

MINUTES

Southampton Conservation Commission
Lanabee School Building

November 27, 2003

Time: 7PM

Present: Robert Floyd, Tom Gentile, Mark Nunnis, Tom Moore, Mark Reed

Absent: Joe King, Joy, Andrea Lucchini

Opening meeting to public (no quorum until 7:35 when Tom Gentile arrived)

7:15 PM
HOLYOKE
TO BFC
WORKS

Holyoke Water Works
MRP 287 53
Request for Certificate of Compliance

Butch Sydel was present to formally request, via Tighe & Bond's May 15, 2003 letter, The Commission's issuance of the Certificate of Compliance. Jim Moore explained several issues that first needed to be addressed, i.e. the species tree that died, mowing on the wetlands during the wet season, etc. The 1997 Order of Conditions requested three items to be performed according to 802SS94 No. Sydel and he stated that they were in compliance. ~~Mr. Sydel presented photos of a species tree planted by the district.~~ Jim Moore requested Mr. Sydel contact the three about Commission (MRP 16, JK, MR) by e-mail to learn of their issues before meeting with the Commission as a whole. Mr. Sydel requested the Commission contact David Conti.

7:35 PM

Tom Gentile arrived at meeting; Meeting formally starts

Mr. James Boyle announced his lawyer sent the Commission a letter requesting copies of minutes, etc. Jim Moore apologized stating they were not ready yet and asked Mr. Boyle if he'd accept a delay. Jim Moore called for a meeting November 24, 2003 to finalize the minutes. Mr. Boyle agreed to this date. Robert Floyd addressed Mr. Boyle explaining the Town Hall's policy regarding the copies of tapes be requested from the Commission. The Town's policy is for the requester to provide the tapes and pay \$11.70/hour to transcribe the tapes. Mr. Boyle said he'd first want to review the minutes.

7:45 PM
VINCENT CROSS
PUBLIC
HEARING

VINCENT CROSS
No. 100 of Vincent
Continuance of Public Hearing

Vincent Cross provided new photos of his bank work showing eye and regular grass blend growing nicely. Jim Moore requested the silt fence stay in until after high water next spring. Mr. Cross acknowledged and agreed to this. Also any rivulets or gullies need to be addressed immediately by stuffing hay or riprap into them. He suggested keeping additional riprap on site and ~~also~~ also a couple extra haybales. Mr. Cross before and after photos were placed in his file. Mr. Cross said the recent 5" rain storm did not breach the riprap or silt fence. The water rose up lifting some of the haybales off the stakes. They were replaced. The abutter notification ~~were~~ were three short, two being sent in that day. Through across the race-diving in the transfer was ~~notified by e-mail~~ but has not yet responded. A neighbor attended earlier before the meeting concerned with concern of the laundry line. ~~Mr. Cross~~ Cross will meet with the neighbor to rectify the concern. ~~After being notified~~ Commission ~~for~~ for ~~notification~~ notification, ~~Commission~~ Commission, ~~the~~ the ~~abutter~~ abutter ~~was~~ was ~~notified~~ notified ~~by~~ by ~~e-mail~~ e-mail ~~but~~ but ~~has~~ has ~~not~~ not ~~yet~~ yet ~~responded~~ responded. A neighbor attended earlier before the meeting concerned with concern of the laundry line. ~~Mr. Cross~~ Cross will meet with the neighbor to rectify the concern. ~~After being notified~~ Commission ~~for~~ for ~~notification~~ notification, ~~Commission~~ Commission, ~~the~~ the ~~abutter~~ abutter ~~was~~ was ~~notified~~ notified ~~by~~ by ~~e-mail~~ e-mail ~~but~~ but ~~has~~ has ~~not~~ not ~~yet~~ yet ~~responded~~ responded.

The Commission adjourned until the next meeting to continue the proceedings.

Mount Royal Health memorandum from Joe Slattery of November 1, 2003. It stated the photos submitted showing paper passing water into the Bowden Run a tributary behind 1125 Strong Road was submitted by the Board of Health. It described the videotape shot by Gary DeLeon documenting precisely the problem of the flow with erosion and siltation in the waterway. The Commission will join Joe Slattery for a combined site visit. We will meet him in front of the Mack Estate's house on November 23, 2003 at 1:00PM to 2:00PM. We will then proceed to the Strong Road property.

Frank Tom
Green

David Brown's Heritage Survey's letter of announcing Run & Run Creek's intention to build a 13 mile subdivision. He stated there will be a submission to the Commission at a future date due to the proximity of the proposed detention basin to the wetland area.

