NATURAL RESOURCES COMMISSION
Meeting Minutes
April 18, 2007

Pursuant to the notice duly filed with the Town Clerk, the meeting of the Natural Resources Commission was held in the First Floor Meeting Room, 141 Keyes Road, Concord, MA at 7:05 p.m. on Wednesday, April 18, 2007. The following Commissioners were present: Chair, Paul Feshbach-Meriney; Alexander Easterday; Jamie Bemis; and Steve Verrill. Delia Kaye, Natural Resources Administrator, Katie Holden, Natural Resources Assistant Administrator; and Cynthia Gray, Natural Resources Administrative Assistant, were also present.

CONTINUANCES:

EMERSON HOSPITAL – 133 ORNAC / ANRAD DEP File #137-916:
Thad Soule of Beals and Thomas appeared. The Applicant requests confirmation of wetland resource area boundaries.

Thad Soule presented two plans. The first plan represented part of the Master Plan to confirm the Bordering Vegetated Wetland and Annual High Water Mark boundaries. Natural Resources Staff accepted the delineation.

Alexander Easterday moved to close the hearing. Steve Verrill abstained due to a possible conflict of interest. The remaining three Commissioners voted. Alexander Easterday moved to issue an Order of Resource Area Delineation with 1A being accurate. Jamie Bemis seconded. All so voted.

CAGGIANO – 94 Dalton Road / NOI–DEP File #137-922:
Scott Smyers of Oxbow Associates appeared together with Applicant, Matthew Caggiano. This project involves renovations and an addition to an existing single-family home. All work is contained in previously disturbed area.

Scott Smyers visited the site on April 13, 2007 and discussed the wetland boundary with Natural Resources Staff. There was a lot of surface water noted. At the site visit, DNR staff made a request for Scott to ask the Applicant to move the garage five feet forward to ensure compliance with the 50-foot setback policy for new structures. Scott Smyers indicated that this would change the design and the Applicant preferred the plan as proposed. After the site visit, Scott Smyers performed a soil profile that didn't meet the criteria for a hydric soil. Scott Smyers submitted this additional information and asked the Commission to accept the accuracy of the wetland line.

Ripley school is located to the west of the property, and in Mr. Smyers opinion the lack of stormwater infiltration has contributed to ponding on the subject property. Additionally, there is no continuity between the site and adjacent farmland, farmland; no obligate wetland species; flooding occurs in a sandy soil; and a diverse plant community when it dries out.

Delia Kaye noted that staff was not comfortable with the wetland delineation. This parcel is very level, historically part of the Bedford levels, and abuts the Ammendolia land. Hydric soils on the Ammendolia land were delineated by soils expert Peter Fletcher because of their complex nature, and the soils in the area in question appear wetter than those on the Ammendolia parcel.

Paul Feshbach-Meriney indicated that it was important to get the wetland line right and to probably shift the design to meet compliance with the 50-foot setback policy for new structures. Scott Smyers asked the Commission what would be protected by doing this.

Delia Kaye asked if the garage could be put on sona tubes. Katie Holden indicated that although the structure was not in the floodplain, flooding was a concern among the neighbors.

Scott Smyers indicated that he would discuss with the Applicant moving the garage five feet, but that it was his understanding that as a contingency plan, the wetland boundary would be declared accurate by his submitting an additional letter to DNR staff.

Scott Smyers indicated that he could connect wetland flags 083 to 087 as shown on the plan.

Delia Kaye discussed the pinch point. She also expressed that staff and the Commission needed more time to review the site and the soil profile in the field.

Alexander Easterday asked Scott Smyers to indicate where the test pits were in the pinch point area of the plan.

Matthew Caggiano asked for a date for the site visit to be scheduled. .Delia Kaye and Katie Holden scheduled a site visit with Scott Smyers for April 26, 2007 at 10:00 a.m. In the interim, revised plans would be submitted to DNR staff prior to the next meeting and the DNR office would accept those revised plans up till the meeting date as long as all parties agreed to findings in the field on April 26, 2007.

This hearing was continued to the May 2 meeting.

