

**Conservation Commission**

One Liberty Lane  
Norfolk, MA 02056

**Meeting of July 8, 2015**  
**7:00PM**

<b>Commission Members</b>	<b>Others</b>
John Weddleton –Chair ----- --present	Janet DeLonga ---Agent -----present
Joyce Terrio -----V. Chair ----- present	
Patrick Touhey ---Member ----- present	
Dan Crafton -----Member -----absent	
Michelle Lauria --- Member ----- present	

The duly posted meeting of the Norfolk Conservation Commission convened at 7:10 p.m. in room 124 at the Norfolk Town Hall. The meeting was audiotaped by NCTV.

**VOUCHERS:**

The Commission signed vouchers.

**ACTION ITEMS:**

**#240-570 – Callahan Pond - Order of Conditions –**

The Special Orders of Conditions were reviewed. Mrs. Terrio made motion

**MINUTES:**

*Mrs. Terrio made the motion to accept the Minutes of June 10, 2015 as presented. Mrs. Lauria seconded the motion. The vote on the motion was unanimous.*

**ACTION ITEMS:**

A written request was received to issue a **Certificate of Release** for the expired Order of Conditions that encumber **30 Berkshire Street**. Mrs. Terrio made the motion to issue the Certificate of Release for 30 Berkshire Street. Mr. Crafton seconded the motion. The vote on the motion was unanimous.

Mr. James Susi from United Consultants gave a brief overview of the septic repair project proposed at **47 Leland Road**. The hearing was previously closed and an Order of Conditions was issued on April 22, 2015. Mrs. Terrio made the motion to issue the Order of Conditions as drafted. Mr. Crafton seconded the motion. The vote on the motion was unanimous.

The Commission affirmed the vote taken on April 22, 2015 to lift the **Enforcement Order** issued against **Pulte Homes of New England**. Mrs. Terrio made the motion to release the Enforcement Order. Mr. Crafton seconded the motion. The vote on the motion was unanimous.

The Commission affirmed the vote taken on April 22, 2015 to allow Pulte Homes to construct a drainage swale in the Maple Street open space parcel subject to a Conservation Restriction placed on **Lot 4 Warren Drive**. The Commission will hold the Restriction which will preserve this lot as open space. Mrs. Terrio made the motion to allow Pulte Homes to construct a stormwater drainage swale on the Maple Street Open Space subject to a Conservation Restriction on Lot 4 Warren Drive. Mr. Crafton seconded the motion. The vote on the motion was unanimous.

The Commission noted that the Order of Condition, **DEP/NCC #240-528** issued to the **Town of Norfolk Recreation Commission** on May 10, 2012 will expire on May 10, 2017. The Orders are subject to a two year extension under the Permit Extension Act. A letter will be drafted to the Recreation Commission.

Princess Equipment Company forwarded a letter, dated May 26, 2015, requesting a Certificate of Compliance for the construction of a driveway at **18 Medway Branch**. Ms. DeLonga noted that there are still some outstanding issues related to compensatory flood storage. Ms. Delonga will contact the Applicant.

The Commission is awaiting a letter from the **Norfolk Trout Club** regarding their contention that they are an aquacultural entity and exempt from the Wetland Act.

**CORRESPONDENCE:**

A letter was forwarded to the **Department of Corrections**, dated May 18, 2015, related to monitoring wells at supply well #2 at the correctional facility on Clark Street.

A letter from the Building Inspector, dated May 6, 2015, was received regarding a zoning violation on **Campbell Street**. The owner of the property has been in communication with the Town regarding purchase of the property.

**PUBLIC HEARING:**

7:25 PM- #240-569 – 20 Valley Road - Mr. Al Quaglieri was present.

