



# TOWN OF PALMER

Palmer Town Building  
4417 Main Street  
Palmer, Massachusetts 01069

Angela Panaccione  
Conservation Agent

Telephone: (413) 283-2611  
FAX (413) 283-2637

## CONSERVATION COMMISSION

**PALMER CONSERVATION COMMISSION  
MEETING TUESDAY AUGUST 6, 2013 @ 7:00 PM  
PALMER HIGH SCHOOL LIBRARY, 4105 MAIN STREET**

**Members Present:** Robert Ring (Chair)  
Donald Duffy  
Dennis Cote  
Angela Panaccione (Agent)

**Members Absent:** Matt Trybus  
Peter Izyk

**Also Present:** John Thomas, Sr., Beals & Thomas  
John Thomas, Jr., Beals & Thomas  
Lynn & Joel Ryan, 221 Breckenridge Street  
James Michaelia, 228 Breckenridge Street  
Deborah & Richard McDonald, 101 Woodland Heights  
Michael Marciniak & Linda Leduc, Palmer Planning Board  
Roger Woods, Roger Woods & Co.  
Paul & Linda Bukowski, 185 Ware Street  
Lori Stabile, The Republican

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

**7:00 PM RDA: Mohegan Sun Casino – Thorndike Street & Breckenridge Street**

The applicant is requesting a Determination of Applicability to confirm and verify the precise boundaries of jurisdictional resource areas, which have been delineated at proposed at the site. The property is located between Thorndike Street and Breckenridge Street, Palmer, MA 01069, and is also known as Map 13, Lots 14 & 32; and Map 19, Lots 32 & 37-1.

Ring open the public meeting and explained the ground rules for public participation; specifically that this meeting was not a site plan review and would not address the impacts of the proposed casino development, sustainability, water quality, air quality or other extraneous issues. Anyone who is present is welcome to speak, however, topics will be limited to the verification of resource areas identified in 310 CMR 10.54-10.60; including: Bank, Bordering Vegetative Wetlands (BVW), Land Under Water (LUW), Bordering Land Subject to Flooding (BLSF), Isolate Land Subject to Flooding (ISLF) and the Riverfront Area (RFA); and those protected under the Palmer Wetlands protection Ordinance, Chapter 168.

Both Donald Duffy and Dennis Cote publicly stated on the record they would be abstaining from all casino proceedings due to potential conflict of interest.

John Thomas, Sr. began the presentation by stating his credentials and giving a background on the project. The current filing at hand is a preliminary stage and is specifically to identify and verify the jurisdictional resource areas on site. The site is approximately 152-acres and is  $\frac{3}{4}$  mile by  $\frac{1}{2}$  mile. The proposed plans are at a scale of 1"=100'. Thomas has identified and delineated 13-acres of state certified wetlands, and an additional 2-acres of isolated wetlands regulated by both the Town of Palmer's Wetland Ordinance, and the Army Corps of Engineers. 2-acres have also been separately identified as potential vernal pools, and the data for each is provided in Section 4 of the RDA. Also identified on the plans are two perennial streams, with their associated 200-foot Riverfront Area, located in the Northern area of the site, off Thorndike Street.

Overall, 14,000-linear feet of WPA jurisdictional resources boundaries have been flagged and 27,000-linear feet of isolated wetland boundaries have been flagged. Neither the bank resource area nor the land under water have been flagged or delineated as part of this determination. Additionally, no Bordering Land Subject to Flooding/100-year flood plain (BLSF) is present on site.

The major vernal pool on site is approximately 1.5-acres (300' X 200'), and evidence of spotted salamander egg masses and wood frog egg masses has been documented. Pictures were supplied to the commission and incorporated in Section 4 of the RDA. The small vernal pool is roughly 200-cubic feet and had evidence of both wood frog eggs and wood frogs. No rare species were present.

Thomas, Sr. explained the resource areas were only delineated on the 152-acre site and not on abutting properties. This determination is seeking confirmation only for the 152-acre site.

Ring asked Thomas, Sr. how the area was delineated and he turned the floor over to his son, John Thomas, Jr. who performed the delineations and the flagging. Thomas, Jr. explained the three fundamental identifiers for delineating Bordering Vegetative Wetlands were 1) Evidence of surface Hydrology, 2) Hydric Soils and redox morphic features 3) Plant/Vegetation consisting of obligatory wetlands plants or FACW plants. Thomas, Jr. explained he conducted transect plots at various different locations along the large track of BVW on site. Transect lines are selective location on the site where the various hydrology, vegetation and soils characteristics are documented and recorded. The data recorded from the transect plots is supplied in the Appendix 5 Data sheets contained in Section 4 of the RDA. Both an Upland and wetland BVW sheet is included for each transect location, and the wetland flag were hung in the middle (where the wetland meets the upland). The site plan was mapped using GPS, with an accuracy within 5-feet.