NEW APPLICATIONS

MASHITER – 427 Silver Hill Road / RDA #07-02:
The proposed project is for invasive species control and vista pruning within the 100-foot Buffer Zone to Bordering Vegetated Wetlands, Bordering Land Subject to Flooding, and the 200-foot Riverfront Area of the Concord River.

Julia Fiske of New England Environmental appeared. She indicated no work would be done within Bordering Vegetated Wetland. The project involves pruning limbs that are starting to grow in the view from the house. Trees are growing into the area of the existing porch. The Applicant is looking for a more permanent plan and would be obtaining the services of a licensed applicator to do the work and that native plants would be installed as needed.

Paul Feshbach-Meriney asked about the method of invasive species control.

Julia Fiske indicated the herbicides Rodeo (glyphosate) and Renovate (triclopyr) would be used.

Delia Kaye indicated that a cut and dab approach was acceptable but not foliar spraying. .

Alexander Easterday moved to accept the Finding of no determination of the resource area. Jamie Bemis seconded. All so voted. Jamie Bemis moved to issue a Negative #2 and #3 Determination and Special Conditions consisting of a site visit and no foliar spraying. Steve seconded. All so voted.

ESTABROOK ROAD NOMINEE TRUST (Parafestas) – 55 Estabrook Road / NOI DEP File #137-925: The proposed project is to construct an addition to an existing single-family home, driveway reconfiguration, invasive species work, renovations to existing terrace, and landscaping within the 100-foot Buffer Zone to Bordering Vegetated Wetlands and Bank, and Estimated Habitat of Rare Wildlife During a site visit before the public hearing, DNR staff observed work occurring in the 100-foot Buffer Zone (partially within the 25-foot NDZ) consisting of installing gravel adjacent to the driveway. DNR staff required erosion controls to be installed immediately and that this change be shown on the proposed plans.

Tim Santos of Holmes & McGrath appeared. Mr. Santos supplied revised plans at this meeting. He noted that the limit of work was installed with silt fence and hay bales. A small addition was proposed to the western side of the property and resurfacing of the existing terrace together with reconstruction of the stone wall.

Paul Feshbach-Meriney noted the storage of gravel along the driveway and discussed removing it outside of the 25-foot NDZ. Tim Santos indicated that the blue stone gravel was installed as a temporary extension to the driveway for use by construction vehicles. Tim Santos indicated that the temporary parking area would be restored following construction. Paul Feshbach-Meriney asked if it could be shifted or modified. Tim Santos indicated the low point was wet (driveway down from house and street) and therefore, the gravel was installed to provide parking there.

Delia Kaye requested more information on invasive species and that it be shown on the plan. She requested the Applicant submit a monitoring plan.

Alexander Easterday asked what exists in the southeast corner. Tim Santos replied that there was an existing terrace – brick and stone pavers and that the post was within the existing structure.

Jamie Bemis asked whether this was in the Historic District, and if so whether Historic Districts Commission had approved the work. Mr. Santos responded that he was not sure.

Paul Feshbach-Meriney asked if they could extend the hay bale line in one area. Tim Santos indicated that work around the back of the premises would be done by hand requiring no heavy equipment.

Al Easterday asked if it was a manicured lawn up to the stream. Tim Santos replied that the Applicant had obtained a permit for the easterly side of the stream to mow the meadow annually. Alexander Easterday suggested that the Commission make annual mowing of the meadow a Special Condition of the permit. Alexander Easterday asked if the Applicant could provide a five foot buffer to the stream which would only be mowed once a year.

This hearing was continued to the May 2 meeting at which time the Commission expects to close and issue an Order of Conditions.

FOX -13 Estabrook Road / RDA #07-03
It should be noted that this matter was taken off the agenda and then heard by the Commission at the request of William McNary of Stamski & McNary after all other applicants had finished. The proposed project is an after-the-fact filing for clearing and grading associated with constructing an on-site sewage disposal system within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

William McNary of Stamski & McNary appeared. He gave the Commission a copy of the plan and indicated that the work was within the Buffer Zone of adjacent property's wetlands.