**PUBLIC HEARING:**

7:40 PM - **47 Seekonk Street** – DEP/NCC #240-564 – The Applicant, Guaranteed Builders, requested via e-mail a continuation to June 10<sup>th</sup> in order to properly address the concerns of the Commission's consultant. *Mrs. Terrio made the motion to continue the hearing to 7:45 PM on June 10<sup>th</sup>. Mr. Crafton seconded the motion. The vote on the motion was unanimous.*

**PUBLIC HEARING:**

7:50PM - **20 Valley Street** – DEP/NCC #240-569. Also present was the immediate abutter, Betsey Whitney, of 26 Valley Street. Mr. Quaglieri recapped the information that he presented at the meeting of April 22<sup>nd</sup>. He noted that the project consists of two- one bedroom duplex buildings. The dwellings, which were formerly located 25 feet from the front lot line on the first plan, were pushed back further into the lot by three feet so that they will now be located 28 feet off Valley Street. The rear deck of one unit will now encroach further into the 50 foot no disturb buffer. Each unit will consist of a one story, 1000 square foot house with a one car attached garage. The proposed duplexes will be 30 feet apart. The revised plan shows that the building closest to the Whitney property was moved 7 feet closer to that property for a total distance of 38 feet from the property line. The zoning setback is 15 feet. The units will be serviced by municipal water and an on-site septic system. Ms. DeLonga noted that for new lots formed after the effective date of the Regulations, which is May 1999, it is presumed that alteration to the 50-100 foot buffer can be avoided. Mitigation for all buffer zone alteration is required.

Ms. Delonga stated that this is a new lot that was formed in 2013 and they should address the proposed 20,000 square feet of 50-100 foot buffer disturbance. The disturbance within the 0-50 foot no disturb buffer is 493 square feet. The applicant is proposing to mitigate for the work in the 0-50 foot no disturb. Mr. Weddleton noted that the disturbance would have to be mitigated fully.

Mr. Quaglieri stated that he sidestepped creating a commercial use on this lot. He stated that this plan represents the residential use allowed in this district. He felt that the residential use was mitigation for not putting in a commercial structure. Mr. Crafton questioned how a commercial development would threaten the environment. Mr. Quaglieri stated that when the doors are closed behind a commercial entity no one knows what goes on behind the doors. He noted that if the property were sold for a commercial use, no one knows what could be occurring to harm the environment. Mr. Quaglieri stated that there are commercial lots across the street from this lot.

Ms. DeLonga proposed more tweaking to the plan to allow for greater preservation of the 50-100 foot buffer. She noted that pulling in the development could reduce the disturbance numbers. Mr. Weddleton noted that he did think that this project could come close to mitigating 20,000 square feet of disturbance. Ms. DeLonga noted that mitigation could take other forms as well. Mr. Crafton noted that he has not seen the best design for the site as yet. He noted that 20,000 square feet of disturbance without mitigation is not acceptable to him. He noted that in the past the Commission has denied projects for lack of mitigation. Mr. Weddleton noted that the residential project was proposed at the behest of a neighbor. Mr. Quaglieri stated that he could propose a two or three level apartment building with a parking lot, lights and drainage. That type of design would reduce the amount of disturbance in the 50-100 buffer. Mr. Quaglieri stated that he increased the area of disturbance by separating the buildings from 15 feet to 30 feet. Mr. Quaglieri noted that he was not aware until

this evening that this parcel was a newly created lot in 2013. Mr. Crafton noted that the Commission does not regulate the type of use, only if the building fits into the site with appropriate mitigation. He is also interested in the type of mitigation proposed. Mr. Crafton noted that it would not be considered mitigation to reduce the number of families that could fit on the parcel as you must create mitigation for the land that you are disturbing. Mr. Quaglieri stated that he could reduce the buffer zone impact by approximately 20% by designing an apartment complex. He noted that mitigation is not credited if it is proposed in the 50-100 foot buffer.

Mr. Weddleton recommended that Mr. Quaglieri speak to his engineer and to the Agent to come up with some forms of mitigation that would satisfy the Commission.

Mrs. Betsey Whitney, the immediate neighbor at 26 Valley Street, stated that Mr. Quaglieri had visited her and proposed the residential development in lieu of commercial. She stated that she would prefer residential development, which was what the neighborhood consisted in the 1700's. She stated that she would want the regulations to be followed and the mitigation to be as good as possible.

