



**Norton Conservation Commission**  
70 East Main Street  
Norton MA 02766

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MAY 20 2009

NORTON TOWN CLERK

SPECIAL MEETING

Tuesday, April 7, 2009  
7:00 pm

**Attendance**

Earl Willcott (Chairman), Julian Kadish (Vice-Chairman), Lisa Carrozza, David Henry and Jennifer Carlino, Conservation Agent.

Kathleen Giblin, Ron O'Reilly and Chris Baker were absent.

**Minutes**

The meeting started at 7:00 pm.

The first project under discussion for the Special meeting is the appeal for project **File #250-793 – Fairlee Lane – Fred Bottomley**. Fred Bottomley's attorney, Matt Wattsky addressed the Commission. He stated that DEP had issued a Superceding Order of Resource Area Delineation for this project and the Commission is appealing the Superceding Order of Resource Area Delineation. He stated that some discussion had taken place between Fred Bottomley, Matt Wattsky, DEP, Jennifer Carlino and Donald Nagle (the Conservation Commission's attorney) in hopes of reaching a settlement.

Mr. Wattsky stated it is Fred Bottomley's intention to remain in good standing with the Norton Conservation Commission at this time and in the future. Mr. Wattsky proceeded to submit a revised plan to the members and pointed out the area of concern, which is a section of the stream shaded in gray. The gray section is deemed perennial by DEP and north of the gray stream DEP is deeming the stream to be intermittent. He stated that the Conservation Commission is deeming the entire stream perennial.

Mr. Wattsky stated Mr. Bottomley has proposed a settlement to this issue. He stated that Mr. Bottomley has three areas he proposes to develop (colored in orange) that require wetland permits. He stated Mr. Bottomley proposes to file Notices of Intent for two of the three areas which are stream crossings. He pointed out a purple line which he stated is the 50-ft. line from the edge of the wetlands and said Mr. Bottomley has no proposals within this area. He pointed out areas outlined in pink which Mr. Bottomley has agricultural intentions, such as cranberry bogs. He stated these areas have already been approved with a Farm Plan and are out of the 100-ft. buffer zone. Mr. Wattsky stated there are existing access roads which will be utilized, but because of stream crossings, Notices of Intent will be filed to upgrade these roads. He stated Mr. Bottomley intends on using and expanding the existing pond, which will fall under an agricultural project.

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Mr. Wattsky stated Mr. Bottomley proposes to obtain all needed permits and donate areas of land not being used close to the wetlands to the Conservation Commission. Fred Bottomley stated he would be donating approximately 40 acres of land to the Conservation Commission for recreational use in memory of his father who served on the Conservation Commission for several years. He stated he would pay for any signs that would be installed. He said that the two access areas, or easements, to the recreational areas would be at Fairlee Lane. Mr. Wattsky stated that, in regards to legal issues, these are Mr. Bottomley's goals but cannot be added as a condition for this project or considered part of a deal for IRS donation purposes.

Mr. Don Nagle addressed the Commission and suggested that the Conservation Commission's appeal of the determination of the riverfront area be dismissed as long as Mr. Bottomley agrees to obtain all necessary wetland permits needed to move forward for this project and his goals.

Julian Kadish asked how close to the water table cranberry bogs are usually placed and Mr. Bottomley stated that in zones 2 and 3, approximately four feet. He stated that in Norton, within the Water Resource Protection District, any soils removed within the four foot area has to be replaced within 45 days. He stated that the method of construction and the type of bogs created would be determined by water sampling data. Julian Kadish asked how much gravel would have to be removed to create a bog and Mr. Bottomley replied that he can't answer that at the moment and it would depend on how big the bog is. Julian Kadish stated that it appears that this will be more of a gravel removal project rather than a cranberry bog project in the near future. Mr. Bottomley stated that he would hope to have created the bogs within a few years. Mr. Wattsky stated that Mr. Bottomley presently has at least 240 acres of cranberry bogs in production throughout the state.

Jennifer Carlino asked Mr. Wattsky about the time frame and if Mr. Bottomley intends on obtaining all Conservation permits before donating the land. Mr. Wattsky replied that the donation is a goal that Mr. Bottomley would like to achieve at some point and cannot be at all connected to any permits. Don Nagle suggested to Mr. Bottomley that he would not work within the 50-ft buffer zone of any wetlands only if he succeeds in obtaining the desired permits. He further suggested to Mr. Bottomley that if he does not obtain the permits applied for, he will then change his proposed plans. Mr. Wattsky stated to Mr. Nagle that cranberry bogs are not the only agricultural projects possible. He stated that the wetland portion of the property that would be donated to Conservation would have to be deemed not buildable by the Planning Board before being donated. He said that an applicant would never lock himself into a specific project when trying to get all needed permits in a Town from each department just in case he does not get approval by a specific board or department. Lisa Carrozza reminded him that is the inherent risk involved with all permit applications.

