



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 SEPTEMBER 17, 2013 @ 7:00 PM

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

Members Absent:

Also Present: Kristen Kent, Vannasse Hagen Brustlin, Inc.
John Thomas, Sr., Beal's & Thomas
John Thomas, Jr., Beal's & Thomas
Lori Stabile, The Republican
Lisa Moynahan, Prospective New Commissioner
Amanda Gittens, Representing Zach Cooper, 54 French Drive

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.

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 giving a background on the peer review process. Beals & Thomas conducted several site visits with VHB representatives, and the Conservation Agent Panaccione. Most delineations were confirmed as accurate with the required moving of a few flags. Areas of concern arose from the ISLF designation and the presence of stone wells located on the property, some within resource areas, which were not depicted on the plans. Thomas, Sr. noted the wells pose a public safety issue and may be filled in if the project continues.

The Agent raised a concern over the designation of bank along the access road off Breckenridge. She was concerned why this was the only area classified as bank, when bank is also present in several other BVW on site. Thomas, Sr. explained they classified it as bank because it is a man-made drainage swale, and according to the definition of bank at 10.54 Bank "may be partially or totally vegetated". These particular Bank flags delineate a drainage swale which parallels the northerly portion of the Town of Palmer water easement access road. Given the very narrow width of the hydrophytic vegetation along this channel, Beals & Thomas believes it is more appropriately delineated as Bank rather than BVW.

Kristen Kent, VHB, was asked by the Commission to state her opinion on the classification of the area as Bank, opposed to BVW. Kent noted VHB had originally asked the same question, but the issue is a matter of opinion. What one may classify as Bank, another may view as BVW. Overall, VHB does not disagree with the determination of the swale as bank.

Duffy asked about the new/revised plan of Record The Commission was viewing, and Thomas Sr. stated it was entitled Revised Wetlands Resource Area Plan: B+T Plan # 212312P061C-001, dated September 13, 2013.

Ring asked again about the location of the wells on site, and Thomas Sr stated the wells can be an issue latter if a NOI filing is to occur. He did reiterate Beals & Thomas is requesting that the Conservation Commission specifically exclude the on-site manmade stone lined wells (some covered and others uncovered) and remnant foundations from classification as wetland resource areas. Thomas, Sr. stated it is of no consequence to the project should these features be considered wetlands, but they do represent potential public safety hazards given their depth and presence of standing water at their bottoms. It is preferable to fill these areas in the future in order to eliminate the hazard. However, if they are classified as wetland, it is unlikely that they will be filled as there are local, state and potentially significant federal permitting implications.

Duffy agreed to leave the wells as undetermined in the determination and deal with it should a NOI be filed. Duffy did agree something should be done about the wells, without disturbing the wetlands they are part of. There is a way to deal with the wells without filing them.

Kent further stated that if the Commission does not make a decision about the wells tonight, they will not be regulated.

Ring asked Kent if VHB was satisfied with the amended plans and areas. Kent stated she did not have the opportunity to re-check the flags in BVW GG and KK, but she is comfortable with the revised delineations. Kent also commented that the Commission should not in their determination the Riverfront Area (RFA) in BVW EE & KK is only approximate. The streams associated with each RFA are off site and were not delineated or confirmed as part of this determination.

Thomas, Sr. requested the Commission close the hearing and issue the determination. He also informed the Commission Mohegan will be filing their Environmental Notification Form (ENF) by September 30, 2013.

Motion made by Matthew Trybus to close the Public Meeting

Motion seconded by Peter Izyk

No further discussion – vote taken: 3-0-0– Motion Carries (Donald Duffy and Dennis Cote Abstain)

Motion made by Peter Izyk to Issue a Positive Determination Box 2 with the following stipulations:

- 1. The two Vernal Pools on site have not been certified as part of this determination, though their boundaries have been confirmed. The Commission agrees they are certifiable, and requires their certification before and/or during any future Notice of Intent filing**
- 2. The Bank Resource Area, located within the intermittent streams of BVW GG, EE and LL were not confirmed as part of this delineation. Only the associated Bordering Vegetative Wetlands (BVW) of each were flagged and confirmed. The Commission requires the associated Banks to be delineated and presented as a resource areas during any future Notice of Intent filing.**