Delia Kaye indicated that work done after-the-fact requires a Notice of Intent (NOI) rather than a Request of Determination of Applicability (RDA).

William McNary agreed to withdraw the RDA Application and submit a NOI Application.

McCOURT – 110 Nashoba Road / RDA #07-06
The project consists of constructing an addition to an existing single-family home, grading and restoration of disturbed lawn areas that occur within the 100-foot Buffer Zone of Bordering Vegetated Wetland. William McNary of Stamski & McNary appeared and presented the project.

Paul Feshbach-Meriney asked if hay bales were needed. Delia Kaye indicated that the site was flat and suggested Applicant use filter socks or silt fence.

Alexander Easterday moved to issue a Negative #3 Determination with one Special Condition for a preconstruction site visit. Jamie Bemis seconded. All so voted.

LANPHEAR – 798 Strawberry Hill Road / RDA #07-07 - The proposed project consists of grading, landscaping, installing a foundation drain associated with construction of a single-family dwelling within the 100-foot Buffer Zone to Bordered Vegetated Wetland. During a site visit before the public hearing, DNR staff observed work occurring in the 100-foot Buffer Zone. DNR staff required additional erosion controls to be installed immediately.

William McNary of Stamski & McNary appeared. He stated that there formerly was a house on the site and that the house had since been removed and a new septic system installed. The site has been sold. There are Bordering Vegetated Wetlands on an adjacent property and wetlands located on the easterly side of the abutter's driveway. A siltation barrier had been installed due to the upcoming rains. Bill McNary indicated that there was excess fill as this was not a balanced site.

William McNary indicated they would put rock around the proposed foundation drain (a ring of stones). Delia Kaye requested that the detail of the pipe be indicated on the plan instead of noting it as a Special Condition of the permit.

Alexander Easterday moved to issue a Negative #3 Determination with a revised plan to be supplied to DNR staff. Steve Verrill seconded. All so voted.

KRAMER – 71 Spencer Brook Road / NOI –DEP File #137-926 - The proposed project is to install underground utilities, repair an existing driveway and to realign the driveway within the 100-foot Buffer Zone to Bordering Vegetated Wetland. It is possible that the house construction, which is already

underway, is within Riverfront Area if the stream in the project area is determined to be perennial (shown as perennial on USGS mapping of the property).

William McNary of Stamski & McNary appeared with the builder, Chris Hart, and property owner Bob Kramer. This property is predominantly field. Underground utilities will be installed under a portion of the driveway. The current utilities cross through wetlands before becoming and overhead line, which is a potential maintenance issue. The floodplain was scaled from FEMA mapping and appears to cross the driveway, although Mr. McNary stated that the elevation change from the stream to the driveway make it very unlikely that the floodplain does in fact cross the driveway. No Special Permit from the ZBA was required.

Bill McNary presented the Commission with a copy of an Affidavit of Ned Perry, a previous occupant of the premises, which states that as a long-term resident of the property he has observed the stream dry on several occasions. Paul Feshbach-Meriney was concerned about the affidavit being considered credible evidence as stated in the regulations and he referenced the wording in Paragraph 6 of the Perry Affidavit. Paul Feshbach-Meriney also expressed concern about the wording in Paragraph 10 of the Perry Affidavit. The Commission expressed concern with setting precedent with using the Affidavit as credible evidence. Alexander Easterday expressed that the Commission should be given more time to think about this. Paul Feshbach-Meriney expressed that the Commission needed to come to a consensus. Delia Kaye expressed concern that more information was needed to determine whether the affidavit referred to drought or non-drought years. William McNary indicated that the requirements changed after 2002. Delia Kaye noted the change in the regulations in 2002 (4 consecutive days of a stream observed dry vs. 4 days in a year). Katie Holden asked if David Crossman had taken any photographs when he visited the site and saw no flow since it is a perennial stream on the USGS site.

Bob Kramer discussed the approved intermittent status of the stream upstream of this property. The NRC acknowledged that this had been determined to be intermittent, but that it was upstream and this portion of the stream is very close to Spencer Brook.