The Agent asked Thomas, Jr. to identify on the site plan where he conducted his transect lines. She was concerned no transect lines were conducted around the various isolated wetlands. Thomas, Jr. explained Mass DEP does not require the data sheets for isolated wetlands. The Agent countered that the Army Corps of Engineers required them. Thomas Sr. stated that would be true, if the project goes forward, but this is a preliminary meeting on delineations only.

Duffy asked Thomas, Jr. to re-explain how they determined the vernal pools were vernal pools. John Thomas, Jr. provided the reason as being obligate vernal pool species were present over the past two Aprils, including: wood frog egg masses, wood frog tadpoles, wood frogs, and spotted salamanders egg masses. No rare, threatened or species of special concern were document.

The Agent expressed concerns that the Vernal Pools could not properly be verified this time of year because they would be dry. The ideal time to both verify and certify the vernal pools would be in the early spring (April). She also expressed concerns with the vernal pools boundaries not being confirmed as part of the Commissions determination. By not verifying and confirming the Vernal Pool boundaries now, it could leave holes in the determination of resource of resource areas. If Mohegan is not awarded the license in April 2014 and Northeast Realty (property owner) decides to propose a different development at

the site within the next three (3) years, the boundaries confirmed by this determination will serve as the basis for any new site plan proposed. The large vernal pool on site is a valuable resource area that should be confirmed and certified and is essential for the life cycles of many different amphibian and invertebrate species.

Thomas, Sr. stated the vernal pools could be certified either by the Commission themselves, with the information provided in Section 4 of the RDA or if Mohegan is awarded the Casino license, the certification of the vernal pools could be conducted then or as part of the Order of Conditions. Thomas, Sr. further stated that if Mohegan fails to secure the license they are done with the site and will not pursue further development.

The Agent also expressed concerns about the bank of the intermittent stream (running through the large BVW on site) was not delineated. Thomas, Sr. responded that no work is proposed to the bank and all crossings would span the wetlands. The Agent further inquired why the area by the old cart road was then identified as bank, but not BVW. Thomas, Sr. explained in that area the bank is the edge of the filled cart road, and no BVW is present on the cleared gravel road.

At 7:30 PM Robert Ring open the floor for Public Comment. Only one abutter had concerns. James Michaelia, of 228 Breckenridge Street, inquired about the impacts to wildlife in the area and if any special studies have been completed to address this issue. Thomas, Sr. explained a wildlife habitat analysis typically only occur in areas designated as Priority Habitat under the Massachusetts Endangers Species Act (MESA) and the Natural heritage and Endangered Species Program (NHESP). The site does not contain any priority habitat or species of special concern; therefore there was no need to address the wildlife issues. Thomas, Sr. further explained no wetland resource areas were proposed for alteration in the current site plan and all crossings would meet the stream crossing standards to allow a corridor for wildlife migration.

Ring closed the Public Comment session, and switched the conversation to reviewing the three proposals the Commission received for third party review. Ring began by explaining the process for hiring a consultant for the independent review. As provided by G.L. Ch. 44 §53G, the Commission may impose reasonable fees for the employment of outside consultants, engaged by the Commission, for specific expert services. The Consultant hired, would work on behalf of the town, but is paid with fees collected from the applicant. All fees not spent in the consultation process will be returned to the applicant.

The Agent sent a request for proposals to three separate Environmental Consulting Firms and the corresponding estimates are as follows: 1) Pioneer Environmental (\$4,900) 2) New England Environmental, Inc. (\$17,575) and 3) Vanasse Hangen Brustlin, Inc. (\$12,600).

The Agent recommended VHB, since their proposal had the most detailed, incorporated all the requirements the Commission was looking for, and was proposed as a fixed rate. The proposal included a preliminary in-office review of the filing, field visits with the Commission, its Agent, Beals & Thomas, field reports and a final summary, identification and justification of areas of discrepancy, investigation of upland area to ensure no resource areas were missed in the delineations, attendance of at least two Commission hearings, and the Certification of the potential vernal pool in the Spring of 2014.

Ring stated he was in favor of VHB, since their proposal was the most in-depth and had a fixed cost of \$12,600 associated with it. Thomas Sr. stated he would be fine with VHB conducting the third party review, but request the commission remove from the scope of work the proposal to certify the Vernal Pools in Spring 2016; there by reducing the fixed cost to \$11,100.

