

ANDOVER CONSERVATION COMMISSION MEETING MINUTES
VIA TELECONFERENCE
August 4, 2020 7:00pm

APPROVED

Conservation Members in Attendance:

Vice Chairman Kevin Porter, Commissioner Tom Brady, Commissioner Ellen Townson, Commissioner Alix Driscoll, Commissioner Jon Honea and Commissioner Floyd Greenwood. Staff members present were Robert Douglas, Conservation Director and Ben Meade Conservation Agent.

Vice Chairman Porter opened the Meeting with stating the protocol for remote participation and questions from the public.

SCHEDULED ITEMS:

6 Abbot Bridge Drive

Present in Interest: Trudy Zakin, Tim All Crest Construction

Staff Recommendation: Approve

Public Meeting on a Request for Determination of Applicability filed by **Trudy Zakin** under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, § 40 and/or the Andover Wetlands Protection By-law, Article XIV, for proposed construction of a 16'x16' addition at **6 Abbot Bridge Drive**.

Mr. Meade presented this to the Commission. The application is under the WPA only for the construction of a 16'x16' addition which will be placed on a concrete slab on existing lawn and landscaping. No tree removal or vegetation removal is necessary for this project. The closest point to the wetland is 70 feet, which was confirmed by Staff. Erosion controls only if needed based on field conditions.

Vice Chairman Porter asked for a Motion. Commissioner Townson made a Motion to Approve as a Pos.2b, Neg.3; it was seconded by Commissioner Brady and unanimously approved by

Rollcall Vote:

Rollcall Vote:

J. Honea - yes

T. Brady – yes

A. Driscoll - yes

K. Porter – yes

E. Townson – yes

F. Greenwood – yes

39 Dale Street

Present in Interest: Steve Golden and Ken Doran (via email)

Staff Recommendation: Approve

Continued Public Meeting on a Request for Determination of Applicability filed by **Steve Golden** under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, § 40 and/or the Andover Wetlands Protection By-law, Article XIV, for an after the fact approval of construction of a stairway at **39 Dale Street**.

Mr. Douglas presented this to the Commission.

Vice Chairman Porter acknowledged the number of emails received on this hearing and they will be part of the Minutes posted on the Town website once approved.

Vice Chairman Porter also advised the Commission that the Conservation Commission and Staff will control who works on this site and an Amended Enforcement Order has been drafted reflect this language.

Commissioner Honea made a Motion to Approve the Amended Enforcement Order; it was seconded by Commissioner Brady and unanimously approved by Rollcall Vote:

Rollcall Vote:

J. Honea - yes

K. Porter – yes

T. Brady – yes

E. Townson – yes

A. Driscoll - yes

F. Greenwood – yes

Vice Chairman Porter advised the Commission that they needed to vote to approve the hiring of Jennifer Steele and authorize payment to her.

Commissioner Honea made a Motion to authorize the hiring and payment of the peer review by Jennifer Steele; it was seconded by Commissioner Greenwood and unanimously approved by

Rollcall Vote:

Rollcall Vote:

J. Honea - yes

K. Porter – yes

T. Brady – yes

E. Townson – yes

A. Driscoll - yes

F. Greenwood – yes

Mr. Douglas reviewed the report by Jennifer Steele who reviewed the project under the WPA, our local By-Law and the Riverfront regulations. The work can be done under an RDA.

Commissioner Honea stated that the steps are an improvement and the Commission has 2 reports with information to make them safer. Filing a Notice of Intent would be a waste of time as all the other sites have disadvantages. He would like to approve the RDA and open the access to the River.

Commissioner Greenwood agreed with Commissioner Honea's remarks.

Commissioner Townson would like the stairs open as soon as the safety issues are resolved. She would like an NOI filed for the work. She would like to deny the RDA and file the NOI on behalf of the Commission. Commissioner Townson stated that this property as a lot going on and the regulatory process should be followed.

Commissioner Brady does not support the RDA, there are regulations that need to be followed and we need to protect the process. The Commission should deny the RDA and file an NOI.

Steve Golden offered to provide materials and volunteers to make any repairs to the stairs. Commissioner Honea stated that as soon as the Commission issued the Amended EO the process for the repairs was established to add a berm at the top, rocks along the edge and steps at the bottom.

Vice Chairman Porter informed the Commission that he had reviewed all the peer review recommendations.

Commissioner Driscoll added that filing an NOI follows our process and we should open the stairs after the repairs have been made.

Vice Chairman Porter asked for a Motion. Commissioner Honea made a Motion to approve the RDA with Special Conditions as discussed; it was seconded by Commissioner Greenwood.

Motion did not pass.

