



Norton Conservation Commission  
70 East Main Street  
Norton MA 02766

NORTON TOWN CLERK

JAN 26 2010

RECEIVED

Monday, December 14, 2009

**Attendance**

Ron O'Reilly (Chairman), David Henry (Vice-Chairman), Julian Kadish, Earl Willcott, Kathleen Giblin, Lisa Carrozza, Jennifer Carlino, Conservation Agent

Chris Baker was absent.

**Minutes**

The meeting started at 7:00 pm.

The members reviewed the draft minutes of **November 9, 2009**. Earl Willcott made a motion, seconded by David Henry, to accept the minutes as drafted. Approved.

The members reviewed the Bills Payable Sheet (Amory Eng.). Kathleen Giblin made a motion, seconded by Julian Kadish, to pay the bill. Approved.

The members reviewed the Bills Payable Sheet (Nextel). Earl Willcott made a motion, seconded by David Henry, to pay the bill. Approved.

The members reviewed the Bills Payable Sheet (Misc.). Earl Willcott made a motion, seconded by David Henry, to pay the bill. Approved.

The members reviewed an Abbreviated Notice of Resource Area Delineation – **(#250-852) - Fairland Farm, LLC, Lot E, Parcel 195 (assessors map 12) Bay Road – (cont. from the November 23, 2009 mtg.)** - for verification of the wetland resources. Present at the public hearing was the applicant, Fred Bottomley, his wetland scientist, Scott Goddard and his engineer, Chris Yarworth who updated the members on the project. He stated he had submitted an informational letter on December 1<sup>st</sup> clarifying the use of Lot E, Bay Road for a single-family house. David Henry asked Mr. Yarworth to read the letter. Mr. Yarworth summarized the letter as follows:

1. According to the Norton Zoning. By-Laws, the lot just barely meets the required minimum size for a lot eligible for the Article 6.10 frontage exemption.
2. A copy of a "Modification and Easement Agreement" signed by Fred Bottomley to assure abutters that the driveway easement will be used only for utilization of a single-family house.



3. The prospective purchaser had requested that an ANRAD be filed to confirm that the flagged wetland lines were correct.

Mr. Yarworth stated the applicant may want to clear as much of his upland property as possible without having to file for a wetland permit. He stated a Notice of Intent will be filed to construct the house and will include any clearing within the Conservation Commission's jurisdiction.

David Henry asked Mr. Yarworth for the proof of mailing to abutters and Mr. Yarworth stated he had already submitted those with the application. Scott Goddard stated that the purchaser of the lot wanted to confirm the wetland boundaries before purchasing the property. He said that at the last meeting there was a dispute about the filing fee for this project and this is why Mr. Yarworth had submitted the information proving that the ANRAD is for a single-family house only. Lisa Carrozza asked if there was going to be a visual barrier for the 200-ft. riparian zone and Mr. Yarworth stated that it would be noted in the Notice of Intent filing. Fred Bottomley stated a snow fence would be in place during construction.

Jennifer Carlino stated to the members that they could accept the filing fee as correct in view of the latest submitted information by Chris Yarworth and move to the discussion of the wetland boundaries. Julian Kadish stated he missed the previous discussion regarding the filing fee and David Henry explained that for an ANRAD, the filing fee is calculated by the linear footage of the property unless a single family house is proposed. Mr. Bottomley stated the project contains only one house lot. Julian Kadish asked what the difference was between the two filing fees are and Chris Yarworth stated the two amounts are \$400 versus \$4000. Julian Kadish said that, in his opinion, with the added information, the \$400 fee would be correct. Julian Kadish made a motion, seconded by Earl Willcott, to set the fee at \$400. Approved. David Henry voted not to accept the \$400 fee.

Scott Goddard stated this property was part of the larger parcel containing the cranberry bogs at one time. He proceeded to point out the various resource areas.

