

**Andover Conservation Commission Meeting Minutes
July 5, 2011**

Town of Andover
36 Bartlett Street
3rd Floor Conference Room
7:45pm

Conservation Commission Members in Attendance:

Chairman Donald Cooper, Vice Chairman Michael Walsh, Commissioner Kevin Porter, Commissioner Alix Driscoll, Commissioner Jon Honea and Commissioner Floyd Greenwood. Staff members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

SCHEDULED ITEMS:

Town of Andover DPW

Staff Recommendation: Approve as Neg.3

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed paving projects on 14 streets in the Town of Andover are subject to the Massachusetts Wetlands Protection Act.

Mr. Douglas presented this to the Commission. This is routine maintenance on 14 streets in the Town. Staff will work with DPW to install haybales. It will take 1 day to resurface the street. All resource areas and catch basins are to be surrounded by haybales.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to Approve as Neg.3 it was seconded by Vice Chairman Walsh and unanimously approved.

**37 Chester Street
Present in Interest: Cabot Lewis**

Staff Recommendation: Approve as Neg.2

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed construction of a shed (14' x 20') is subject to the Massachusetts Wetlands Protection Act.

Mr. Douglas presented this to the Commission. This is a 100 year old house which had a shed on a flagstone foundation which was about 80 feet from the BVW. Only the flagstone foundation remains. Sona tubes will be installed and the shed will look like it is on top of the flagstone foundation, but will actually be on the sona tubes. The shed is on existing lawn area that is previously disturbed or developed. There will be digging within the 100 foot buffer zone but on a distinct upland area about 75-80 feet from the wetland. There is no sedimentation control, but a limit of work will be established. All excavated materials will be removed from the site.

Andy asked about the perennial stream along the south boundary of the property line which runs along the AVIS reservation. Would this put the project within the Riverfront? The project would be within the second 100 feet of the Riverfront, but does not further degrade an already degraded area.

Chairman Cooper asked for a Motion. Vice Chairman Walsh made a Motion to Approve as Neg.2 as permissible under the WPA, it was seconded by Commissioner Porter and unanimously approved.

39 Lucerne Drive
Present in Interest: Sheilah Knowles

Staff Recommendation: Issue Enforcement Order and continue RDA

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed construction of a deck is subject to the Massachusetts Wetlands Protection Act.

Agent Cleary presented this to the Commission. Upon inspection by staff, there was construction equipment on site and clearing proximate or in a BVW had been done. A cease and desist order was issued and all work immediately stopped. Staff requests that the BVW be delineated and a restoration plan be submitted by July 19, 2011. No further work to be done until the site is in compliance. The Commission cannot hear or discuss the deck project until the wetland and property are back in compliance.

Sheilah Knowles informed the Commission that the wetland was mostly poison ivy and poison oak with an old metal shed and piping in the wetland near the stone wall. The wetland surrounds the backyard.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to deny the project for lack of information and issue the Enforcement Order. There was no second, so the motion died.

Commissioner Driscoll made a Motion to issue the Enforcement Order and continue the RDA to a date uncertain, it was seconded by Commissioner Porter and unanimously approved.

109 Holt Road

Staff Recommendation: Approve as Neg.3

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed abandonment of an existing septic system and tie in to Town sewer is subject to the Massachusetts Wetlands Protection Act.

Agent Cleary presented this to the Commission. The filing is under the WPA only and is complete. The work is for a standard tie in to Town sewer with standard conditions and simplified plan requirements. There is a Special Condition that yard waste in the wetland be removed and sedimentation control is required.

Chairman Cooper asked for a Motion. Commissioner Porter made a Motion to Approve as Neg.3, with Special Conditions stated, it was seconded by Commissioner Driscoll and unanimously approved.

22 Gould Road

Staff Recommendation: Continue to July 19, 2011

Continued Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law for the proposed construction of a single family dwelling.

Agent Cleary presented this to the Commission. The Applicant requests a continuance to July 19, 2011 hearing. The Applicant has met all vernal pool setbacks and Ann Marton will monitor the site and provide language for Order of Conditions regarding the location of the driveway and foundation. There is a continuous quorum issue. Commissioner Honea will Mullenize himself before the July 19th meeting.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to continue to July 19, 2011, it was seconded by Vice Chairman Walsh and unanimously approved.

