift River. The grant funds requested for the project will include construction of a parking area for handicapped vehicles, two resting/viewing areas along the trail

with concrete benches, and a terminus overlooking the River with benches and a handicapped accessible table.

2. Discuss Site Visits to Solar Arrays in Town

- Landfill – On track, but still have not implemented the Riverfront Area Restoration required under the order (invasive removal and planting of native blueberries)
  - Peterson Rd – Very well could be a huge disaster come spring. They were hydro seeding snow this week in an attempt to stabilize the site for the winter. The entire 40 acres is currently exposed soils and the detention basins are not vegetated. There is already noticeable erosion in several different areas on site, but only one is within jurisdiction of the Commission. The Agent walked the perimeter with the lead contractor and identified areas of concern. The outfall pipes of the stormwater basins need to be lined with a rip-rap apron and all the sediment that has exited the unfinished basins needs to be removed immediately from the buffer zone.
  - Boston Rd – After the Commission's last site visit to Palmer Motorsports the Agent decided to swing by Lot 2 Boston Road to inspect the restoration area there after the recent weather. She discovered the proposed Solar Array was nearly complete. The Solar Company never informed the Commission work was to commence and never held a pre-activity visit prior to construction. The Agent contacted the Solar Company and issued a violation notice for failure to comply with the Order of Conditions. The violations on site are currently only administrative violation, but again the site is unstable going into winter. Erosion is occurring in the drainage swale parallel to the array and the site contractors have installed a series of check dams along the swale to slow the flow of water. The company has no intention of even attempting to plant grass or hydro seed till the spring. They stated it would be a waste of money, as nothing would grow.
3. Three Rivers Bridge Repairs: The Town Manager has request an Emergency Permit for the repairs to the Main Street Three Rivers Bridge. All work will occur from the road, no work in the water. The Agent did inform the Town that the Bridge is within state listed priority habitat for endangered species, and that they should contact NHESP for an emergency permit as well.
4. New NOI's: 232 & 234 Breckenridge: The Commission will be reviewing two NOI's at the 12/20 meeting. They are for work that was started, but abandoned by Lizak. The NOI's are for the two homes on Breckenridge that constructed within 25-feet of the BVW.
5. Violation Update – Palmer Motorsports Park Septic System: The Commission discussed the findings of their full Commission visit held Thursday December 1, 2016 at PMP. Both restoration areas have been completely destroyed as a result of the heavy rains last week. Few plantings survived and the area is filled with more silt than previously. No member had any real recommendations on how to fix it and it was recommended the Agent call Mass DEP for assistance. The Commission did recommend PMP hire a Landscape Architect to develop a planting plan to stabilize the area. If PMP does not retain one on their own, the Commission will retain one under MGL Ch 53G. The Commission was also in agreement that the required level spreader from the original access road OOC needs to be installed and at no point in time was it ever approved to remove it from the plans.

**9:46 PM      Administrative Matters: Payable – Mileage \$201.96**

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**Motion made by Donald Blais, Jr to approve the payable to Angela Panaccione in the amount of \$201.96, for the reimbursement of travel expense for November 2016, from the Con Com Town Bylaw Expense Account**

**Motion seconded by Peter Izyk**

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

**9:47 PM      Administrative Matters: MACC Payable \$55.00**

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**Motion made by Donald Blais, Jr to approve the payable to MACC in the amount of \$55.00, as payment for Unit 101 Webinar (c0692) for Commissioner Sarah Brodeur, to be held 1/19/17**

**Motion seconded by Peter Izyk**

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

The Agent will register Donald Blais and David Cotter for the same webinar.

**9:48 PM      Administrative Matters: Minute Approval – November 1, 2016**

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**Motion made by Donald Blais, Jr to approve the minutes from Tuesday November 1, 2016 as corrected**

**Motion seconded by David Cotter**

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

**Office Closed:** Wednesday December 14, 2016 (MSMCP Event)

**Next Meeting Date:** Tuesday December 20, 2016

**Meeting Adjourned:** 9:50 PM

**Motion made by Donald Blais, Jr to adjourn at 9:50 PM**

**Motion seconded by Peter Izyk**

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

Sincerely Submitted,  
Angela C Panaccione, Conservation Agent