*Mrs. Terrio made the motion to continue the hearing to June 10, 2015 at 8:10 PM. Mr. Crafton seconded the motion. The vote on the motion was unanimous. The hearing adjourned at 8:25PM.*

**8:40 PM – Pondview Estates Homeowners Association – DEP/NCC #240-570.** Maryann Magner of 22 Pondview Road gave the presentation on behalf of the Association. Also present was Keith Gazaille, a senior biologist from Aquatic Control Technologies. Present were abutters Ben Rogers and Mrs. Barbara Rogers and her legal representative, Edward McCormick. Also present was Lenore White from Wetland Strategies, Inc. The project is the herbicide treatment of invasive aquatic vegetation, specifically pond lilies. Ms. Magner stated that only portions of the pond will be treated using the aquatic herbicide AquaPro. The entire pond is 15 acres in size but the Pondview Homeowners Association, consisting of about 20 households, owns and manages 9 acres. The treatment would occur within the areas owned by the Association. The pond is shallow and no deeper than 5 feet. The pond was treated for weed infestation in 1993 (Sonar) and again in 2003 (Rodeo—Glyphosate).

The purpose of the treatment protocol is to maintain the open water and its functions. Ms. Magner stated that there is a tremendous amount of wildlife habitat in this pond. The pond also receives stormwater from a residential development. The 2003 herbicide treatment was conducted very late in the season and was not very successful. The plan is to treat the plants in the peak of the summer. Only one treatment regimen will be applied to select areas of the pond, amounting to 5-6 acres. Not all of the pond lilies would be treated. This is the same scope of work that was previously filed in the past, which was approved by the Commission.

Ms. Magner noted that there are three parties, Mr. Ben Rogers, Mr. and Mrs. Kimball Rogers and the Pondview Homeowners Association, that own a portion of the pond. Mr. and Mrs. Kimball Rogers do not want the treatment to be near their portion of the pond. Ben Rogers has approved the treatment.

Ms. Magner noted that the herbicide is a topical foliar spray and only affects the plants that are directly touched by the chemical. The chemical does not migrate into the water. Ms. Magner stated that there is a stone wall beneath the water that marks the property bounds of the pond. This area can be marked with floating balloons to prevent any encroachment to the neighbor's area.

Mr. Gazaille noted that there will be two applications of the chemical for the treatment regimen. This is the same chemical used in previous filings. The safety data sheets for this chemical were included in the Notice of Intent filing.

Ms. Lenore White was asked to comment on this project by the chairman. Ms. White formerly worked at MassDEP in the Clean Lakes Program. She noted that the plants grow as a result of nutrient input so addressing the watershed area to the pond should be looked at. She noted that once treated, the plants will die, fall to the bottom and decompose adding to the nutrients. She noted that the plants should be removed and not allowed to fall to the bottom and decay. Ms. Magner noted that the Association is aware of watershed management. She said that the pond was once a farm and a wet meadow. The pond has a surface water inlet and is spring fed. There is a sink of nutrients in the pond, which cannot be overcome. The

Association has looked into other methods of treating the invasive vegetation. She noted that every year the pond is covered with pond lilies. She felt that the two applications would help in the oxygen balance. Mr. Gazaille stated that at present the pond lilies die off and fall to the bottom and decay. The treatment of the lilies would reduce the amount of coverage that would fall to the bottom and decompose.

Attorney Edward McCormick stated that the information contained in the Notice of Intent contradicts the information being presented. He stated that AquaPro is a glyphosate and is linked to cancer and birth defects. He asked how much study has been done on this subject and at what volume would the chemical be used. Mr. McCormick stated that it was mentioned that the chemical can be washed off the plants. He said that the chemical would be washed into the water. Mr. McCormick stated that Mrs. Rogers' property is serviced by a private well. He questioned the statement in the application that the groundwater would not be significantly affected by the application of the chemical to the pond. He noted that by saying that there would not be a significant impact then they are admitting that there must be some impacts to the groundwater. Mr. McCormick read the hazards listed on the safety data sheet associated with the use of this chemical. He stated that by their own literature it shows that the application should not be allowed. He stated that his client is very concerned with the health effects of this application.

Mr. Weddleton asked the applicants if they can assure the abutter that the application of this chemical will not affect her. He asked if there was an environmental reason for this treatment procedure or is it simply a matter of aesthetics. Ms. Magner noted that the wildlife habitat over a period of time would be changed if the pond is allowed to fill up.

Mrs. Rogers' stated that in 1993 they were never notified of the herbicide treatment. Ms. Magner stated that Mrs. Rogers was not notified of the treatment as her name was inadvertently left off of the abutters list by the Assessors' office. When the treatment was conducted in 2003 they made sure that Mrs. Rogers' name was included on the notification list.