James Michaelia, of 228 Breckenridge Street, asked if the delineations determined by VHB could vary from the ones proposed by Beals and Thomas in the current RDA. The Agent answered most of the time they do differ in locations. This is primarily due to time of year restraints, variations in vegetation present, changes in hydrology (for example a spring visit would have visible indicators of hydrology such as flowing or standing water; while a fall visit indicators of hydrology must be determined through secondary forms such as root buttresses, water stained leaves or water marks on trees).

Michael Marciniec, of the Palmer Planning Board, spoke in favor of the Commission choosing VHB since they will be working with the planning Board on their site plan review and with them having the prior knowledge of the site through this review would benefit the Town.

**Motion made by Dennis Cote to accept the VHB proposal for a Third party review, at \$11,100, excluding the additional cost of \$1600 for the proposed vernal pool certification in the Spring**  
**Motion seconded by Robert Ring**

**No further discussion – vote taken: 1-0-2 (Duffy & Cote abstained) – Motion Carries**

John Thomas, Sr. supplied a check to the Commission in the amount of \$11,100 to begin the review process. Thomas also requested a continuance from the commission, so VHB could conduct their independent review.

**Motion made by Dennis Cote to continue the Public Hearing until 7 PM on September 17, 2013**

**Motion seconded by Robert Ring**

**No further discussion – vote taken: 1-0-2 (Duffy & Cote abstained) – Motion Carries**

**7:00 PM      RDA: Paul and Linda Bukowski – 185 Ware Street**

---

The applicant is requesting a Determination of Applicability for the in kind replacement of an existing failing 4-foot diameter culvert with a 4-foot diameter ADS-N-12 culvert in the same location. The proposed culvert will require the disturbance of an intermittent stream, and its supporting bank; along with disturbances in the 50-buffer zone. The property is located at 185 Ware Street, Palmer, MA 01069, and is also known as Map 81, Lot 29.

Roger Woods, of Roger Woods and Co. attended the meeting with property owners Paul & Linda Bukowski, of 185 Ware Street, to present the project. Mr. Woods supplied pictures of the site, along with a brief narrative of how and why the replacement crossing did not meet Steam Crossing Standards as requested by both the DEP and the Conservation Agent. Duffy stated he agreed the project was a maintenance project and could be permitted. Woods stated the project should be completed soon, in fear of the entire culvert and driveway collapsing due to the poor quality of the eroding culvert presently there.

The Agent questioned about replacing the CMP with a bridged crossing in order to meet the Stream Crossing Standards. Woods stated a bridge was completely feasible in the location, but the costs would be significantly higher than the in-kind culvert replacement. She also informed the Commission an NOI should be required. DEP specifically stated in their letter to Mr. Woods that culvert replacements were not typically permitted under an RDA and usually required an NOI because they do fill, dredge and alter a resource area (bank, LUW, and BVW). The Agent felt the project could potentially be permitted if work was completed when the stream was completely dry, but as of her site visit and pictures she took today, there was still significant flow in the channel. Woods stated they intended to pump the water around the stream and the work would be completed within a day. When asked about a dewater plan, Woods state one was not incorporated into the plan. The water would be pumped back into the stream on the opposite side of the culvert.

Ring agreed with Duffy, that the project would fall into the maintenance category.

The Agent did recommend to the Commission they issue a positive determination for the work and require a NOI. The project does not meet the stream crossing standards and the removal and replacement would alter bank, land under water and the corresponding BVW on both sides of the drive. The amount of disturbance to bank, BVW and LUW were not incorporated on the site plan, and any BVW disturbance requires a 1:1 replication. Additionally, the culverts flared ends are in the BVW, with vegetation growing all around them. Pictures were supplied that showed dense wetland vegetation surrounding the flared ends. Ring stated he appreciated her concerns, but re-iterated his opinion it was a maintenance issue and recommended a condition be added that any vegetation disturbed, will be replace. Duffy agreed with Ring

**Motion made by Don Duffy to close the Public Meeting and Issue a Negative Determination with the condition that any vegetation disturbed in the culvert replacement would be restored**

**Motion seconded by Dennis Cote**

**No further discussion – vote taken: 3-0-0– Motion Carries**

**8:00 PM      Administrative Matters: Palmer Motorsports Inquiry**

The Commission received a request from Fred Ferguson, to attend tonight's meeting to discuss a few issues present before work can begin on the motorsports facility. Duffy informed Ferguson tonight agenda was full, but the Commission would add him to the August 20<sup>th</sup> agenda. Ferguson informed the Commission they have officially purchased the land and wish to begin construction soon. He requested a joint meeting with Conservation and the Planning Department to review the OOC and Planning Boards conditions. The meeting is scheduled for August 13, 2013, at 3pm, in the Planning Department.