3. **The Riverfront Area (RFA), located in both BVW KK & EE is approximate. The perennial streams associated with each RFA are located off site, and there for their boundaries were not confirmed as part of this determination. The Commission requires the RFA to be delineate and present during any future Notice of Intent filing.**
4. **The stone artesian wells located on the property were neither confirmed nor denied as possible resource areas. The Commission will determine their significance as a resource area during any future Notice of Intent filing. This determination only acknowledges their presence. The Commission accepts the validity of the claim they are a threat to human health and safety, and proper mitigation measure will be further addressed in any future Notice of Intent filing.**

Motion seconded by Matthew Trybus

No further discussion – vote taken: 3-0-0– Motion Carries (Donald Duffy and Dennis Cote Abstain)

7:40 PM Administrative Matters: Minute Approval – 7/16/13, 8/6/13, & 8/20/13

Motion made by Peter Izyk to approve the minutes from Tuesday July 16, 2013

Motion seconded by Matt Trybus

No further discussion – vote taken: 4-0-1 (Dennis Cote Abstains)

Motion made by Don Duffy to approve the minutes from Tuesday August 6, 2013

Motion seconded by Dennis Cote

No further discussion – vote taken: 4-0-1 (Peter Izyk Abstains)

Motion made by Don Duffy to approve the minutes from Tuesday August 20, 2013 as corrected

Motion seconded by Matt Trybus

No further discussion – vote taken: 4-0-1 (Robert Ring Abstains)

7:50 PM Administrative Matters: Chair Reports

1. Henry Plant, 1564 Park Street: Ring informed the Commission about the ongoing Plant situation. The DEP Stormwater management division has been contacted to view the area in question.
2. Intern Report/Discussion, Sarah Brodeur: Conservation Intern Sarah Brodeur is back at school but she will still be doing an independent inventory of the conservation lands. Brodeur will keep the wildlife viewing cameras in the field all semester, and will occasionally rotate them to other various locations in Conservation Lands. Ring informed the Commission she already has several photos of different wildlife ranging from birds, to deer, fox, bear and even some coyote pictures. During winter break, Brodeur will return to the Commission to give a report of her findings thus far and discuss the continuation of the project.

7:55 PM Document Signing: Palmer Motorsports Easement Agreement

At the previous meeting held on August 20, 2013 the Commission reviewed the draft easement language and decided the Commission would have to check with the Town Manager before signing the agreement. The Agent spoke with the Town Manager, who informed her that the land in question is under the care and custody of the Commission; therefore signing the easement agreement is up to the Commission. The Town Council previously approved the easement last year, but determined after the fact they had no jurisdiction to sign considering the Land in question is Conservation Land.

Motion made by Donald Duffy to sign the easement agreement for Palmer Motorsports

Motion seconded by Peter Izyk

No further discussion – vote taken: 5-0-0– Motion Carries

8:00 PM Letter of Request: Forest Legacy Project (FLA)

The Commission reviewed a letter from Jennifer Ohop, of the Forest Legacy Project, in regards to a request for a letter the Commission is willing to hold a Conservation Restriction in Town. The letter is in support of a grant FLA is seeking for FY 15, which will provide funding to participants to monitor and maintain forested lands in the Connecticut to Quabbin Reservoir (CT2Q) Forest Legacy Program Project Proposal.

Motion made by Peter Izyk to support the Forest Legacy Act and sign the letter stating the Commission would hold the Conservation Restriction for any land participating in the FY15 FLA project

Motion seconded by Donald Duffy

No further discussion – vote taken: 5-0-0– Motion Carries

8:05 PM Administrative Matters: DEP Intervention – 185 Ware Street

The Commission discussed the departmental intervention on the negative determination of applicability issued to the Bukowski's, of 185 Ware Street, for a culvert replacement. The DEP does not believe the commission was correct in determining the work will not alter an area subject to jurisdiction. The Agent discussed the site visit she attended, on September 5, 2013 at 11am, with DEP representative Karen Hirschberg, the Bukowski's and their representative Roger Woods. DEP determined at the site visit the work did not conform to the current stream crossing standards, and would result in the alteration of both bank and BVW during the culvert replacement. Furthermore, the DEP determined a Notice of Intent is needed for work to begin.