William McNary indicated that the driveway would be patched and repaved. Delia Kaye noted that the floodplain elevation must remain the same after the driveway work, or that compensatory storage should be provided. William McNary stated that no elevation was published for this particular portion of Spencer Brook. William McNary indicated that since it was not on the FEMA maps, that it could be computed, however, it would take a few days.

Chris Hart noted that the stone wall runs along Spencer Brook. The electrical line runs across wetlands to meet the pole. There is existing damage to the stone wall on the southerly side of the road.

Delia Kaye indicated the temporary disturbance within the 25-foot No Disturb Zone. The Commission discussed relocating the proposed utilities outside of the 25-foot NDZ. The Applicant discussed restrictions and mitigation for this work. Such as invasive species removal and replanting.

Katie Holden recommended use of silt fence only or filter socks instead of hay bales.

Paul Feshbach-Meriney noted that the Commission should review the paving/flood plain issue as well as the language in the Affidavit.

This hearing was continued to the May 2 meeting.

CLOSE HEARING/ISSUE PERMITS:
MAIONE – 57 Walden Terrace and 500 Walden Street / NOI – Plantings to mitigate for vegetative clearing and landscaping that occurred within the 100-foot Buffer Zone to Bordering Vegetated Wetlands – DEP File #137-920.

Scott Smyers of Oxbow Associates appeared. Revised plans were submitted by Scott on this day.

Katie Holden acknowledged receipt of the plans and indicated that they were in order.

Alexander Easterday moved to close the hearing. Jamie Bemis seconded. All so voted.
Alexander Easterday move to accept Finding A. Steve Verrill seconded. All so voted.
Alexander Easterday moved to issue a standard Order of Conditions with Special Conditions. Jamie Bemis seconded. All so voted.

GRACE PROPERTIES, LLC - 63B Cambridge Turnpike / NOI - Road construction and associated grading, construction of two single-family dwellings with associated subsurface sewage disposal systems, driveways and utilities - DEP File #137-919

Roy A. Cramer, Esq. of Frieze, Cramer, Cygelman, Rosen & Shubert, LLP attended with Applicant, Michael Malouf.

Katie Holden indicated that revised plans had been submitted but a notation needed to be inserted on the plan to include an environmental monitor.

Alexander Easterday noted that changes should be submitted for review.

Katie Holden expressed that staff and the Commission needed time to review the changes.

Delia Kaye indicated that the changes that Attorney Cramer requested included revisions to the standard Special Conditions.

Michael Malouf indicated that the changes were nothing more than clarifications. He indicated that he and Attorney Cramer would speak with DNR staff to work through the changes.

Alexander Easterday moved to close the hearing. Jamie Bemis seconded. All so voted.

REQUEST FOR CERTIFICATE OF COMPLIANCE

CANNON – 42 Shore Drive DEP File #137-828

Staff presented a request from Joseph Cannon for a Certificate of Compliance for 42 Shore Drive, DEP File #137-828. Jamie Bemis moved to issue a Certificate of Compliance for 42 Shore Drive. Alexander Easterday seconded. All so voted.

OTHER BUSINESS

Warrant Article 41: Improvement & Maintenance of Off Harrington Avenue (By Petition)

Steve Verrill went out to the site on a rainy day and indicated that it needed grading but there was no impact to the pond. Paul Feshbach-Meriney also visited the site and witnessed no excessive erosion to the pond. He noted that Delia Kaye had made similar observations as previously reported. Alexander Easterday noted that the Commission didn't see evidence based on observations. The Commission is against Warrant Article 41.

Kevin Dionne, Off 24 Harrington Avenue also appeared.

CRSC Update (Hasso Ewing)

Hasso Ewing appeared as did soon-to-be new member, Ann Colony. Hasso presented copies of Baseline Documentation reports to the Commission. The CRSC established a protocol for creating these reports based on Audubon's manual. She reported that the Town of Concord currently has over 70 Conservation Restrictions. The CRSC has been able to complete 4 reports that year. There was a time sheet in the front page of the report to keep track of time spent. Hasso Ewing indicated that the Natural Resources Commission was responsible for monitoring. Hasso Ewing requested the Natural Resources Commission's help in obtaining monies from CPC to hire someone to help complete reports for all the Conservation Restrictions.