Rollcall Vote:

J. Honea - yes

K. Porter – no

T. Brady – no

E. Townson – no

A. Driscoll - no

F. Greenwood – yes

Commissioner Townson made a Motion to deny the RDA and require the filing of an NOI; it was seconded by Commissioner Driscoll and approved by a vote of 4-2.

Rollcall Vote:

J. Honea - no

K. Porter – yes

T. Brady – yes

E. Townson – yes

A. Driscoll - yes

F. Greenwood – no

23 Buttonwood Drive

Present in Interest: Kevin Casey

Staff Recommendation: Approve

Continued Public Meeting on a Request for Determination of Applicability filed by **Kevin Casey** under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, § 40 and/or the Andover Wetlands Protection By-law, Article XIV, for proposed construction of a 400 sq. ft. pool cabana, removal of trees and brush, grading and relocation of a fence at **23 Buttonwood Drive**.

Mr. Meade presented this to the Commission. A site walk was held and the site has been modified to comply with the By-Law. The pool cabana has been reduced from 400 sq. ft. to 196 sq. ft. which puts it 38 feet from the wetland boundary, but it is no longer subject to the By-Law. The existing fence line will be moved back 6 feet, 6 inches instead of 9 feet, 4 inches and the closest point to the wetland will be 32 feet. No tree or brush removal past the new fence line. All work is within the buffer zone, however the applicant has provided a clear scope of work. Substantial erosion controls, a pre-construction meeting, erosion controls for stock piles and communication with Staff are included in the SC.

Commissioner Greenwood asked that a SC be added that no pool water to be emptied into the wetland, including lowering of the water level.

Vice Chairman Porter asked for a Motion. Commissioner Townson made a Motion to Approve as a Pos.2b, Neg.3 with conditions discussed; it was seconded by Commissioner Brady and unanimously approved by Rollcall Vote:

Rollcall Vote:

K. Porter – yes

E. Townson - yes

T. Brady – yes

A. Driscoll - yes

F. Greenwood – yes

J. Honea - yes

24 Pomeroy Road

Present in Interest: Maureen Herald

Staff Recommendation: Continue

Public Hearing on a Notice of Intent filed by **Thomas Fuerst** under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, § 40 and/or the Andover Wetlands Protection By-law, Article XIV, for proposed razing of the existing dwelling, deck and concrete pad; construction of a new single family dwelling on the existing foundation, deck, porch with stairs and associated utilities at **24 Pomeroy Road.**

Mr. Meade presented this to the Commission. This application is under both the WPA and By-Law. Mr. Meade reviewed the open filings for this property, including:

2 open Enforcement Orders and Amendments;

1 OOC open for the septic system; and

1 OOC open for the parking expansion

Maureen Herald advised the Commission that the outstanding issues are being addressed. The OOC for the septic should be cleared up in September and the Enforcement Order for restoration

and plantings and monitoring will be completed soon as the 2 year monitoring period ends in December, 2020. She asked to continue to September 1, 2020.

Commissioner Townson reviewed the items missing from this application, stockpiling locations, equipment movement, removal of debris, etc. Maureen agreed to provide a construction narrative.

Vice Chairman Porter asked for a Motion. Commissioner Townson made a Motion to continue to September 1, 2020; it was seconded by Commissioner Brady and unanimously approved by Rollcall Vote:

Rollcall Vote:

J. Honea – yes

K. Porter – yes

T. Brady – yes

A. Driscoll - yes

F. Greenwood – yes

E. Townson - yes

400 Federal Street

Present in Interest: Mark Beaudry and Ann Marton

Staff Recommendation: Approve

Public Hearing on an Amendment to an Order of Conditions filed by **Vicor Corporation** under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, § 40 and/or the Andover Wetlands Protection By-law, Article XIV, for proposed relocation of the proposed electric transformers, and gas and electric utility upgrade/improvements at **400 Federal Street**.

Mr. Douglas presented this to the Commission. The Amendment is to shift the utilities which will result in a decrease in alterations to the buffer zone.

Mark Beaudry reviewed the changes needed and will provide a hard copy of the plan showing the 25' no-disturb and markers to be placed.

Vice Chairman Porter asked for a Motion. Commissioner Townson made a Motion to Approve the Amendment it was seconded by Commissioner Driscoll and unanimously approved by Rollcall Vote:

Rollcall Vote:

E. Townson - yes

K. Porter – yes

T. Brady – yes

A. Driscoll - yes

F. Greenwood – yes

J. Honea - yes

3, 3R and 4 Executive Place

Present in Interest: Peter Ellison, Ann Marton, Scott Kelly

Staff Recommendation: Continue to August 18, 2020

Continued Public Hearing on a Notice of Intent filed by **Ballardvale, LLC** under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, § 40 and/or the Andover Wetlands Protection By-law, Article XIV, for proposed construction of 2 buildings with parking, landscaping, utility and stormwater management at **3, 3R and 4 Executive Place**.