11:00-11:30 AM

Joe DeLoe
POB-17
Dale
HERBERT

Joe DeLoe was present to present plans to the Commission requesting a DCA. Mr. DeLoe wishes to clear 1.77 acres on the east side of High Street, to restore the Mount Tom view and improve the property. Mr. DeLoe has contacted Brian Wing to clear 50 clumps of spruce. 4-5' diameter near the intermittent stream. Difficult timber zone. The Commission will conduct a site visit, November 23, 2003 at 12:00 to 12:45PM. No DEP application has been filed.

Vincent Green met with Mack to review his fence. *for 22 minutes*

ROBERT FLOYD discussed The Advanced MAAC on Buffer Zones, DEP plans to streamline the application process giving the Commission authority to check a 30-day Fr. file as to some cases in lieu of a NOI.

Spring Update at 5 Garfield Avenue - no new information

Muple Street, Vernal Road - no new information

Board Young Wildlife Sanctuary No Bunting Signage has been ordered. BP indicated five signs are nearly completed with the Commission's budget of \$300. BP will hang signage when ready.

Ken's Romania AIR - program - no new information

Mr. & Mrs. ^{Texas} Boyles' BW cannot be signed at this time.

Bob Fletcher's contract with the Commission to now remove fields has not yet been completed. ~~It was~~ stated Bob Fletcher told him three times in the last three weeks that the concrete rough material to be moved for already been muddered - was carefully as erosion control material. ~~It was~~ stated the fields need to be moved now or they will be ruined by next year for their original purpose. ~~It was~~ recommended the Commission send a letter informing Mr. Fletcher he has been in violation of our contract with him for the last three years. We need to be prepared towards the Commission and we contacted Mr. Fletcher to re-negotiate any grassland habitat. ~~It was~~ will draft letter for the Commission's November 24, 2003 meeting.

NEW BUSINESS

1125 Prichard Road - DEP - *Muspele with Jerry Baze of DEP today.*

Mack Beal visited property recently noting *tree* has been cut down at the edge of the house as a lawn. ~~There is~~ *There is* a Vernal Pool in a horse pasture. The Commission will conduct a possible site visit, November 23, 2003.

Rabbin Lefkowitz of the Commission had signed off on the Fire dump project. ~~It~~ replied he recently was present on a couple of site visits and a number of soil erosion situations were repair. ~~It~~ formed with Jim Bering recently and the vegetation was stable. The Commission signed off on this project approximately 3 months ago and we are not monitoring it anymore.

~~It~~ informed the Commission the Request Bond team will not construct wood harvesting as previously agreed. They still expect to receive one more installation of 50,000 and want to provide some educational material. The money already allocated went toward purchasing an \$35,000 house. ~~It~~ Statowicz destroy the building in order to construct a shed for year round first house, my plan is to... *the Board cannot... will not... 2003.*

BOLYON Water Works. HE offered his observations. The Commission AGREED TO RESPOND IN WRITING in a month or so.

IG expressed concern about a homeowner's property near the Southampton/Easthampton border. Years ago a sandbar formed in the Easthampton side of the Manhan River. This formed two channels: 1. the river causing erosion on the Southampton bank. Historically, Ed Canley, Jim Gracie, Ed Moore and Joe Slattery visited the site to explore various solutions. No one had any money at the time to assist the landowner. The Commission will investigate the current status. HE will approach Ed Canley for an update. Barbara LaPlam suggested the Almoners' Fund and the Council on Aging as possible ideas.

IG referred to today's article in the Springfield Republican about EPA money appropriated to Cemetery Tombstone restoration. There is a current proposal for Cemetery fence restoration with the Town's Community Preservation Committee.

~~2/24/2011~~ Robert Floyd motioned to adjourn the meeting, second by Mark Reed. voted unanimously

2/24/2011
9:30 PM
A

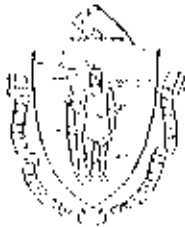
November 17, 2003

Mail

- Post Office Mail \$24
- Holyoke Waterworks double postmarked Nov. 11 & 12
- Daily Hampshire Gazette invoice
- Earth Night food-raising event
- DEM Amherst Forest cutting plan file #276-5994
- Daily Hampshire Gazette invoice
- Daily Hampshire Gazette invoice
- National Geographic Society
- The O'Leary Company - Harley-Davidson, 17 College Highway
- 2 Toxic Use Reduction Institute pamphlets
- COASTLINEPS urban harbors institute
- Co-WMECO letter 10/31/03, to Ken Melo, Division of Fisheries and Wildlife to DEP 10/27/03, cutting plan #276-5994
- Certified: Vincent Cross, his receipt of 11/11, notice of his 7:15 PM meeting
- Steve Thibault WPA appendix B, form with check #3349 for \$40.
- Kopelman & Paige, P.C. 10/9/03 Sprint cell tower, Glendale Road
- Green Law Firm letter - Mark Kassis
- NHEHP rare plant management plan
- OMASS extension, "in common"
- Green Law Firm, Oct. 30 letter - Red Brook
- Heritage Surveys - King Oak Estates, undated, with map -- subdivision
- Board of Health, 11/17/03 25 Strong Road photos