Ms. White noted that there is some benefit to having open water and it would be good information to have the species that use and benefit by the open water if that is the goal of the Association. Mr. Gazaille noted that the intent of the Association is to open up the center of the pond. Ms. White questioned if mechanical removal might be an option. Mr. Gazaille noted that the mechanical removal is a short term solution and chemical use is long term solution. Each protocol has pros and cons.

Mrs. Rogers stated that her well is located 15 feet from the edge of the water. She stated that she does not know the depth.

Mr. Gazaille stated that glyphosate and AquaPro is licensed to be used in a zone II. AquaPro is also a registered chemical with the EPA and the State of MA. Mr. McCormick noted that the data sheets are put out by the manufacturer of the herbicide and there is no evidence before the Commission that refutes this information.

Mr. Gazaille stated that the half-life of the chemical is 1 ½ to 14 days. The plants usually succumb within 3 to 4 weeks. The chemical only becomes effective when it comes into contact with the plant. The turn over of the pond is not known. Mr. Gazaille stated that the plant does not uptake the chemical from the water. Mr. Crafton noted that the NFPTA rating 701 lists AquaPro as a level 1 for health and flammability concerns with 4 being the highest concern. Reactivity is listed at 0, which indicates that this chemical is very mild. He noted that vinegar has a higher rating than that. Mr. McCormick stated that there is no information before the Commission that tell what this chemical can and cannot do.

Ms. White stated that this is an ecological restoration limited project and is a new category mandated by MassDEP. Ms. White stated that valid concerns were raised and conditions could be added to ensure that there are no impacts to abutters, such as spot treatments, silt curtains to ensure no migration, well checks. She noted that the resource area is Land Under Water Body (LUWB). The Commission has to determine if this project affects the LUWB. She stated that the pond is not the resource area. She stated that the Commission has to determine if the project impacts the resource area and meets the performance standards.

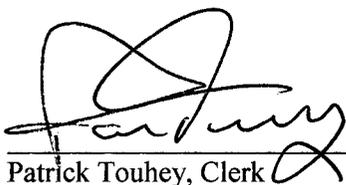
Mrs. Rogers stated that she requested that her well be tested every year for 15 years and that did not occur. Ms. Magner stated that the Association has permission from Mr. Ben Rogers but not from Kimball and Barbara Rogers. The Association has not been able to contact another abutter (Harry Neil). Mr. Weddleton stated that there is not enough

information to close the hearing. He requested that the Association come up with some estimates of a few manual methods to remove the lilies and to propose some environmental benefits for treatment and what other ponds use this chemical and how many times the chemical was applied. Mr. Weddleton requested that Attorney McCormick research information on any action against the use of these chemicals. The depth of the Rogers' well can be determined from Board of Health records.

Mr. Ben Roger, the abutter at 12 Holbrook Street and a member of the Board of Governors of the Norfolk Trout Club, stated that the Norfolk Trout Club has been treating the Trout Club ponds for many years and every year the sediment testing for the chemical treatments in the pond comes back as non-detectible. The Association is proposing to use the same chemicals as the Trout Club as has the adjacent property owner to the Trout Club, Mr. George Bentley. Mrs. Rogers stated that sediment testing should be taken for years after any application. She stated that she is totally against the treatment of the water lilies in the pond.

*Mrs. Terrio made the motion to continue the public hearing to June 10, 2015 at 8:30PM. Mr. Crafton seconded the motion. The vote on the motion was unanimous. The hearing adjourned at 9:40PM*

*Mrs. Terrio made the motion to close the meeting at 9:40 PM. Mr. Crafton seconded the motion. The vote on the motion was unanimous.*

  
Patrick Touhey, Clerk

In accordance with the requirements of G.L. 30A § 22 approval of these minutes by the Board constitutes its certification of the date, time and place of the meeting, the members present and absent, the matters discussed, and the action taken by the Board with regard to those matters (if any). Any other information contained in these minutes is included for context only. Notes memorializing deliberation or discussion of any matter are in the summary form and may include inaccuracies or omissions. Where proof of the content of a statement is required, a tape recording or transcript should be consulted, if available.