Mr. Douglas presented this to the Commission. The wetland and vernal pool delineations are set and in agreement. There is no way to enter into the property without disturbing the wetlands or vernal pool or their buffers. The Applicant has provided alternatives of the road layout. Peter Ellison provided a power point presentation of the 4 or 5 alternatives to the road layout and reviewed each of them with the Commission. The only access to the site is via Executive Place, which is a subdivision allowed in the 1980s.

Commissioner Honea asked by Biotechnology Drive could not be used. It is a gravel path with no access.

Peter Ellison provide the 5th Alternative which is an access road 49' from the vernal pool using the National Grid right of way and the roadway will be 30' wide as mandated by the Planning Board.

Ann Marton agreed that the 5th Alternative is the only one that works on the site.

Hard copies of the Alternatives will be provided to the Commission prior to the next hearing.

Vice Chairman Porter asked for a Motion. Commissioner Townson made a Motion to continue to August 18, 2020; it was seconded by Commissioner Greenwood and unanimously approved by Rollcall Vote:

Rollcall Vote:

E. Townson – yes

K. Porter – yes

T. Brady – yes

A. Driscoll - yes

F. Greenwood – yes

J. Honea - yes

CONSENT AGENDA:

Minutes

Approval of Minutes from July 21, 2020.

Commissioner Driscoll made a Motion to approve the Consent Agenda; it was seconded by Commissioner Townson and unanimously approved by Rollcall Vote:

Rollcall Vote:

E. Townson - yes

K. Porter – yes

T. Brady – yes

A. Driscoll - yes

F. Greenwood – yes

J. Honea - yes

DISCUSSION ITEMS/ LATE ITEMS:

Open Space Task Force

Tabled to August 18, 2020.

Eagle Scout Project

Present in Interest: Alex Miller

Alex's project consist of construction of a kiosk which will be 5' wide and 7' tall and installed 17.5 feet from the wetland on Gray Road. Most of the cutting and assembly will be done in his driveway. He is obtaining donations from Home Depot, Loews and family members.

Commissioner Honea made a Motion to approve the Eagle Scout Project; it was seconded by Commissioner Driscoll and unanimously approved by Rollcall Vote:

Rollcall Vote:

E. Townson - yes

K. Porter – yes

T. Brady – yes

A. Driscoll - yes

F. Greenwood – yes

J. Honea - yes

Staff Update:

Commissioner Townson advised the Commission that the Community Garden is expanding and using a 40'x70' blue tarp across the property to control the poison ivy.

Mr. Douglas informed the Commission of the OML Complaint received from Jose Albuquerque. Vice Chairman Porter asked the Commission if everyone had reviewed the Complaint.

Commissioner Honea made a Motion to appoint Tom Urbelis to respond to the OML Complaint; it was seconded by Commissioner Driscoll and unanimously approved by Rollcall Vote:

Rollcall Vote:

E. Townson - yes

K. Porter – yes

T. Brady – yes
F. Greenwood – yes

A. Driscoll - yes
J. Honea - yes

The meeting was adjourned at 9:25 pm by Motion of Commissioner Townson; seconded by Commissioner Driscoll and unanimously approved by Rollcall Vote:

Rollcall Vote:

E. Townson – yes
T. Brady – yes
F. Greenwood – yes

K. Porter – yes
A. Driscoll - yes
J. Honea - yes

The next meeting is scheduled for August 18, 2020 at 7:00pm.

Respectfully Submitted,

**Lynn Viselli,
Recording Secretary**

Documents:

Consent Agenda

- Draft Minutes of July 21, 2020
- Email from Ken Doran

Lynn Viselli

From: Ken Doran <ken.doran451@gmail.com>
Sent: Thursday, July 30, 2020 1:50 PM
To: Robert Douglas; dcooper@nixonpeabody.com
Cc: Andrew Flanagan; Lynn Viselli; Ken Doran
Subject: July 21 Commission Meeting Follow-Up - Ken Doran
Attachments: Dale Street (July 30).docx

I am writing this email as a result of the Enforcement Order Issued by the Conservation Commission on June 25 regarding the Dale Street steps. Attached is a follow up letter addressing my position after watching the July 21 Commission meeting. I understand that the next meeting is August 4 and want my position to be presented prior to that meeting.

Please share this letter with other members of the Commission.