CONSERVATION COMMISSION
MEETING
NOV. 17, 2003

| | SIGN NAME | PRINT NAME |
|----|------------------|------------------|
| 1 | Robbie Baker | ROBBIE BAKER |
| 2 | Frank D. Wayne | FRANK D WAYNE |
| 3 | Edward Nied Sr | Edward Nied Sr |
| 4 | J. Dads | Joss Dads |
| 5 | Brenda M. LaFlam | BRENDA M. LAFLAM |
| 6 | Francine Boyle | Francine Boyle |
| 7 | J. F. Satterly | J. F. Satterly |
| 8 | Vincent Cross | Vincent Cross |
| 9 | (RF) JAMES BOYLE | |
| 10 | | |
| 11 | | |
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| 13 | | |
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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WESTERN REGIONAL OFFICE

115 Dwight Street • Springfield, Massachusetts 01103 • (413) 781-1100

MIKE ROMNEY
Governor

ELLIEN ROY FISHERLEDER
Secretary

KERRY HEALY
Lieutenant Governor

ROBERT W. GOLLETTAS, Jr.
Commissioner

OCT 27 2003

Mark Kassis and Ellen Senghas
19 Fomer Road
Southampton, Massachusetts 01073

RE: DEP Wetlands File #259-142
Request for Superseding Order of Conditions
Red Brook Estates, Fomer Road, Southampton

Dear Mr. Kassis and Mr. Senghas:

The Massachusetts Department of Environmental Protection (hereinafter the Department) is in receipt of your appeal of the Southampton Conservation Commission's Order of Conditions, issued under the Massachusetts Wetlands Protection Act, MGL c. 131, § 40 (hereinafter the Act) and postmark-dated October 6, 2003, for the project referenced above. The Department will determine if your appeal, postmark dated October 16, 2003, is valid under the regulatory requirements of 310 CMR 10.05(f).

As part of the Department's review of this project proposal and per 310 CMR 10.05(f)(ii), a representative of this office will conduct an informal on-site meeting. All interested parties are invited to attend.

This informal meeting will be held at the site on: **Tuesday, November 4, 2003, at 11:00 am.**

Per the authority granted it at 310 CMR 10.05(f)(e), the Department hereby requests that the following requisite information be submitted *by the applicant* in order to facilitate its review:

1. A written alternatives analysis specific to 310 CMR 10.55(4)(c)1.c. ("proposed use"), in terms of the "economic viability" of:
 - a. An alternative subdivision design that eliminates any alteration of the Riverfront Area of Red Brook through reduction in the proposed number of lots, such that requirements under Southampton Planning Board bylaws would not require a secondary egress;
 - b. An alternative subdivision design that eliminates any alteration of the Riverfront Area of Red Brook through reduction in the proposed length of the subdivision access roadway, such that requirements under Southampton Planning Board bylaws would not require a secondary egress;

- e. Any combination or permutation of the above that results in less adverse effect to the Riverfront Area of Red Brook.

Please note that such an analysis must establish that any given differential in the cost of one alternative versus the next is "prohibitive" per the definition at 310 CMR 10.58(4)(c)1 a. Additionally, any legal/logistical constraints [310 CMR 10.58(4)(c)1 d], such as zoning setbacks, must be argued through citation of applicable bylaws, and must be supported by delineation or illustration on a revised site plan.

As the Department understands that the applicant owns the entirety of the land that is the subject of this appeal, elimination of lots and/or shortening the proposed subdivision access roadway typically have no affect upon establishing a "prohibitive cost" (in fact costs would be reduced in most instances). An alternatives analysis of this nature may only be addressed when discussing "proposed use" [310 CMR 10.58(4)(c)1 c.] in terms of "economic viability". If such an argument is made, costs must be broken down by type of expenditure, whilst "economic viability" must be presented as projected per-unit monetary value based upon an actual assessment of the regional real estate market.

2. Should the preferred alternative be determined to be the least damaging practicable alternative, a written alternatives analysis that details and justifies the "prohibitive" nature of "costs" associated with installation of a Stormceptor system and/or underground storage cells, as is required at 310 CMR 10.58(4)(c)1 a. Information provided with the Notice of Intent and subsequently does not reach this standard.
3. Should the preferred alternative be determined to be the least damaging practicable alternative, a written alternatives analysis that details and justifies the "prohibitive" nature of "costs" associated with installation of roadside retaining walls for the proposed secondary egress, as is required at 310 CMR 10.58(4)(c)1 a. Information provided with the Notice of Intent and subsequently does not reach this standard.
4. A revised site plan showing the extent and geographic position of any certifiable vernal pool habitats (as defined at 310 CMR 10.04) upon the parcel in question, or within 1,000 feet of any parcel boundary.
5. Evidence of compliance with 310 CMR 10.07 and 310 CMR 10.05(7)(f)1. This letter serves to notify you per the Department's obligation at 310 CMR 10.07(2) that this project appears to exceed thresholds under the Massachusetts Environmental Policy Act (MEPA), MGL c. 30, §§ 61 through 62H. The applicant should confirm this status and file either an Environmental Notification Form or an Environmental Impact Report as required by MEPA.