Fred Bottomley stated he intends on applying for the one Request for a Determination of Applicability (RDA) and two Notices of Intent (NOI) eventually regardless of the outcome of tonight's informal meeting. Jennifer Carlino asked Mr. Bottomley when he would be filing for the permits and he replied that he would probably be filing the RDA in June, one NOI for one of the stream crossings in December and one NOI in two or three years.



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Jennifer Carlino asked the members if they had any other questions for Mr. Wattsky and they did not.

The meeting went into **EXECUTIVE SESSION** at 7:55 pm.

The Commission returned to the regular meeting at 8:22 pm.

Mr. Don Nagle stated to Mr. Bottomley that the Commission had come to an agreement during the Executive Session.

Julian Kadish stated to Mr. Bottomley that if he agrees to remain at least 50 feet from the Bordering Vegetated Wetlands (BVW) with the exception of being within 50 feet because of the three permit applications, the Commission would withdraw their appeal of the SORAD.

Mr. Wattsky requested a little more clarity from the Commission as to what they expected of Mr. Bottomley within this agreement. Julian Kadish clarified the fact that if Mr. Bottomley agrees to keep activity outside of the 50-ft. buffer zone of a BVW, the appeal will be withdrawn. He stated the Commission understands that he will be submitting a Notice of Intent for two areas and a Request for a Determination of Ability for one area and within the permits, the 50 buffer zone agreement may have to be revised.

Don Nagle and Matt Wattsky had a brief discussion. Mr. Wattsky stated that he would like to see a condition on this agreement that the Conservation Commission would not oppose the issuance of any permits or approvals issued by any other boards or committees. He stated that the Conservation Commission should be a co-applicant on an "A & R" (Approval Not Required) filed with the Planning Board since the land will be deeded over to the Conservation Commission.

Mr. Wattsky summarized the finalization of the agreement by stating:

1. The appeal by the Commission would be withdrawn if Mr. Bottomley agrees to keep activity outside of the 50-ft. buffer to a BVW with the exception of special circumstances that might arise during the application of a Notice of Intent for one of the three areas that will be developed. He stated that Mr. Bottomley would not be bound to this agreement if he is not able to obtain permits because of an appeal by a third party.

The Commission discussed their inability to agree to arbitrarily approve a project before another board that they've never even seen, or that they can't state that they won't oppose something they haven't seen either. It negates the whole fact finding public hearing process. They stated they agree in theory with the agricultural proposal but any approvals or opposition would come about during the hearing process, not before.

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The Commission further proposed the following agreement;

“We agree to withdraw the appeal of the Superceding Order of Resource Area Delineation (SORAD) provided that the applicant abides by the commitment to have no activity inside the wetland and 50 feet, more or less, as illustrated on the exhibit—contingent on all necessary permits for the project to proceed being issued.”

Julian Kadish made a motion, seconded by David Henry, to sign an agreement with Mr. Fred Bottomley which would state that the Conservation Commission will withdraw their appeal to the SORAD for file #250-793 provided that Mr. Bottomley will agree to the settlement statement. Fred Bottomley signed and submitted his proposed plan to the Conservation Commission. Approved.

Julian Kadish made a motion, seconded by David Henry, to have the Conservation Commission's attorney, Don Nagle, sign the agreement between Fred Bottomley and The Conservation Commission. Approved.

The members reviewed a Bills Payable Sheet (misc.). David Henry made a motion, seconded by Julian Kadish, to pay the bills. Approved.

The second project under discussion for the Special meeting is the appeal for project **File #250-787 – John Scott Boulevard – Scott Goddard**. Scott Goddard presented color-coded plan and described the various areas to the members. He updated the commission and stated a Notice of Intent had been filed for the construction of a single-family house, septic ssytem with associated grading and a driveway crossing over a stream. He stated the project was denied approximately one year ago for lack of information and for lack of compliance with the Performance Standards. Mr. Goddard stated he disagreed with the findings and filed an appeal with DEP and has been issued a Superceding Order of Conditions recently stating that he had submitted enough information to come to a decision. He stated the Conservation Commission has appealed DEP's issuance of a Superceding Order of Conditions (SOC). He said a pre-screening conference was held about a week ago to narrow down a few of the main issues and try to bring both the Conservation Commission and himself into an agreement before going to court for a trial. Mr. Goddard stated the purpose of tonight's hearing is to have him and the Commission come to a settlement for this project and to have the Commission withdraw their appeal to the SOC.