1350 South Street

Present in Interest: Mark Johnson, Steve Eriksen,

Staff Recommendation: Close Public Hearing

Continued Public Hearing on a Notice of Intent filed under the Massachusetts Wetland Protection Act and/or the Andover Wetlands Protection Act for the proposed development of a Solar Farm.

Mr. Douglas presented this to the Commission. This was continued from June 21, 2011 for a site visit. The site visit was completed. The delineation of the Riverfront and wetlands to determine the Riverfront was very well done. Mr. Douglas presented pictures to the Commission.

Commissioner Driscoll inquired as to the Certificate and Management Plan from Natural Heritage was issued and to whom will the Open Space be conveyed? Attorney Johnson is speaking with AVIS to allow studies to be done. They have submitted to AVIS what Natural Heritage requires for the Conservation Restriction. Natural Heritage will have final approval over who holds the Conservation Restriction. Attorney Johnson asked that the conveyance of the Conservation Restriction NOT be a condition of the permit as this will inhibit the Applicant from applying for a tax break for donating the land.

Mr. Douglas is still waiting for the vernal pool report. The project is 140 feet from the vernal pool and the woods in close proximity to the vernal pool is supposed to be cut down due to the shade they cause. The Butterfly expert was excluded from the site visit, but Natural Heritage has cleared the Commission to issue the Order of Conditions.

Commissioner Greenwood wants to make sure AVIS is on the same page as the Conservation when it comes to the Conservation Restriction. Natural Heritage is requiring the Conservation Restriction and the Applicant is working with AVIS to deed the Conservation Restriction plus other land.

Commissioner Honea asked if there could be a finding in the Order of Conditions that the Applicant agreed to pursue the Conservation Restriction.

Under the Wetlands Protection Act, compliance with the Endangered Species Act is required and the Commission is NOT waiving this compliance.

Attorney Johnson informed the Commission that they are still in the Planning Board process. The plan has been submitted and they are in informal discussions regarding access.

Commissioner Greenwood is concerned that by closing the public hearing, the Commission will lose leverage for the Conservation Restriction and public access.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to Close the Public Hearing and issue the Order of Conditions on July 19, 2011, it was seconded by Vice Chairman Walsh and unanimously approved.

66 Tewksbury Street

Present in Interest: William MacLeod and Mr. Parker

Staff Recommendation: Close Public Hearing and Approve

Continued Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law for the proposed construction of a single family dwelling and other related construction.

Mr. Douglas presented this to the Commission. This was continued from June 21, 2011 for purposes of revising the site plan to put in a swale to protect abutter's property from runoff and investigate the vernal pool. The revised plan with the swale to contain runoff has been submitted. The roadway is 100 feet from the vernal pool. Based on observations, the project is outside the 100 foot buffer for the vernal pool. The trees on the other side of the roadway that are to be cut are not significant to the health of the vernal pool.

Chairman Cooper asked for a Motion. Vice Chairman Walsh made a Motion to close the public hearing and issue the Order of Conditions, it was seconded by Commissioner Porter and unanimously approved.

ACTION ITEMS:

86 River Street

(formerly 93-97 River Street)

Taylor Cove

Present in Interest: Paul Finger, Katherine and Robert Craig-Cronin, Frances Wheeler, John Murphy and Subhash Dandage

Staff Recommendation: Deny

Issuance of an Order of Conditions for Taylor Cove. Chairman Cooper excused himself for 15 minutes to Mullenzie himself for the last meeting by reading the consultant's reports and minutes from the last meeting.

The peer reviews were based on the original Notice of Intent, not the revised Notice of Intent. The revised Notice of Intent changes the address, ownership and Riverfront.

Staff recommends the Commission deny the original Notice of Intent 93-97 River Street based on the following Findings:

1. Project is based on an inaccurate and outdated resource(s) area line. This was confirmed based on observations of staff and the Commission's Environmental peer reviewer, Ann Marton of LEC, described in a letter dated May 19, 2011, which is incorporated herein by reference.
2. The Application does not meet the Stormwater

Management Regulations and insufficient information was provided to the Commission and the Commission's Engineering peer reviewer, Dan Mac Ritchie, by the Applicant as described in Mr. MacRitchie's final review letter of June 1, 2011, which is incorporated herein by reference.