In order to process this Departmental action in a timely fashion, the Department requests that you submit the above requested information no later than close of business on Monday, November 3, 2003. Please be advised that no work may proceed until the Department issues a final decision on this matter.

Correspondence to the Department should be sent to the attention of David Foulis of the Wetlands Program. All correspondence must be copied to all parties in this matter. If you have any questions regarding this on-site meeting notification and information request, please feel free to contact David Foulis at 1-413-755-2181.

Sincerely,

Robert J. McCollum
Wetlands Program Chief

RJM/dbf

F:\mccoll\WET\NO\WET\template\WET\NO\WET\NO\144\On-site Letter

Certified Mail #2005 0500 0005 8444 2043, return receipt requested

re Southhampton Conservation Commission

Jim Boyle Construction
James E. and Patricia A. Boyle
Post Office Box 290
Easthampton, MA 01027

Heritage Surveys, Inc
Bruce A. Coombs, President
Post Office Box 1
Southampton, MA 01075

Massachusetts Natural Heritage & Endangered Species Program
Patricia Duckery, NHE&SP Wetlands Environmental Reviewer
State Route 135
Westborough, MA 01581

HERITAGE SURVEYS, INC.

Professional Surveyors and Engineers

College Highway & Clark Street

P.O. Office Box 1

Southampton, Massachusetts 01073-0001

Bruce A. Cronin, President
Professional Surveyor, MA, CT & VT
E-mail: bruce@heritage-surveys.com

Telephone: (413) 527-4600
Facsimile: (413) 527-8200
Website: heritage-surveys.com

Town of Southampton
Town Clerk
Post Street - Town Hall
Southampton, MA 01073

RE: Preliminary Subdivision Plan Application
King Oak Estates
Pomeroy Meadow Road Extension
Assessors Map 24, Parcel 20
Southampton, MA
PST Job #2471-021120

Dear Town Clerk:

On behalf of our clients, Thomas M. & Frances J. Cross, we are submitting one (1) print of a Preliminary Subdivision Plan King Oak Estates, Southampton, Massachusetts, Surveyed for Thomas M. & Frances J. Cross, dated October 27, 2003, showing land located at the end of Pomeroy Meadow Road Extension and the end of Helen Drive, Southampton, MA (Assessors Map 24, Parcel 20). The parcel consists of 26.05 acres of land and is located in the Residential Village Zoning District with a minimum lot width of 130 feet and 30,000 square feet of lot area, as outlined in Table 2-Area Regulations for the Zoning By-Laws of the Town of Southampton. The proposed subdivision consists of thirteen building lots and a parcel for recreational use donated to the Town of Southampton. The proposed project will also involve the construction of a cul-de-sac extending off of Helen Drive and a roadway that will connect Helen Drive and Pomeroy Meadow Road Extension. The proposed right-of-way is fifty foot wide with a twenty-six foot wide paved roadway.

The applicants are requesting two waivers from the Rules and Regulations Governing the Subdivision of Land in the Town of Southampton, Massachusetts:

1. A request that sidewalks be constructed on only one side of the proposed roadway, as shown on the above referenced plan.
2. The second waiver requested is to allow the proposed length of the dead end street/secondary street, which is proposed to have a length of 650' from the intersection of Helen Drive and Pomeroy Meadow Extension to the center of the proposed cul-de-sac, as shown on the above reference plan.

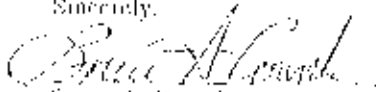
The applicants are proposing to donate a 42,871 square foot parcel of land to the Town of Southampton, for possible recreational use, in exchange for the above requested waivers, which were discussed at a meeting held on September 30, 2003.

The following items are also being submitted:

1. Form B - Application for Approval of Preliminary Plan.
2. A copy of a check referenced to the Town of Southampton (check #12327) in the amount of \$150.00
3. Copy of a worksheet showing an application for calculation
4. Copies of letters addressed to the Southampton Planning Board and Southampton Board of Health.

We would appreciate you directing any correspondence regarding the above referenced project to Thomas M. & Frances J. Cross, 180 College Highway, Southampton, MA 01073 (413) 527-4474, with copies of same to Heritage Surveys, Inc.

Sincerely,


Bruce A. Cronin

cc: Southampton Planning Board w/2 print
Southampton Board of Health w/1 print
Southampton Conservation Commission w/1 print
Southampton Highway Department w/1 print
Thomas M. & Frances J. Cross

Rec'd
COW.COM

LEONARD BLUMBERG
ROBERT H. BRADY
ELIZABETH A. CLARK
JOHN W. COLEMAN
CATHARINE J. GARDNER
JOEL B. HARRIS
JOSEPH L. HARRIS, JR.
STEPHEN R. HOWEN
BERNARD A. LEELEY
MICHAEL HOWEN
DAVID J. MORTIMER
JIMMIE C. O'BRIEN
KATHLEEN P. O'NEILL
DAVID C. O'NEILL
MARC S. O'NEILL
DEAN W. PERRY
DARRYL H. PETER
NATHAN M. RICHMOND

THOMAS M. KELLY
DIRECTOR
WILLIAM HOWE III
CLERK

KOPELLMAN AND PARO P.C.

ATTORNEYS AT LAW
41 ST. JAMES AVENUE

DORCHESTER, MASSACHUSETTS 01913-4100

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WWW.KOPELLMAN.COM
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PAUL J. M. COUGHERLI
SANDRA M. CHARYAN
PATRICIA A. GAYTON
THOMAS P. FANELLO
MARTIN J. GARDNER
THOMAS W. MURPHY
KATHLEEN GOSSEL GAVEL
GEORGE J. DELOACH
PAUL H. GARDNER
JAMES H. TAYLOR
JOSEPH A. HENNING
MORTIMER B. HANSEN
GREGORY J. TORRES
EDWARD J. HILLMAN
LEONARD A. O'NEILL
ELIZABETH B. O'NEILL
MARCELLE LA BELLA
MICHAEL J. HARRIS
JOHN J. GARDNER
THOMAS M. KELLY
THOMAS M. KELLY
THOMAS M. KELLY
THOMAS M. KELLY
THOMAS M. KELLY

October 9, 2003

Hon. Kenneth Malo and
Members of the Board of Selectmen
Southampton Town Hall
P.O. Box 397
Southampton, MA 01073-0397

RECEIVED

OCT 14 2003

SOUTHAMPTON SELECT BOARD

Re: Sprint Cell Tower, Glendale Road

Dear Members of the Board of Selectmen:

You have requested an opinion regarding a proposed cell tower to be constructed by Sprint Spectrum PCS ("Sprint") on a parcel of land owned by the Town on Glendale Road, Assessor's Map 13, Parcel 76 ("the Property"). You have asked if the use of the Property is limited to water supply purposes or whether it may be used for the proposed cell tower. I am assuming for the purposes of this opinion that the Town is considering entering into a lease with Sprint for all or a portion of this parcel.

In my opinion, the use of the Property is restricted to water supply purposes. It is therefore my opinion that use of the Property for any other purpose, including a cell tower, may not occur unless and until all necessary approvals are obtained to release the restriction. These approvals include: the State Legislature under Article 97 of the Amendments to the Massachusetts Constitution and G.L. c. 184, §32; the Board of Water Commissioners, as the custodian of the Property, and Town Meeting under G.L. c. 40, §15A; the Secretary of the Office of Environmental Affairs ("Secretary of Environmental Affairs") and/or the Department of Environmental Protection ("DEP") under G.L. c. 40 §15B and c. 184, §32; and the Metropolitan District Commission under G.L. c. 182, §32.

You have informed me of the following facts. The deed to the Property was recorded at the Hampshire County Registry of Deeds on June 23, 1994, at Book 4501, Page 034. The deed conveys the Property to the "Inhabitants of the Town of Southampton, under the direction and management of the Board of Water Commissioners" and states that the Property was purchased by the Town, "subject to the terms and conditions of certain grant agreement from the Commonwealth of Massachusetts

KOPPELMAN AND PAIGL, LLC

Hon. Kenneth Malo and
Members of the Select Board
October 9, 2003
Page 2

Department of Environmental Quality Engineering, accepted by the Town of Southampton on July 22, 1986, identified as 'Project #17: Aquifer Land Acquisition', annexed and incorporated by reference as Exhibit 'A' ["Exhibit A"]. Among the conditions in Exhibit A is condition 8, which provides:

The Grantee agrees that any property or facilities acquired for the Project will not be used for purposes other than those stated in the Act [St. 1982, c. 286], the regulations [310 CMR 24.00], or this Agreement, nor otherwise disposed of, unless the Grantee receives the appropriate authorization from the General Court required by Article 97 of the Amendments to the Massachusetts Constitution, with the approval of the Secretary of Environmental Affairs, under C. 184, §32, and any authorization required by the provisions of Massachusetts General Laws (M.G.L.) c. 40, §15B.

On September 22, 2003, DEP wrote to the Board of Water Commissioners inquiring whether deed restrictions might affect the use of (what I assume to be) the Property and requesting further information regarding those deed restrictions:

You also have sent me a deed recorded at Book 4820, Page 0175 for land acquired by the Town on January 26, 1986 for "water supply protection", which contains similar conditions to that quoted above regarding the Property. It does not appear that you are inquiring about that land, but if you are intending to lease that land, the same general analysis would apply.

i. Article 97

Article 97 of the Amendments to the Massachusetts Constitution authorizes the taking of land for conservation and other purposes and provides, in part, "that land and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote... of each branch of the general court." In my opinion, because a lease of the Property to Spirit constitutes a disposition and a change in use of land within the meaning of Article 97, a two-thirds vote of the Massachusetts Legislature is required to authorize the Town to enter into a lease and to change the use of the land. In my further opinion, the appropriate mechanism for the Town to request legislative action under Article 97 would be a home rule petition approved by Town Meeting.

Hon. Kenneth Malo and
Members of the Select Board
October 9, 2003
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2. General Laws, c. 184, §32.

General Laws c. 184, §32, as applicable here, requires approval of the Secretary of Environmental Affairs if land that is subject to a "watershed preservation restriction" is to be used for another purpose. In my opinion, pursuant to Exhibit A, the Property was acquired subject to such a restriction. In addition to the Secretary's approval, §32 requires approval by (a) the Board of Selectmen; (b) the Metropolitan District Commission; and (c) a two-thirds vote of both branches of the Legislature (the vote as required under Article 97).

3. General Laws, c. 40, §15A.

General Laws, c. 40, §15A, governs the change in use and transfers of land by municipalities and provides, in relevant part: "Whenever a board of officers having charge of land for a specific purpose shall determine that such land is no longer needed for such purpose, such board or officer shall forthwith give notice of such determination to the board of selectmen." In this instance, the land is currently held for "watershed protection purposes." Since the Board of Water Commissioners has charge of the Property, that Board must first provide notice to the Board of Selectmen that the Property is no longer needed for watershed protection purposes.

Section 15A also provides:

At any time after the receipt of said notices, the Town by a two-thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the town for another specific municipal purpose,

I am assuming that it is the intent of the Town that the Property continue to be under the custody of the Water Commissioners and that it continue to be held for water protection services, with the additional use (lease for a cell tower). In my opinion, such an additional use still requires a town meeting vote under c. 40, section 15A, since that statute applies to any change in use, including the addition of a new use.

4. General Laws, c. 40, §15B.

Under c. 40, §15B, DEP must approve the lease of land no longer needed for public water supply works.

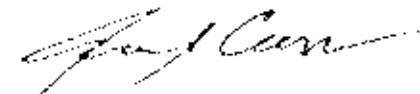
KOPELMAN AND FAIGEL, P.C.

Hon. Kenneth Malo and
Members of the Select Board
October 9, 2003
Page 4

Finally, I note that Exhibit A, specifically Conditions 9 and 10, provides that the grant funds obtained to purchase the Property could have to be refunded to the state. I therefore recommend that as part of the process by which the Town obtains the necessary approvals for release of the restrictions to permit use of the Property for a cell tower that provision be made so that the Town does not have to refund the grant funds. For example, the Article 97 petition should include a provision that the grant funds do not have to be refunded so long as the Property continues to be used as described in Exhibit A, except for the portion upon which the cell tower will be located. Similarly, as part of the DEP approval process (see Exhibit A, Condition 3), the Town could negotiate with DEP regarding changes to the "Implementation Plan" which would allow the use of the Property for a cell tower. I also recommend that you contact the DEP to determine how the agency has responded to requests from other municipalities to use land acquired for water supply purposes for cell towers.

If you have any further questions or would like further assistance concerning this matter including drafting of any warrant articles, please do not hesitate to contact me.

Very truly yours,



Patricia A. Cantor

PAC/df
1034928/SPAM/CPIN

Tighe & Bond

Consulting Engineers
Environmental Specialists

EL-6873-01
May 15, 2003

Town of Southampton
Conservation Commission
P. O. Box 343
Southampton, MA 01073-0343

Attn: Mr. James Moore, Chairman

Re: DPP File 287-53
Holyoke Water Works
42" Transmission Main

*Accepted as
official
request
on 11/17/03
[Signature]*

Dear Mr. Moore:

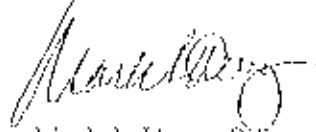
We are writing on behalf of the Holyoke Water Works (HWW) to officially request that a Certificate of Compliance be issued by the Conservation Commission stating that the work of the above referenced project has been satisfactorily completed.