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

Amanda Gittens attended tonight's meeting to represent Zachary Cooper, of 54 French Drive. Gittens began by stating the Coopers did not believe a Notice of Intent (NOI) was needed and the issue has been resolved. She contacted Bob McCollum, of Mass DEP, and she stated McCollum told her an NOI was only needed if the work was within Bordering Land Subject to Flooding (BLSF). Gittens does not feel the NOI is necessary and stated she believes this is just an additional hoop the commission wants the Coopers to go through.

The Agent responded there is a difference between something that is permitted and something that is permissible. The work the Coopers have performed on their property is technically permissible under the WPA, but the Coopers never received a permit to complete the work. What is being requested now is known as an after the fact filing, to obtain the necessary permits needed for the work previously completed. If the work was not permissible, the Commission would be requiring the area to be restored to natural conditions.

Ring stated the property has been problematic for several years. The proposed restoration plan on file was never completed. The required plants were never planted along the fence line of the property and the Coopers put in a horseshoe pit in the buffer zone without permission. Furthermore, Ring stated the drainage patterns of the landscape have changed significantly through the Coopers land alterations.

Gittens stated the Coopers could argue the same argument, from the other side. She believes the changes occurring at her neighbor's property at 50 French Drive are negatively affecting the Coopers yard.

The Agent stated that at several of her previous site visit she did document the yard at 50 French Drive was significantly higher than the yard at 54 French drive. She has the elevation change at the fence line document with site photos.

Duffy stated the Commission is requiring 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 instructed Gittens to hire a professional engineer to develop an as built plan showing what is on the ground now. The Commission wants to put this violation to rest, but the Coopers need to supply the Commission with something recordable. Ring stated to Gittens, to have their Engineer contact the Agent, to clarify what needs to be in the plans of record.

Gittens asked the Commission about the fine Mr. Cooper received, and if the fine could be waived if the Cooper's comply with the Commissions requests. Ring stated he is not inclined to stop the fines. The Agent recommended the Commission set a new deadline for the required NOI and the professionally engineered plans, then lift the fines in the Coopers come into compliance with the Commissions requests. Cote agreed with the Agents recommendation. The Commission agreed to continue the fines until the Coopers are in Compliance. The Commission set a deadline of October 15, 2013 for the Coopers to at least hire a Professional Engineer/Surveyor. The Coopers will be rescheduled to October 15, 2013 at 8pm to present their Engineer to the Commission.

Gittens supplied the Commission with a written request for all information/pictures pertaining to the ongoing violation. She also requests the Agent email her with the deadline and details of the Commissions decisions.

8:30 PM Administrative Matters: Possible Violation – Bretera Chevy

The Agent informed the Commission during her various site walks with VHB during the Mohegan Sun delineation confirmations she noted filling within the RFA by the unnamed perennial stream that runs by Bretera Chevy on Thorndike Street. The Commission informed the Agent they have previously allowed work on the property up to 25-feet of the stream; considering the area as densely developed. Izyk stated the area is already very disturbed. The Agent will review the plans for the property on file, and follow up with Bretera if necessary.

8:40 PM Administrative Matters: Lamothe Violation – 103 Water Street

The Commission conducted two site visit with the Attorneys, environmental consultant Dan Nitzsche (of GZA Consultants), and Mr. Lamothe. During the site visit it was determined resource area damages have occurred. As requested, Mr. Nitzsche supplied the Commission with updated maps depicting approximately 315-feet of Bordering Vegetated Wetlands disturbance by the animal pen. The Commission agrees the disturbed area must either be restored or replicated on site. The Agent developed a list of requirement for Mr. Lamothe to return to compliance with the WPA and the Town's wetlands Protection Ordinance. The court date has been set for August 23, 2013.

Next Meeting Date: Tuesday, October 1, 2013 at 7 PM

9:00 PM Meeting Adjourned

Motion made by Donald Duffy to adjourn

Motion seconded by Dennis Cote

No further discussion – vote taken: 5-0-0– Motion Carries

Sincerely Submitted,
Angela Panaccione, Agent