Staff recommends denying the Revised Notice of Intent for 86 River Street, formerly 93-97 River Street, based on the following Findings:

1. There are no provisions for the Applicant to obtain conditions under which the remaining work in the buffer zone may be performed in accordance with Special Condition #13 or DEP File #090-0792, which was for construction of individual lots and rooftop infiltration noted in the cover letter to the "Revised Notice of Intent" dated May 11, 2011. The Commission finds this is not applicable to Taylor Cove.
2. Resource Areas determined under Victoria Place are not applicable to Taylor Cove. The Commission finds LEC's Mean Annual High Water Line and BVW line to be applicable to Taylor Cove.
3. Since the resource area and riverfront line changed pursuant to a decision of the Conservation Commission, additional engineering and environmental review is required to determine if the application is in compliance with applicable regulations and requirements.

Paul Finger reminded the Commission that at the last meeting the public hearing was closed, but no denials were made. There remains only 1 Application for Taylor Cove and the revision submitted is for Taylor Cove.

Commissioner Greenwood made a Motion to accept the Findings presented by staff and issue a Denial Order of Conditions as drafted by staff, it was seconded by Commissioner Driscoll and unanimously approved.

Frances Wheeler asked whether the work on Victoria Place has ceased. The Enforcement Order was drafted after the site visit, but the Applicant stated he will submit the As-Built Plan when Victoria Place is finished because it is not part of the Order of Conditions. As far as our peer reviewer can tell, the Applicant is in compliance for Victoria Place, we only have circumstantial evidence to the contrary.

Katherine Craig-Cronin stated the Applicant has just gone ahead and done what he wants with no regard to the Commission.

Subhash Dandage asked if the road constructed will meet new construction standards.

Robert Craig-Cronin asked why the reluctance of the Commission to stop the work.

Paul Finger stated documentation from the Applicant's Attorney states they are building the roadway for Taylor Cove, on February 15, 2011 the Commission stated the Applicant was NOT to continue work, but it was done anyway. DEP asked the Applicant to stabilize the site, including the dirt mounds, this has not been done in violation of stormwater management #8.

Chairman Cooper does not feel he could go up in front of a Court Magistrate to explain the basis of a cease and desist order.

Commissioner Greenwood made a Motion to issue a Stop Work Order based on the lack of cooperation, lack of information and the express representation that the Applicant built Taylor Cove with different utilities and proceeded with Taylor Cove. The Motion was seconded by Commissioner Driscoll and approved with Vice Chairman Walsh opposed and Chairman Cooper abstained.

The Enforcement Order was issued.

CONSENT AGENDA:

81 Jenkins Road

Issuance of a Certificate of Compliance.

3 Dean Circle

Request for Final Inspection and Satisfactory Completion of Work.

Commissioner Driscoll made a Motion to Approve the Consent Agenda, it was seconded by Commissioner Porter and unanimously approved.

DISCUSSION ITEMS:

Bow Hunt Fall 2011

The limited bow hunt last year was a success and the Commission has been approached to do the same this year, only expanded. Bob Dalton provided the Commission with a suggested list of regulations for the hunt. There is a Special Meeting with the Selectman on July 25th to discuss the hunt. There were 13 deer taken last year, but it is hard to determine how that reflects on the number of permits issued. It is suggested the hunt be open to all Andover residents and non residents at the discretion of the conservation director. The number of permits issued must be capped. The Commission can try to maximize the hunt to specific conservation areas and then redirect the hunt year to year.

Foster's Pond Reservation

Bob DeCelle informed the Commission that the overseer for Pole Hill has collected 2 large trash bags of beer cans this past weekend and 3" diameter trees are being chopped down and left. There must be a police presence on the weekends. Bob Douglas will meet with police and make a request to meet with Bob DeCelle to go over the specifics.

Parking at Foster's Pond on the Foster's Pond Association land will not be as beneficial as parking on conservation land. Scrub brush can be cleared on the conservation land for better access to the trail and we can control the parking. Mr. DeCelle will speak with Steve Cotton regarding the parking.

The signage is confusing "No Trespassing" posted, but access to public land.

FOIA Request

Freedom of Information Act Request by Attorney Borenstein for email communications by the Commission. Discussion of emails going to a central point. Chairman Cooper will not be forwarding his 300+ emails unless he can charge his hourly fee to do so. The Commission will email their questions regarding emails from private email accounts and deleted emails to Bob Douglas and he will discuss them with Buzz.

The next meeting will be held at 7:45pm on July 19, 2011.

The meeting was adjourned at 10:15pm by Motion of Commissioner Honea, seconded by Commissioner Driscoll and unanimously approved.

Respectfully submitted by:

**Lynn Viselli,
Recording Secretary**