All outstanding work detailed in Southampton's Conservation Commission's letter of September 9, 1998 (1. Mitigation and restoration at the Manhan River crossing to the easterly bank and 2. restoration of the wetland easterly of Brickyard Road) has been completed.

Please review these two areas at your earliest convenience and, if acceptable, issue a certificate as soon as possible. If you have any questions in these areas or other project-related concerns, please contact me.

Very truly yours,

TIGHE & BOND, INC.



Mark J. Hoy, P.E.
Vice President

68163/2/03/T&B/VM/MS, INC

Copy: HWW - BWC
HWW - DMCC, Mgr

*Holyoke Center Leads
David Costello, Manager
20 Commercial St.
Holyoke, MA 01040
email: Costello@ci.holyoke.ma.us
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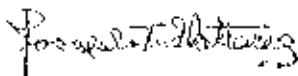
Memorandum

To: Southampton Conservation Commission
cc: File
From: Southampton Board of Health
Joseph F. Slattery, Chairman
Date: 11/1/03
Re: 25 Strong Road photographs

Gentlemen,

Please be advised that the photographs given to your board member Robert Floyd, in October 2003, regarding 25 Strong Road, were submitted to the commission from the Board of Health.

Very truly yours,



Joseph F. Slattery, Chairman

GREEN, MITES, LIPTON, WHITE & FITZ-GIBBON

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BRIAN L. FLAGLER
JOEL REYNOLD

October 30, 2003

Chairman/Secretary
Conservation Commission
Town of Southampton
Town Hall
8 East Street
Southampton MA 01073

Re: **Freedom of Information Request/Red Brook Estates**

Dear Sir or Madam:

I am writing to request access to and copies of the following public records pursuant to the State Freedom of Information Act, M.G.L. c. 66, §10, and the applicable regulations: 950 CMR 32.01-09:

1. Copies of all documents contained within the Southampton Conservation Commission file concerning the so-called Red Brook Estates, James Boyle Construction developer located off Pomer Road in Southampton, MA, including, but not limited to:
 - a. All correspondence by and between the Commission and the Massachusetts Department of Environmental Protection, or the Environmental Protection Agency;
 - b. Copies of all correspondence between any citizen of the Town of Southampton or any Municipal Board of the Town of Southampton and the Southampton Conservation Commission;
 - c. All petitions submitted or pertaining to the Red Brook Estates which were submitted to or copied to the Southampton Conservation Commission;
 - d. Minutes of all meetings regarding Red Brook Estates;

Minutes of the Conservation Commission
Town of Southampton
November 24th 2003

- I Convene. The meeting was started at 7:04 PM. Thomas Gentile, Robert Floyd, Mark Kassis and Jim Moore and Mark Reed were present.
- II Open Public Time
- III Continuation of Public Hearing - Vincent Gross, 50 Gunn Road. Mr. Gross updated the Conservation Commission stating that the area has good growth of grass and appears stable. Silt screens are in place. Because DEP File # has not been received, the hearing has been continued until January 12th 2004. The Con Com voted to continue the public hearing until 1/12/04.
- IV Continuation of Public Hearing - Stephen Thibault, 321 E. Street. Mr. Thibault updated the Conservation Commission stating that the area had well-established growth of grass and appears stable. Silt screens are in place. Mr. Thibault had asked whether he could arrange for additional sales to be delivered and put in place within the next few weeks to fill in an additional approximately 50 feet greater than 100 feet from the streambed. The DEP file number has not been received. After discussion the Conservation Commission raised concerns that this additional fill may be unstable over the winter and should not be undertaken this winter. The Con Com voted to continue the public hearing until 1/12/04 at 7PM.
- V Continuation of Public Hearing - John and Claire Martin, 106 High Street. A DEP File # has not been received. Mr. and Mrs. Martin were not present.
- VI Continuation of Public Hearing - Pam and Jess Dodds, 34 The Street. A site visit has been conducted. Mr. Dodds presented his proposals to remove stumps of Sumac trees and reseed this area. The conservation commission's primary concerns related to preventing any unexpected washout. The proposal was approved to be started during the dry season of the spring of 2004. The Conservation Commission requested appropriate silt protection be placed. The Con Com voted that the hearing for Pam and Jess Dodds is closed.
- VII Treasurer's Report. The treasurer was not available and the treasurer's report will be reviewed at the next meeting.
- VIII Minutes of Previous Meeting. The minutes of many of the prior to have meetings were available for approval. However, a quorum of the Board members present during these meetings was not present to approve the minutes. Andrea had previously handled minutes and R. Floyd is feeling overwhelmed by this work. It is unclear who will handle future minutes. Mr. Jim Moore asked M. Kassis (because of access to Dragon Dictate computer program) to help R. Floyd finish minutes of prior meetings.
- IX Open Mail. No new mail was available for opening.
- X Other Business
 - A. Septic System Upgrade - 5 Garfield Avenue. Mr. Reed stated that current work is on hold because the owner has failed to pay for pump peak testing.
 - B. Maple Street Vernal Pool - removal pipe. Mr. Grassa is due to present a plan to remove the existing pipe.