Fergusons other issues included:

1. NHESP restrictions on the site and their requirements for the Conservation restriction
2. Who signs the access agreement and who is the hold harmless agreement with; the Town of the Commission?
3. Problems with the initial survey: Survey points are unclear and are not lining up with the approved plans. Motorsports is requesting permission to mow/remove trees in a few separate locations to gain GPS access to plot the survey point more accurately. The work should take a few day max, will occur outside all resource areas and their corresponding buffer zones, and all trees taken down will be kept in the same location of removal until the access road is complete. The Agent will meet with the Contactor of Thursday to review the area proposed for mowing and tree removal.

**8:10 PM      Emergency Certification: Mass Dot & Palmer DPW – Culvert Cleaning**

Tim Meyer, of Mass Dot and Craig Dolan, of Palmer DPW requested an emergency certification to clean culverts at the intersection of Rt.20 (Park Street) and Breckenridge Road. It is a Human Health and Safety issue at hand, and neighbors have expressed concerns over flooding in the area. Griswold Glass sent a letter to Senator brewer, expressing his concerns and the impacts the flooding is having on his business. Agent Panaccione conducted a site visit on Tuesday August 6, 2013 at 10 am with DOT and DPW. She noted there were two culverts blocked up because of silt and sedimentation, with one culvert under Rt. 20 having almost zero flow due to sedimentation. Her determination was that the situation was an ongoing problem, with Emergency Certification being issued in 2004, 2006 and 2008. She did recommend another Emergency Cert be issued, due to the continual flooding damages to businesses; but included as a condition that DPW develop an NOI within the next 120 days to address the problem at the source (being poor Stormwater management on Breckenridge Road).

**Motion made by Dennis Cote to issue the Emergency Certification to Palmer DPW for the routine cleaning of 3 culverts: 2 at the railroad tracks and 1 cross culvert connecting said two. The**

**approximate 100' drainage way connecting the culverts of Route 20 and the Rail Road shall be dredged of existing silt to a maximum of 2'. The small cross-culvert catch basin located by the railroad shall also be dredged to a maximum depth of 2'.**

**Motion seconded by Don Duffy**

**No further discussion – vote taken: 3-0-0 – Motion Carries**

**Motion made by Don Duffy to issue the Emergency Certification to Mass DOT for the routine cleaning of 2 culverts: along Breckenridge Street, and at the Route 20 crossing. The granite slabs blocking the inlet basin on the north side of Route 20 shall be removed, and the drainage swale from Griswold Glass shall be dredged of existing silt to a maximum of 2' and replanted with native wetland vegetation. The cross-culvert under Rt. 20 shall also be dredged to a maximum depth of 2'.**

**Motion seconded by Dennis Cote**

**No further discussion – vote taken: 3-0-0 – Motion Carries**

**8:15 PM      Administrative Matters: 54 French Drive – Cooper Violation**

Panaccione has conducted two separate site visits to 54 French Drive since the last meeting. She supplied pictures of to the commission showing all work has been completed on the property and the vegetation is restored. No exposed soils are present at the site and all heavy equipment has been removed from the property as well. She determined the site is stabilized, and no future washouts should occur. She also informed the Coopers that the Notice of Intent, required by the Enforcement Order, is still due to the Commission by September 3, 2013. Furthermore, Evelyn Sullivan (50 French Drive) supplied the Commission with new photos of the final grading occurring.

**Motion made by Don Duffy to allow the silt fence on the bank of Lake Thompson to be removed**

**Motion seconded by Dennis Cote**

**No further discussion – vote taken: 3-0-0– Motion Carries**

**8:15 PM      Administrative Matters: 103 Water Street – Lamothe Violation**

Ring informed the Commission he is having difficulty corresponding with the town Lawyer in regards to this situation. The court date has been postponed again, and the Commission has yet to be given a date. The Commission also reviewed a “Restoration Plan”, submitted by GZA consultants on behalf of Mr. Lamothe. The Commission raised several concerns with the draft plan. Specifically the Commission felt it was not a restoration plan, but more of a letter attempting to justify the work that has occurred to demonstrate no violation is present. The Commission rejected the plan, and is requesting all resource areas on site be flagged for commission approval and a site plan be submitted detailing the area. The Commission is also requesting access to the property to verify the delineations are correct.

**Motion made by Don Duffy to send a letter to the Town Attorney and the Town Manager, identifying the Commissions areas of concern with the proposed restoration plan**

**No further discussion – vote taken: 3-0-0– Motion Carries**

**Next Meeting Date: Tuesday, August 20, 2013 at 7 PM**

**8:30 PM      Meeting Adjourned**

**Motion made by Dennis Cote to adjourn**

**Motion seconded by Don Duffy**

**No further discussion – vote taken: 3-0-0– Motion Carries**

Sincerely Submitted,  
Angela Panaccione, Agent