He stated that even though the cranberry bogs are not flagged, they are a resource area. He said the resource areas that are delineated are the bordering vegetated wetlands and the mean annual high water for Mulberry Meadow Brook. Mr. Goddard said that there is a depression at Bay Road which is a Certified Vernal Pool, which was labeled Isolated Land Subject to Flooding, but because of a connection, he is labeling it Bordering Vegetated Wetlands. Jennifer Carlino agreed that it is clearly Bordering Vegetated Wetlands. He stated that many parts of the Mulberry Meadow Brook are flat and wide and run right into the edge of the wetlands, so he was delineating the edge of the wetlands consistent with the Mean Annual High Water Mark. He said he has delineated 1. Bordering Vegetated Wetlands, coinciding with Mean Annual High Water Mark, 2. 100-foot Buffer Zone which is also the inner riparian zone and 3. the 200-foot Riverfront Area.



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Jennifer Carlino stated she did not have any questions regarding the flags. She requested that Mr. Yarworth add a few notes to the plan such as 1. the BVW and the MAHWM are coincident 2. label the "top of the bogs and 3. add the number for the Certified Vernal Pool which is #2890. He suggested to label the top of the bog, "top of the bank". Jennifer Carlino stated she did not see any other problems with the wetland resource boundaries. Kathleen Giblin made a motion, seconded by David Henry, to continue the public hearing until the next regular meeting of Monday, January 11, 2010. Approved.

The members reviewed a Notice of Intent – (#250-850) – **Duane Knapp/Town of Norton Water Department – Parcel 1 (assessors map 31) 166 John Scott Boulevard – (cont. from the November 23, 2009 mtg.)** - for proposed plans to construct a building, leaching field and sewer connections within 100 feet of wetlands. Duane Knapp, John Hume of Weston and Sampson and Chris Yarworth of Yarworth Engineering Co., Inc. were present at the public hearing. Chris Yarworth explained that he submitted revised plans which shows the silt fence line, concrete wash pit and concrete pad under the propane gas tank. David Henry asked if the reports were received yet and Jennifer Carlino stated that it was received today. Jennifer Carlino asked Mr. Yarworth if all the revision dates were listed on the top page of the submitted plans and he replied he would submit new copies after meeting with the Planning Board in case there are more minor changes.

Mr. Hume of Weston and Sampson briefly updated the members on the submitted inspection report of violations. He said that Jennifer Carlino had walked the site back in September with a member of Weston and Sampson and she pointed out the several violations that are listed in the report as follows:

1. Pile A, which was located at 31 feet from the wetlands had been moved away from the wetlands and spread out for a storage area.
2. Pile B, which consists of chunks of asphalt paving, cobbles, sand and gravel, and is located 51 feet from the wetlands, has not been moved.
3. Location C, which is a dirt road consisting of sand and gravel was created to cross through a possible wetland and that a 12-inch PVC pipe was installed to convey a stream. He said the area has not been changed. Jennifer Carlino stated the culvert was to be removed and the stream was to be reshaped and revegetated. Duane Knapp agreed to remove it that week.
4. Location D, which is an old cranberry bog used for skating, of which sand was added to the banks. He said the area has not changed. Jennifer Carlino noted that the permit for the skating area has expired and a new application would have to be filed.
5. Location E, which is an area located behind an old bog where sand and gravel has been removed. He stated that this area appears to be upland and there has not been any change to the area.
6. Pile F, which contains cobbles, was located in a wetland, and has since been removed.
7. Pile G, which contains sand and gravel, was located in a wetland, and has since been removed.
8. Pile H, which is comprised of asphalt pavement and located within 25 feet of the wetland, has since been removed.
9. Pile I, which contains asphalt pavement, sand, gravel and stones is located within 100 feet of wetlands has been partially removed and the remainder has been moved toward the existing barn and away from the wetlands.
10. Pile J, which is comprised of gravel and sand, and located within 100 feet of wetlands, has been removed.
11. Pile K, which is comprised of gravel and located within 100 feet of wetlands, has been removed.