Ann Colony noted that taking pictures and referring back to old photos would help with future challenges.

Hasso Ewing was concerned with the liability issues that the Town would be facing. She noted that the CRs should capture the whole property and not just where the CR was located l.

Delia Kaye suggested checking with the Sudbury Valley Trustees as they had been looking for an intern to do their work.

Katie Holden noted that the work should be done by a professional.

Steve Verrill noted that the Agricultural Preservation Restrictions have the same problem of not being monitored.

Hasso Ewing suggested prioritizing the CRs and establishing an enforcement policy. CRSC can only report violations to the Commission because only the Commission has enforcement authority. Katie Holden suggested checking the Land Trust Alliance website for example policies.

Alexander Easterday suggested establishing a database. Alexander Easterday noted that if a database were in place, if a building permit was pulled, the GIS map could be referenced.

Delia Kaye noted that Health, Planning, Building, and Natural Resources are working to develop a permit tracking system.

Paul Feshbach-Meriney indicated that the Commission would put the general policies together.

CCHS Reforestation Initiative (Hasso Ewing)
Hasso Ewing stated she offered to help with the Reforestation Initiative. She stated instead of planting a individual trees in separate locations, she wanted to find places on conservation lands that had invasives species which could be removed and replanted with trees to provide better habitat.

Delia Kaye indicated that nothing further would be done until after Town Meeting.

WWP Conservation Restriction (215 Fairhaven Hill Road)
Kristen Wilson of Beals and Thomas appeared together with Kathi Anderson, Executive Director) of Walden Woods Project, and **Rod Malitsky, prospective property owner.**

Kristen Wilson discussed a Conservation Restriction to be granted to Walden Woods Project upon selling a portion of the property. Kristen Wilson presented a display of aerial photos and a scenic view of the property within the Conservation Restriction area (Parcel A). The CR would allow a barn within the restriction to be replaced within the existing footprint. There would be no public access within the Conservation Restriction area, but there will be a Trail Easement Agreement on the land adjacent to the Conservation Restriction. The Commission asked what the CR provided for public benefit. Kristen Wilson described the scenic view as public benefit. Kristen Wilson indicated that they hoped to have the Conservation Restriction in place by June.

Steve Verrill asked whether the affordable housing assurance to the Town for the Brister's Hill parcel was being considered here. Kathi Anderson replied that it was not part of the CR.

Delia Kaye indicated that the Conservation Restriction needed to be reviewed so that there could be adequate discussion as to what the public benefit was for this CR. Delia Kaye asked the purpose of the Conservation Restriction for Lot 1. Kathi Anderson replied that the CR was to protect as much of the land as possible, to keep the field with the house so that it could be sold together in order to protect the field itself, plus the view from the premises across the Sudbury River allowed one to see Mt. Wachusett in the distance.

The Commission recommended having the Conservation Restriction reviewed by Gordon Bell.
The Commission was in general favor of the Conservation Restriction and indicated that a vote by the Commission would be expected at their May 2 meeting.

Approve NRC Minutes: February 21, 2007, March 26, 2007 and April 4, 2007
Jamie Bemis moved to accept the February 21, 2007, March 26, 2007, and April 4, 2007 Minutes. Steve Verrill seconded. All so voted.

Middlesex School Monitoring
Delia Kaye discussed wetlands construction monitoring at Middlesex School and suggested hiring the same consultant who monitored last year, Chuck Katuska, The Commission agreed to continue to hire a consultant to help monitor this project.

Blanding Turtles
Delia Kaye requested authorization of $3,000 to continue the Blanding Turtle study. Bryan Windmiller estimated that it would cost upwards of $5,000. Delia Kaye stated that possibly the Concord Land Conservation Trust could contribute the additional $2,000. This would be the fifth year of the Blanding Turtle study. The Commission indicated being in favor of funding, but requested that a long-term plan for study and funding needs be identified.

The meeting adjourned 11:00 p.m.

Respectfully submitted,

Delia Kaye, Natural Resources Administrator

Katherine Holden, Natural Resources Assistant Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant