



# TOWN OF PALMER CONSERVATION COMMISSION

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Sarah Brodeur, Chair  
Donald Blais, Jr, Vice Chair  
Peter Izyk  
David Cotter

Agent: Angela Panaccione

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## MEETING MINUTES

**TUESDAY FEBRUARY 7, 2017 @ 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:** Brian Nunes, Sherwood Lumber  
Amelia Tracy, NextSun Energy Inc  
Paul Les, Brenton Estates  
Peter Levesque, Wetlands Consultants, Inc  
Donald Frydryk, Sherman & Frydryk  
Trevor Hermance, New Britain CT

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

### **7:05 PM Administrative Matters: Minute Approval – January 24, 2017**

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**Motion made by Donald Blais, Jr to approve the minutes from January 24, 2017**

**Motion seconded by David Cotter**

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

### **7:07 PM Chair Reports: MACC Letter to Governor Baker - Interstate Natural Gas Pipelines**

MACC has request Conservation Commission sign on to a letter to Governor Baker, asking him to end his support for new interstate gas pipelines as that would be an important next step after his notable Executive Order 569: Establishing an Integrated Climate Change Strategy for the Commonwealth.

We need safe, reliable, and affordable energy for our residents, businesses, and municipalities. Our state can - and must - achieve those goals by investing in renewable energy and energy efficiency, rather than in more fossil fuel use that is warming our planet and creating significant problems for our cities and towns.

New interstate pipelines create permanent cuts in the landscape, traversing conservation lands, crossing wetlands, despoiling vistas and forests, and disrupting farms, residential properties, and communities with little regard for community plans or needs. With federal preemption they even override

conservation land protections set forth in Article 97 of our state constitution. And the gas they transport adds significant amounts of greenhouse gases to the atmosphere, exacerbating climate change.

With climate change, our cities and towns will be facing more violent storms, more extreme precipitation, and longer periods of unremitting heat in the summer months. Communities along our beautiful coastline are making plans to defend themselves against sea level rise. Inland communities must protect against costly river flooding that washes out roads and buildings and ruins people's lives. Climate change will disrupt our state's natural ecosystems and built infrastructure.

We in Massachusetts are able to experience the four seasons here at home. Our state is richly endowed with the bounties of nature. A major challenge of our time is to mitigate climate change and preserve what we have inherited and worked to achieve for current and future generations. New fossil fuel pipelines are part of the problem, not part of the solution. By signing on, we add to the collective environmental community that is urging Governor Baker to oppose them.

**Motion made by Donald Blais, Jr to sign onto MACC Letter to Governor Baker re Interstate Natural Gas Pipelines**

**Motion seconded by David Cotter**

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

#### **7:12 PM Land Management Committee Reports**

The Recreational Trails Grants application was mailed out January 31, 2017 and received by DCR on February 1, 2017. The completed grant was 119 pages, and contained several letters of support from the community.

Now that the subcommittee has several new members, Commissioners Sarah Brodeur and Donald Blais will no longer serve on the subcommittee. Only Commissioners David Cotter and Peter Izyk are officially on the subcommittee. Sarah will still attend the meetings as Conservation Commission Chair and will be a non-voting member.

The next subcommittee meeting is scheduled for Tuesday February 21, 2017 at 6:00pm.

#### **7:22 PM Public Inquiries: Brian Nunes – Sherwood Lumber Water Withdrawals Swift River**

Brian Nunes, of the Sherwood Lumber (24 Third Street) attended tonight's meeting to discuss continuing the practice of removing water from the Swift River to water the pads on site. The Commission stated there are two separate issue to discuss; 1) The permitting of the actually water withdrawals and 2) Crossing Conservation Land.

The permitting itself is straight forward and the applicant would just need to submit an RDA to determine if the amount of water taken out of the Swift would impact the resource areas. Given the proposed amount taken out, versus the amount of water released from the Quabbin, the Swift is one of the Rivers that would be least likely impacted by the activity. Regardless, under the town Ordinance a permit is required before any future water withdrawals can occur. The permit would set a limit to the amount of water withdrawn daily, as well as impose other conditions to protect the Swift River. One condition, that was not being followed when the violation was discovered, is containing the water pump to prevent any spills or leaks. When Sarah and Angela first discovered the activity the pump was just sitting on the trail, with no preventative measures in place.

The more pressing issue is access over Conservation Land. The Commission restricts all vehicles from traveling on Conservation Land so the water truck could not go onto the land for the water. They would

have to have a 50-foot + hose to get the water. Peter Izyk suggested installing a dry hydrant and running a pipe under the land/trail, to the river. The Agent stated that may not be possible, since the deed to the property specifically protects it under Article 97 of the Massachusetts Constitution.

Nunes was concerned about the access, since the Commission owns all the land abutting the river. The Agent recommended Nunes speak with the Rail Road, since they do own a section of the Greenbelt, where the old abutments are and where the railroad crosses the river. This is located on the opposite side of Sherwood Lumber, from where they are withdrawing water currently. If the railroad permitted it, the dry hydrant could be put in the railroad land and no access issue would be present. Sherwood Lumber would still have to obtain a permit for the installation of the dry hydrant and the water withdrawals, but it would not be on Conservation Land so all those issues would be addressed.

**7:42 PM Administrative Matters: Payable – Roberts Printing \$107.10**

**Motion made by Donald Blais, Jr to approve the payable to Roberts Printing in the amount of \$107.10, for the payment for the printing of the Recreational Trails Grant Application, from the Con Com Town Special Maintenance Expense Account**

**Motion seconded by Peter Izyk**

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

**7:43 PM Administrative Matters: Payable – Mileage \$434.63**

**Motion made by Donald Blais, Jr to approve the payable to Angela Panaccione in the amount of \$406.08, for the reimbursement of travel expense for January 2017 and \$28.55, for the reimbursement of postage to overnight the Trails Grant, from the Con Com Town Bylaw Expense Account**

**Motion seconded by David Cotter**

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

**7:44 PM Administrative Matters: MACC Payable \$115.00**

**Motion made by Donald Blais, Jr to approve the payable to MACC in the amount of \$115.00, as payment for MACC Spring Conference for Angela Panaccione, to be held Saturday March 4, 2017, from 8am-6pm @ Holy Cross in Worcester**

**Motion seconded by David Cotter**

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

**7:45 PM Administrative Matters: MLTC Payable \$74.00**

**Motion made by David Cotter to approve the payable to MLTC in the amount of \$74.00, as payment for Mass Land Conservation Conference, for Angela Panaccione, to be held Saturday, March 25, 2017, from 8am-4pm @ Worcester Technical High School**

**Motion seconded by Peter Izyk**

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

**7:45 PM Administrative Hearing – L 21 Aspen Circle (Map 10-20); 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 re-opened the Administrative Hearing on the Violations. No parties were present.

Prior to the meeting, the Property Owner, by way of counsel, provide red line comments to the Commission in an effort to create an accurate and specific Order. In summary, the requested changes include:

1. Properly identifying the Property Owner;
2. Modifying the performance timelines, as the Order was ratified on December 20th, but for example, required the Property Owner to attend the next meeting on December 6th;
3. Accurately memorializing that the forest cut performed at the Property, including that within wetlands, was authorized by the Department of Conservation and Recreation (“DCR”) under a Forest Cut Plan, and the State has indicated that the cut was performed consistent with best practices; and
4. That forestry and the removal of slash at the Property are the jurisdiction of the DCR, such actions have been deemed lawful by the State, and they should not be include in this Order; and
5. That the Town will retain jurisdiction over the Property Owner’s restoration of graded and existing forest roads in the wetlands; and
6. Certified Vernal Pool 175 is not located on the Property, and upon site investigation with the Commission and subject matter experts, should not be a subject of this Order.

Additionally, the Property Owner request that they be excused from appearing at tonight’s meeting and is hopeful that the Commission will carefully reconsider the terms and provisions of its existing Order, and thereby issue an amended order which is procedurally accurate, and substantively, both specific and particular with regard to required corrective action and jurisdictional authority.

The Commission reviewed the redlines provided by Attorney Brandon Ruotolo and edited the EO as necessary.

It was also request the EO be issued to the Licensed Timber Harvester, Dennis Monette, as well.

**Motion made by Donald Blais, Jr to continue the Administrative Hearing until 7:00pm on Tuesday February 21, 2017**

**Motion seconded by Peter Izyk**

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

**Motion made by Donald Blais, Jr to issue the Enforcement Order dated 2/7/2017 to Dennis Monette, the Licensed Timber Harvester on the approved FCP**

**Motion seconded by David Cotter**

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

**8:00 PM Administrative Hearing – L 2 Boston Road (Map 3-6-1); Solar Array Construction**

The Commission will hold an Administrative Hearing to discuss violations that have resulted from the construction of a ground mounted solar array. If a majority of the Commission finds a violation has occurred, the landowner and /or individual responsible for the violation may be fined not more than \$300.00 per violation, per day. The amount of the fine will be determined by the Commission at the Administrative Hearing.

Sarah Brodeur opened the Administrative Hearing on the Violations. Amelia Tracy, representative for NextSun Energy was present, as well as property owner Paul Les, of Brenton Estates and Peter Levesque, Wetlands Consultants and Donald Frydryk, Sherman & Frydryk.

On January 11, 2017 the erosion control line blew at Lot 2 Boston Road and heavy amounts of fine sediments entered the Quaboag River. The Agent supplied the Commission with photos and videos of the Violation. The Agent, in coordination with Chair Brodeur (who also conducted a site visit and observed the violation occurring) scheduled tonight's administrative hearing in order to discuss fining the Solar Company.

NextSun has already offered restitution for previously administrative violation documented on December 5, 2016 for failure to notify the Commission prior to activity. At that point (December 5, 2016) the Agent instructed the company to install their required detention basin immediately. According to the NOI and the SWPPP a temporary basin should have been installed prior to any site disturbance, and the final basin should have been constructed during initial site grading (prior to any solar array construction). If the basin had been constructed according to the schedule, or even the week or two after the Agent discovered it was not in place the new violations would not have occurred. The discharge of sediments into impaired water way was due to NextSun negligence at complying with the OOC, site plan, SWPPP, OMP, and construction schedule.

The Commission discussed the violations with the representatives, and noted January 30<sup>th</sup> as the day the basin was completed. Violations and fines were calculated based upon the time frame of December 5, 2016-January 30, 2017 (64 days). Based on the number of violations present, as well as the continuing nature of the violations, the Commission assessed the maximum fine at \$89,400. According to the Commission's enforcement policy, the violator may offer restitution to the Commission in lieu of the Commission sending a notice to the courts.

Tracy offered a restitution donation in the amount of \$2500, and the Commission declined. Blais was very adamant about the company making a realistic offer, considering the violation was due to negligence and the Agent had been after the company to install the basin since the beginning of December. According to NextSun it was to be installed before Christmas, but due to the basin area being used as a staging area it was not installed then either. Blais proposed Tracy confer with the Agent to set an amount that more accurately reflects the violations at hand.

The Agent did state she did not recommend the Commission accept anything less than \$6400, which would be the minimum possible fine that could be issued (\$100/1violation/day).

**Motion made by Peter Izyk to continue the Administrative Hearing until 7:00pm on Tuesday February 21, 2017**

**Motion seconded by David Cotter**

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

**8:45 PM      Administrative Matters: Other Projects, Monitoring, Enforcement and Violations**

1. Violation Update – Palmer Motorsports Park Septic System: Fred Ferguson, owner PMP has request a list of items needed to receive a Certificate of Compliance for the project. The Commission unanimously agreed Mr. Ferguson should know what he needs to do by now. They instructed the Agent to not give him a list and tell him to read his permit, it's all right there. They also instructed the Agent to inform Mr. Ferguson the Commission will not begin any work until he submits an official Request for a Certificate of Compliance, including:
  - A completed WPA Form 8A: Request for a Certificate of Compliance
  - A letter from Donald Frydryk certifying compliance of the property with this Order of Conditions, and detailing any deviations that exist, and their potential effect on the

project. A statement that the work is in “substantial compliance” with no detailing of the deviations shall not be accepted.

- An "As-Built" plan signed and stamped by Donald Frydryk showing post-construction conditions within all areas under the jurisdiction of the Massachusetts Wetlands Protection Act and the Palmer Wetlands Protection Ordinance.
- Any post-construction photographs demonstrating compliance with this Order, including established vegetation in exposed areas.
- The COC Fee, which is \$10/acre of Project Site. The Commission also wanted it noted that any requests for COC on sites with open enforcement action shall be charged double (200%) the fee.

Besides making sure the entire site is stabilized (vegetation growing on area of exposed soils) the Commission still has issues with the loss of Old Quarry Road (which had a surveyed easement recorded against the deed and is not under the access road) and the fact PMP has placed a locked security gate on their property, there by restricting the Commission access to its own property. At this point, due to the damages that have occurred on Conservation Land from construction the Commission wants to be compensate for the loss of both the property, and Old Quarry Road hiking trail.

2. Discuss Palmer Landfill Solar Array – The Agent conducted a site visit with Borrego Solar contractors to review the Riverfront Restoration. Given the invasive species removal was not conducted in accordance with the approved plans and documents Borrego reps have provided a plan for the Commissions review. Once conditions are optimal, Borrego will:
  - Clear the remainder of the invasive species between the erosion control measures and the river basin
  - Brush hog and remove fallen debris
  - Install black geotextile fabric and weighted sand bags on ground cover in cleared area in an effort to suffocate/burn any remaining invasives
  - Remove fabric and add loam in covered area
  - Furnish and install (9) blue berry bushes and additional shrubs and plants (Borrego to submit species type prior)

Upon reviewing the proposal, the Commission requested a more detailed replanting plan showing the proposed location and quantity of native plantings to revegetate the riverfront area (opposed to just a list of species from Borrego).

3. Testimonial on Connect the Connecticut: The Agent is featured on the Connect the Connecticut website, under Testimonials. The article focuses on the Commission landscape conservation efforts at the local scale.
4. Mass Wildlife's Wildlife Lands & Walking Trails Policies: The Commission reviewed Mass DFG new Wildlife Lands and Walking Trails policies. Any trail through DFG land must now have a licens through DFG.
5. Submit a slide for MACC 60 years of Conservation Commissions slide show: Take Picture at next meeting
6. MACC Spring Conference: Saturday March 4, 2017 @ Holy Cross in Worcester
7. Mass Land Conservation Conference: Saturday, March 25, 2017 @ Worcester Technical High School

**Office Closed:** Wednesday February 15, 2017

**Next Meeting Date:** Tuesday February 21, 2017 at 7:00pm

**Meeting Adjourned:** 9:45 PM

**Motion made by Donald Blais, Jr to adjourn at 9:45 PM**

**Motion seconded by David Cotter**

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

Sincerely Submitted,  
Angela C Panaccione, Conservation Agent