Sincerely,

Ken Doran, *Andover's Shawsheen Riverkeeper*
451 Mt. Vernon Street
Lawrence, MA 01843
978-302-5259
ken.doran451@gmail.com

Date: July 30, 2020

To: Bob Douglas, Conservation Director, Town of Andover
Don Cooper, Chairman Conservation Commission
Cc: Andrew Flanagan, Town Manager, Andover
Lynn Visell, Conservation Commission Administrative Secretary

From: Ken Doran, *Andover's Shawsheen Riverkeeper*

Subject: River Access Steps at Dale Street

Dear Sir/Madam:

This letter is a follow-up to the Conservation Commission meeting on July 21, 2020, specifically concerning the agenda item 3 and the steps installed for access to the Shawsheen River. My last letter dated July 15th explained my position concerning the access steps installed from the Dale Street parking area to the river's edge. As a result of watching the meeting on public access television I have the following observations and comments:

- When I reviewed the agenda items for the Public Hearing, the Dale Street agenda item was officially allocated 5 minutes; however, at the start of the meeting Chairman, Don Cooper, allowed 15 minutes for this agenda item (*5 minutes for each of 3 persons*). Due to the nature of this issue, this amount of time does not begin to allow for even a cursory overview of the issue at hand. Ultimately this item was shut off from further discussion without any resolution due to the 15-minute time limit. Although I respect the right of the Chair to conduct the meeting with time constraints, if an appropriate amount of time cannot be allocated during such a meeting, then one needs to consider if an agenda of 27 items can reasonably be handled during a single meeting.
- The key peer review document was available before the meeting from Richard Crowley, Consulting Services, and was sent to Bob Douglas concerning the access steps. His detailed review of regulations identified that there were no MA building code concerning the steps and that the steps met the intent of the National Parks Service Trail and Steps construction guidelines. This review essentially gives acceptance to the construction of the steps from a code and safety point of view. Near the end of the meeting Floyd Greenwood made a recommendation to open the steps to the public due to the content of the peer review and the fact that without opening them the town has actually increased the risk for safe access to the river. Floyd's recommendation was dismissed without discussion by the Chair due to the ending of the 15-minute time allocation.
- In the beginning of the discussion of the Dale Street item, it was stated by the Chair that there has been considerable correspondence on the subject. That was the full extent of his comment, it seems only appropriate that this discussion should have identified items such as: who sent in correspondence, what were their position, had they been distributed to all members of the commission, etc. Since we are in the era of Covid-19 and not allowed to attend a meeting or speak during meeting due to the short time frame, written correspondence is our ONLY voice. As one of those who took considerable time to write a comprehensive position on this situation, I am disappointed at the failure to recognize my concerns or those of the others who took their time to generate correspondence. I have no reason to believe that my

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voice is heard or that the commission cares about our input. Letters received prior to the meeting as well as incoming emails should all be made part of the minutes and official record.

- Again, I must recognize that these virtual meetings due to Covid-19 are a requirement; however, the audio quality was so poor that fully understanding the discussion was not possible. How is government allowing the people to participate in a decision process if we cannot attend the meeting, cannot be given Zoom time to make our voice heard, know that our correspondence is recognized and when you finally watch the proceedings on television, much of what is said cannot be understood. An on-site outdoors safe, social distancing meeting, should be considered to resolve matters of this nature.
- Now to address the actual site at Dale Street. When you arrive, you are greeted by an orange Caution sign with a Town of Andover seal that states, "*Steps Closed Until Further Notice Due to Safety Hazard*". Due to the information contained in the Richard Crowley review mentioned above, it seems that this statement has been determined to be inaccurate. I would expect that if this statement is not accurate, then it should be removed and access to the steps should again be open to the public. Since meetings only happen every two weeks and with the low level of resolution, it is likely that the stairs may be closed for the foreseeable future.
- A second sign at Dale Street states, "*Notice, this property monitored by camera*". There are actually two motion activated cameras directed at the stair. I find this level of intrusion and big-brother tactic a serious concern in a free society. The feeling you are being watched every time you go to Dale Street is not comforting. It is my opinion cameras should not be placed by the Town of Andover for surveillance of the public without an official and documented approval process.
- As you can see from my comments above, I am not in agreement with the process or outcome. This issue has taken on a completely personal tone, devoid of reason or compromise. The town and its committees work for the betterment of the community and its citizens. I hope that any further actions and resolutions by the Conservation Commission are handled in a professional, timely, and non-personal manner.

Sincerely,

Ken Doran
Andover's Shawsheen Riverkeeper
451 Mt. Vernon Street
Lawrence MA 01843
978-302-5259