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12. The area along the tree line had been filled with 1 to 2 feet of fill within 25 feet of wetlands and since then, the piles were pulled further from the wetlands, the fill was pulled out and a line of boulders has been placed to define the 25-foot limit of work.

13. Old hay bales were found behind the existing barn at the edge of the wetlands and have since been removed.

14. Along the edge of the center pond alteration to the top of the bank. Some of the alteration was due to parking and some due to routine maintenance of the road. It is suggested to prohibit parking in this area.

Mr. Hume stated the Water Department is working to correct all violations on this property. Jennifer Carlino stated the Water Department has been working on the violations on the property and will be filing a new application for the skating rink. She stated that as soon as revised plans are received by the engineer, the project can be closed. She stated that after the building is constructed and parking areas and storage areas are designated, the whole property will be put into a master plan. Duane Knapp stated he would try to plan to locate work and storage areas out of the 100-foot buffer zone of wetlands in the future. Kathleen Giblin made a motion, seconded by David Henry, to continue the public hearing for revised plans until the next regular meeting of Monday, January 11, 2009. Approved.

The members reviewed a Notice of Intent – **(#250-853) – Timothy & Mary Longo – Parcel 90 (assessors map 30) 71 Maple Street** – for proposed plans install a boulder wall, landscape and allow an existing shed to remain within 100 feet of wetlands. The applicants were present as was their engineer, Chris Yarworth of Yarworth Engineering Co., Inc. Jennifer Carlino stated that the legal notice invoice sent to the applicant had been returned by the post office. Mr. Longo stated that was his physical address but not his mailing address. Chris Yarworth added the mailing address to the Notice of Intent application. The applicant submitted payment for the invoice for the publication of the legal notice.

Chris Yarworth stated that a permit was not needed to construct the existing house since it is out of the buffer zone, but the yard work and shed are within 100 feet of wetlands. He said old plans were used for this filing and he believes the wetlands have not changed since then. He said the applicants propose to complete yard work and installation of a boulder wall which has already been started on the property and would like to do some hand work beyond the wall for clean up and plantings. Jennifer Carlino asked the Longos if they were planning on installing an irrigation well and they replied they were not sure at this time. She suggested they add the well to this permit which will be valid for three years. Jennifer Carlino stated there was an alteration of town property which they have repaired in a timely fashion.

An abutter, Daniel Whynot, stated that trees have been cut and his property has been disturbed by the applicants and felt that further alteration is not necessary. He said that all the trees along the power line have been cut. The applicant stated that National Grid had cut most of the trees for maintenance. Julian Kadish stated that the applicant is replacing a lot of the trees with new plantings under this



permit. Kathleen Giblin made a motion, seconded by David Henry, to continue the public hearing until the next regular meeting of Monday, January 11, 2010. Approved.

The members reviewed a request for a Certificate of Compliance for File **#250-838 – Scott Pietrusewicz/Canfour – Lot 16, Parcel 270 (map 21) 12 Ellis Road**. Jennifer Carlino stated the parcel is only rough graded, not loamed and seeded and the erosion control has to be repaired; therefore, does not qualify for a full Certificate of Compliance. Lisa Carrozza made a motion, seconded by Julian Kadish, to issue a partial Certificate of Compliance as long as the applicant posts a \$3,900 bond with the Town Treasurer to ensure final vegetated stabilization of exposed soils on this lot. Approved.

The members reviewed the draft conditions for the Notice of Intent – **(#250-848) – Fairland Farm, LLC, Fred Bottomley – Parcels 6, 8, & 9 (assessors map 6) Fairlee Lane** – for proposed plans to construct agricultural drainage and water systems within 100 feet of a wetland and a pond. Lisa Carrozza made a motion, seconded by Kathleen Giblin, to sign and issue the Order of Conditions as drafted. Approved.

The members reviewed the draft conditions for the Notice of Intent – **(#250-851) – Mark Mobilia – Parcel 177 (assessors map 12) 1 Fuller Drive** – for proposed plans to construct a garage and to extend a paved driveway within 100 feet of wetlands. Earl Willcott made a motion, seconded by Kathleen Giblin, to sign and issue the Order of Conditions as drafted. Approved.

Jennifer Carlino noted a Right of First Refusal was received for 2 lots at the end of Fairlee Lane, a portion of which was in Chapter 61A, but removed. Julian Kadish made a motion, seconded by Kathleen Giblin, to notify the Board of Selectmn that, since the property is not abutted by Open Space or Conservation property, the Conservation Commission would not be interested in acquiring the land.

Fred Bottomley asked Jennifer Carlino if she could email to him the proper procedure to donate property to the town and she said she would.

The last item on the agenda was the proposed **Bylaw**. Jennifer Carlino stated she sent invitations to the people who seemed to have concerns. Present for the discussion were: Robert Kimball, Selectman, Fred Bottomley, Scott Goddard, Bradford Bramwell, Selectman and Christopher D. Yarworth of Yarworth Engineering Co., Inc.

Jennifer Carlino stated that one of the main concerns of the public was that they wanted to see draft regulations. She said she had started to draft the regulations and had received comments from Horsley Witten Group, Inc. on the draft regulations so far. She stated they are donating their expertise and time as part of the Taunton River Watershed Management Plan Regulations Revision Pilot project.

She stated that under Section 1: **E. Purpose** will be amended to reflect the comments of Horsley Witten Group, Inc. which will have two paragraphs, 1. and 2. rather than one whole paragraph and under Section 1: **G. Areas Subject to Protection Under the Bylaw** will use the term “isolated land subject to flooding” to include any topographically isolated natural depression or closed basin of any size that is subject to periodic flooding either from stormwater storage, surface water flow or



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inundation from groundwater. These basins shall not include any depressions occurring in lawns, gardens landscaped areas, storm water management structures or driveways that existed before the adoption of the Norton Wetland Protection Bylaw or that were created as part of an approved application for site alteration to the Town of Norton, isolated land subject to flooding may be underlain by pervious material, which in turn may be covered by a mat of organic peat or muck. The boundary of isolated land subject to flooding is the perimeter of the largest observed or recorded volume of water confined in said area.”

Lisa Carrozza asked if reference to “Riverfront” was removed from **Section G.** because it is defined in the Wetlands Protection Act. Jennifer Carlino stated she ended at “isolated” land subject to flooding in her outline for tonight’s meeting with “etc.” instead of retyping everything over. Bob Kimball asked Jennifer Carlino if the rules and regulations in this outline tonight are already in place and she replied that the Commission had been asked to develop sample rules and regulations for presentation and stated that these are generally the standard conditions used by the Commission at the present time. Ronald O’Reilly stated that the Section under discussion at present is only the general provisions section. Julian Kadish stated that at Town Meeting it seemed as though the public wanted to see draft rules and regulations as well as clarification of some of the terms used in the bylaw.

Fred Bottomley asked Ron O’Reilly if the purpose of creating a local bylaw is to stop problems that have already occurred or to try and prevent problems from occurring. He said that, in his opinion, he and all other reputable contractors and developers have been able to work with the Norton Conservation Commission very well. Fred Bottomley stated that, in his opinion, a local bylaw is used to take away people’s property rights. He continued to suggest to the commission that if projects have gone through after all these years without any problems, why look for problems now. He said he has taken pictures of various resident’s yards in Norton who have various-sized wetlands in their yards and suggested that a bylaw would create problems and be costly for any of these people if they wanted to add on or construct something in their yard.

Julian Kadish replied to Fred Bottomley’s questions and suggestions by stating to him that the Commission has always been open minded with “out-of-towners” as well as residents. He also stated that Norton has always been mostly agricultural and that for the last few decades, there has been quite a lot of development going on and the future of the town is uncertain. He said that the amount of desirable land is diminishing fast. He noted that the town might be close to “build out”. He stated that with desirable land diminishing, developers are looking at not so desirable properties to develop. He said that, in his opinion, there has not been any large problem with any project or developer to date, but there might be in the future given the fact all the good land has been developed. He stated that it is the Commission’s job to protect the interests of the existing residents of the town and they will need the correct tools to do this.

Julian Kadish continue to say that there is nothing in the proposed bylaw that is “absolute” and will prevent people from doing what they want on or with their property. He said that the bylaw will allow the Commission to **regulate** and **review** areas that might not be listed in the existing Wetlands Protection Act. Fred Bottomley stated, that after speaking with several Norton residents, the fear of the people is not the existing Commission, but future commission members. He said that if specific rules and regulations are in place, the future commission members may not be as flexible as



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the existing commission members. He stated that there are no guarantees that the rules and regulations may become more strict as time goes on. He stated that, in his opinion, at present, Norton has the state's most stringent Zoning laws and regulations.

Julian Kadish replied to Fred Bottomley's concerns by stating that the Commission members are appointed by the Board of Selectmen and if a problem arises with one of the members, the Board of Selectmen will review the problem and take the appropriate action. He suggested to Mr. Bottomley that most people in town are interested in protecting the interests of all residents and not interested in making the permit process difficult for developers. Mr. Bottomley again had concerns with the future and suggested that in past years the Board of Selectmen were too political. Jennifer Carlino noted that the discussion tonight was only for Section 1 and should continue instead of worrying about hypothetical situations.

Bob Kimball, Selectman, stated he has been on the Board of Selectmen for fifteen years and felt that the Board has always done a fair and good job appointing people to various boards and, in his opinion, felt that any political conflict of interests have been long gone. He said that he felt that the meeting this evening was too private and should be seen and heard by all the residents of Norton somehow. Jennifer Carlino stated this is a public meeting and open to all citizens of Norton and advertised as such. Mr. Kimball suggested holding joint meetings between the Conservation Commission and the Board of Selectmen and televising these meetings. Jennifer Carlino said updating the Board of Selectmen at their televised meetings is part of the commission's plan.

Julian Kadish stated that he was really amazed that the proposed bylaw was creating such concerns with the residents of Norton when the main purpose of the bylaw is to ensure that property that homeowners will be living on in the future is protected. He said that he felt that a lot of people are suspicious of government until their personal interests are involved and then they ask why nobody did anything to protect them.

Scott Goddard of Carr Research Laboratories asked the Commission if they were planning on presenting the proposed bylaw at the annual Spring Town Meeting in the same format as it was at the annual Fall Town Meeting. Jennifer Carlino said that any changes would probably be in the next section under "Definitions".

Chris Yarworth suggested that limits on the extent that can be regulated by the Conservation Commission be included in the proposed bylaw to be voted on at town meeting. Lisa Carrozza stated there is no reason to put limits in the proposed bylaw because every project will be reviewed separately and the limits will be negotiable. Chris Yarworth again suggested putting the actual limit numbers in the proposed bylaw. Julian Kadish again assured Chris Yarworth that nothing would be written in stone in the proposed bylaw and will always be negotiable. Jennifer Carlino stated to Mr. Yarworth that his concerns would be better addressed in the following sections of the proposed bylaw.

Chris Yarworth stated that he was on the Conservation Commission in Wrentham where he lives. He stated that there is a Conservation Bylaw which contains limitations to jurisdictional areas and this presents problems. Julian Kadish stated that discussion between applicants and the Commission will



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take place to resolve problems and waivers can be granted. Lisa Carrozza stated she would like to get away from granting waivers and creating paperwork trails. She said she would prefer to make decisions based on the value of the wetland. Julian Kadish suggested to Chris Yarworth that he was being contradictory suggesting Norton include limits in their proposed bylaw and stating that limitations in Wrentham's Commission's bylaw has caused problems.

Scott Goddard stated that a bylaw will cause more paper work in the end and also be more costly for the applicant. He asked the commission why they were trying to create a bylaw when they already follow the same reviewing process and procedures. Julian Kadish stated a bylaw should be in place to protect residents of Norton against the applicants who do not follow the rules and regulations properly. He stated not all applicants cooperate with the commission.

Fred Bottomley stated many developers had used up the best land in Norton in the 1960's. He stated there is not much buildable property left in Norton. Earl Willcott stated there is approximately 30% buildable property left in Norton. Julian Kadish asked Mr. Bottomley what his concerns with the proposed bylaw are if indeed he states that the bylaw will not affect further development. Mr. Bottomley stated that town residents are fearing the bylaw and how the bylaw will affect their properties. Bob Kimball stated even though there is not much buildable property left in Norton, a bylaw would help to protect the quality of the drinking water and quality of the homeowners' properties in Norton. He told Mr. Bottomley that his agents did a great job in creating fear for the residents of Norton if a bylaw was to be voted in at the annual fall Town Meeting.

Julian Kadish stated that town residents are fearing that they will not be able to do anything with their properties which is not true. Fred Bottomley asked what they could do in a "no-build" zone. Julian Kadish stated that the proposed bylaw is not meant to stop development in Norton, but to ensure that development on what little buildable property is left, is done without adversely impacting residents properties. Fred Bottomley stated that if the proposed bylaw is implemented, the appeal process will become much more expensive and take longer to resolve. Jennifer Carlino stated this may already be the case according to what she has heard and read from DEP's recent budget cuts and the Governor's plans to re-organize DEP.

Chris Yarworth stated that it was not clear in the proposed bylaw that there would be exceptions to the rule on a case-by-case basis regarding the "no-disturbance" zone. Lisa Carrozza stated that obviously careful consideration would be given to a homeowner with a hardship circumstance.

Scott Goddard stated his main concern with the proposed bylaw was that the definitions of resource areas were too vague.

Bob Kimball, Selectman, stated that in the past, the former Conservation Agent, who was the Health Agent also at that time, gave him a very difficult time when he was building his own house and was not completely honest with the Conservation Commission about his findings in the field. He was in support of the proposed bylaw and the fact that each project would be reviewed individually taking into consideration any hardships of the applicant fairly.



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Jennifer Carlino stated the meeting was getting off track and she wanted to get through Step 1 before going into other Sections. She said after each Conservation meeting the Selectmen would be given an update of the proposed bylaw discussion. She stated that, aside from going from door to door, every method of notifying the public of the bylaw discussions has been used.

Ron O'Reilly brought up the fact that not many people attended, nor voted, at the previous annual fall town meeting.

Fred Bottomley brought up the fact that Norton has a lot of water bodies which have undeveloped land abutting them. He had concerns with the Commission allowing any activity or construction near the water bodies. Lisa Carrozza stated that each project would be reviewed under the Wetlands Protection Act just as they are reviewed at the present time. She said this will not change.

Chris Yarworth stated he had not had a chance to comment on the final draft proposed bylaw and Jennifer Carlino stated he had many opportunities to address the Commission with his comments but chose not to. He stated that two exemptions were not included in the proposed bylaw within Section H, "Exemptions" which are "mosquito control" and "maintenance of cranberry bogs", which he stated were included in the Wetlands Protection Act under Chapter 131, Section 40. Jennifer Carlino stated these are covered under Section H, number 3, "normal maintenance or improvement of land in agricultural and aquacultural use and do not have to be specifically listed.

Scott Goddard asked that the draft sections of the proposed bylaw be available for review as they are drafted, either by email or added to the website and she replied that they would be made available for review.

Lisa Carrozza made a motion, seconded by Earl Willcott, to adjourn the meeting at 9:40 pm. Approved.

Respectfully Submitted,



Jennifer Carlino  
Conservation Director  
JC/pmb