Mr. Goddard presented a letter which he stated all the members should already have with a summary of the issues discussed at the pre-screening conference. Lisa Carrozza asked Mr. Goddard if DEP had asked for any additional information and Mr. Goddard replied they didn't and that one condition was added to the SOC requiring open spaces in the decking of the boardwalk .

Mr. Goddard proceeded to read to the members a list of items that he hoped would encourage the Commission to withdraw their appeal to the SOC as follows. The April 1, 2009 proposal from Scott Goddard was read and attached hereto. (see attached pages 5 & 6.)



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Mr. Goddard stated the last and most significant issue is the 25-foot set back in the buffer zone. He stated that at present he proposes to keep outside the 25-foot buffer zone except at the wetlands crossing. He said that DEP has already approved the limit of work from the well to the northern part of the site. He stated this area is plus or minus from 3 feet to 21 feet and averages ten feet with a limit of work line at a toe of a 3 to 1 slope. He said that one proposal would be that instead of installing the fence at the toe of the slope at the average 10-foot buffer zone, install the fence at the top of the slope at the 3 to 1 slope. He pointed out a 2,000 sq. ft. sloped area that would be graded for "temporary" disturbance and re-vegetated and then maintained as a long-term 25-ft. vegetative buffer zone. Lisa Carrozza stated that an area that is not going to be used for lawn could have a slope of 2 to 1 instead of 3 to 1. Mr. Goddard agreed to check into that possibility. He said he proposes to seed the slope with a conservation seed mix, which is a native specialized seed mix with about 15 different species, mostly of a herbacious kind.

David Henry asked Mr. Goddard why he was opposed to installing a single larger culvert rather than the twin culverts proposed. Mr. Goddard replied that he had investigated the possibility of one culvert and said that geotechnical investigation would be necessary. The single span would be impractical and almost impossible for a company to get in there to install this type of culvert because of the accessibility. He stated this method is very difficult and expensive and would require footings to be dug causing more of an impact to the wetlands.

Lisa Carrozza asked Mr. Goddard that since he has agreed to deem the stream on the property as perennial, has he reviewed the Alternatives Analysis under the Riverfront Section of his application and maybe omit the pool proposed. Mr. Wattsky replied that even though Mr. Goddard had agreed to deem the stream perennial, he does not agree that it is perennial. He stated that this was done for policy reasons only, not to set a precedent for the Town. He said Mr. Goddard is not going to revise all his plans and application according to the Riverfront policy. The Commission asked him to limit the activity on the site as a minimization of impacts as part of the wetland regulations, not even as a riverfront project. They stated that minimization of impacts is a basic request under the regulations.

Mr. Wattsky stated it was his opinion that the abutter, Mr. Robert Shaw, had not qualified to appeal DEP's SOC for this project and he has requested that Mr. Shaw be dismissed from the appeal process. Lisa Carrozza asked Mr. Goddard if he had plans to install fabric under the 5-inch rip rap bank at the culvert crossing. He replied he had not but was willing to install the fabric if the Commission would like. She asked Mr. Goddard if he had any objections to construction at "low flow conditions". He replied that he proposes to have sump pumps on hand in case there is water flow during construction. He agreed that he would install the culverts during low flow conditions such as June through September.

David Henry asked if the subject of a vernal pool had been discussed at one of the previous hearings. Jennifer Carlino stated there seemed to be a possible vernal pool on the property. She stated she submitted a dry-pool method survey of the pool, but the photograph of the pool was slightly wet and NHESP rejected the photograph.

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Jennifer Carlino asked Scott Goddard if he has looked at the possible vernal pool since the commission has brought it up for the last 3 years. He said he was there today and looked at the pool. She asked Mr. Goddard if he had been in the pool with waders to look for egg masses and he stated that he had gone only to the edge of the pool. Jennifer Carlino questioned his actual investigation since it was a cloudy and windy day, and he would more than likely not find anything under those conditions.

David Henry asked what the cost difference might be between using the twin culverts or using one culvert to span the whole stream. Lisa Carrozza stated that, in her opinion, the cost for a single culvert would be in the six-figure range and building a single-family house would not be practical.

Jennifer Carlino asked if any of the members had any other questions at this time and no one replied.

The Commission went into **EXECUTIVE SESSION**.

The Commission returned to the regular meeting.

Don Nagle updated Mr. Goddard and his attorney on what conditions the Commission would like to include for their appeal settlement. He listed the conditions as follows:

1. a retaining wall would be constructed at the pool area from the northerly side of the observation deck to the northerly property line.

Scott Goddard asked approximately how long the retaining wall would have to be and Lisa Carrozza replied approximately 50 feet by the plans. Lisa Carrozza stated the only way to avoid the wall would be to eliminate the pool.

2. the rest of the slope would have a 2:1 slope from the southerly side of the observation deck to the well to be planted with a special seed mix with the bonded fiber or a tacifier to the well.
3. replace the silt fence with wired-back silt fence.
4. install filter fabric under the 5" rip rap on the sides of the slopes.
5. conduct the stream crossing construction during the "low-flow" season (June – Sept.).
6. include several of the "standard" conditions, ie: pre-construction meeting, no Occupancy Permit without a COC or PCOC with a bond posting and visual barrier to be in place to prevent encroachment into the wetlands.

Mr. Nagle suggested making a joint motion to have himself and Mr. Watsky sign an agreement between the Commission and Scott Goddard have the revised plans drawn up as soon as possible. Mr. Watsky agreed this would be a good idea, but stated that revised plans may take longer than desired because the engineer is going out of business at this time and a new engineer will have to be retained by Mr. Goddard. He stated they will try to contact the engineer and get as much information as they can.

The Commission adjourned the meeting temporarily to allow Mr. Watsky to speak with Scott Goddard regarding the Commission's settlement proposal.

The regular meeting resumed at 10:41 pm.



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Mr. Wattsky requested to list the Commission's proposed conditions as follows:

1. He stated that Scott Goddard is not willing to put up a retaining wall from the northerly side of the observation deck to the northerly side of the property line nor is he willing to eliminate the pool. Scott Goddard is willing to change the slope in this area to a 1:1 slope with rip rap or a 2:1 vegetated slope. Jennifer Carlino stated the special mix should contain a bonding material. Scott Goddard agreed to use this mix.
2. Scott Goddard agreed to replace the silt fence with the wired-back silt fence.
3. Scott Goddard agreed to put filter fabric under all 5" rip rap on the sides of the slopes.
4. Scott Goddard agreed to the several standard conditions such as pre-construction meeting and visual barrier, etc., but no bondable conditions as DEP would not agree to them.
5. Scott Goddard agreed to the visual barrier.
6. Scott Goddard agreed to the construction of the stream crossing during the "low-flow" season (June – Sept.).
7. Mr. Wattsky stated that DEP will not agree to a settlement on a project that requires a bond. Jennifer Carlino stated the actual language stating that a bond is required will not be written into the conditions that will be accepted by DEP, but she said the Commission will follow its standard procedures with the Building Inspector and Treasurer regarding signing an Occupancy Permit.

The Commission members stated that they prefer a 1:1 slope and would like the limit of work pulled back further from the wetland. Scott Goddard and his attorney, Mr. Wattsky had a brief private discussion on what Scott Goddard was going to agree to. Mr. Wattsky stated that Scott Goddard is agreeing to have a 1:1 slope at the area northerly side of the observation deck to the northerly side of the property line.

David Henry asked what the next step is in the settlement of the appeal process.

Mr. Wattsky stated that a settlement agreement will have to be put together and brought to DEP for himself, DEP and Don Nagle to sign. He stated the agreement will list all the conditions listed this evening and agreed upon by the Commission and Scott Goddard including Scott Goddard's April 1, 2009 letter and this recent list of 7 items. He said it could possibly be submitted without the newly revised plans, with the condition that they would be submitted as soon as possible. It was suggested by the members to Scott Goddard to try and retain an engineer as soon as possible in order to obtain a revised stamped plan to submit to the Commission and DEP. Mr. Nagle stated that this Friday is another deadline for the case. He stated that DEP is unlikely to agree to a settlement without a new plan.

Lisa Carrozza made a motion, seconded by Julian Kadish, to have Mr. Wattsky and Mr. Nagle sign an agreement to submit to DEP requesting a "stay" of the settlement for revised plans. Approved.

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Lisa Carrozza made a motion, seconded by Julian Kadish, to adjourn the meeting at 11:05 pm.  
Approved.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Jennifer Carlino".

Jennifer Carlino  
Conservation Director  
JC/pmb