C. Need for signage on conservation property - Robert Lloyd has been able to purchase signs for no hunting at the Hazel Young conservation property. These were purchased under the proposed budget. He will post these in the near future.

D. Bruce Fournier - APR program. Mr. Jim Moore has not had an opportunity to speak with Mr. Fournier.

E. James and Patricia Boyle - The RDA will be signed.

F. 193 Brickyard Road - A site visit has been conducted. Originally it was thought that the tree cutting did not involve wetlands area. When prior site plans were reviewed at the meeting it was realized that the tree cutting does involve potential wetlands area and will need to be explored further. Mr. Reed will contact the owner.

G. Drainage pipes at 11 Strong Road. A site visit has been conducted with Mr. Kurt Boisjolie present. Existing drainage pipes were reviewed. There are curtain drains for surrounding house and a street drain. One pipe that was owned by AT&T did show substantial erosion. Mr. Boisjolie will request that AT&T repair this. There was evidence of a prior stream crossing that has collapsed with tar present in the streambed. Mr. Boisjolie data expressed interest in repairing this and cleaning the streambed. Two of the pipes did have coliform screening of 10 and 40. The largest pipe has not been tested and Mr. Jim Moore requested that the water in this pipe to be tested. The discussion will be continued until these test results are available.

H. 19 Homer Road - A site visit was conducted with the owners present. The existing barn, out building and footbridge all constructed before 1996 were inspected. The pole barn has no floor and is 104 feet from the stream and an outbuilding 54 feet from the stream. Options for addressing the site including moving the outbuilding of the 100 foot buffer zone, moving the manure pile and leaving the current pole barn at its current location. After initial discussion by the Conservation Commission about the appropriate next step, Mr. Jim Moore suggested that he contact Mr. Davis Frouin of Western Mass DEP especially regarding decisions about the footbridge.

I. 80 High Street - The septic system repair is underway. Some silt protection is in place.

J. 88 High Street. Mark Keegan raise the question of whether plans for repairing the wetlands behind the 88 High Street. Mr. Moore stated that they were waiting for the owners to submit a plan for this project.

XI. New Business

A. Easthampton Harley Davidson - addition to existing building. Mr. Brian Nicole of O'Leary Company presented initial plans of the Easthampton Harley-Davidson Co. wishing to extend the existing building an additional 50 feet to the south. This was 25 feet further south than the original expansion plans and comes within the existing buffer zone. The Conservation Commission reviewed the presented initial plans, raising concerns about minimizing damage to neighboring wetlands. The current building will not support a second story therefore any additional expansion will require a larger first floor. Implications and options were discussed - including minimizing tree cutting and minimizing impacts on the wetlands. Because the original construction complied completely with the original requests careful work near the buffer sound may be able to be accomplished.

B. Pioneer Valley Planning Commission has contacted the Southampton conservation commission. They had requested a payment of approximately \$5000 dollars.

to update our current open space plan that was last updated in May of 1995. Mr. Jim Moore has contacted by Gary Swanson for his input. Because a current open space plan is necessary to apply for any potential state funding it would be valuable to pursue completion of an updated open space plan. The conservation commission will explore potential joint funding from the Community Preservation Program and the water department. This would not be formally approved until 2004.

C. Certificate of Compliance for RDA for Theodore Towne 194 Buckyard Road. Because of the owner's failure to comply with the Conservation Commission's Order of Conditions, a letter will be sent stating that conditions 1 through 4 have been met, however condition 5 has not been met. Mr. Mark Reed will complete a draft of this letter.

D. Ms. Brenda Coufure of the Zoning Board Authority had contacted Mr. Jim Moore regarding input on the proposed plan from Latham family. Mr. Moore stated that the Latham family will need to file an RDA for the Con Com to formally comment.

E. Mr. Jim Moore stated that he had received approval of a tree grant for approximately \$10,000. This will be payment after services are completed. He was inquiring how this money could directly be distributed to the conservation commission if possible since clearance through the Select Board is slow. He will discuss this with the select Board.

F. Rattle Hill Road. Mr. Jim Moore requested that the conservation commission approve an RDA for septic repair of his property. He will be closing on the sale of this property within 40 days and update of the septic system is needed. He was requesting approval of this repair under emergency provisions since this need to be completed before closing, before winter freezing and before the Conservation Commission's next scheduled meeting. Mr. Moore will file an RDA with negative input. The Con Com gave approval for this.

XI Adjourn. The meeting was adjourned at 9 PM. The next meeting will be January 12th 2004.