



Paxton Conservation Commission

Minutes, February 14, 2013 Meeting

Location and Time Paxton Town Hall 7:46 – 9:10pm

Attendance Commissioners: Marisa Ayvazian (vice-chair), Daniel Gehnrich, Michael Voorhis (secretary), James Robert (vice-chair), Holly Robert (associate) Commissioners Absent: Chris Keenan (chair). Others present: Kevin Quinn (Quinn Engineering).

The meeting was opened by James Robert at 7:46pm

Minutes: Minutes of the meeting of January 10, 2013 were not available and will have to be approved at the next meeting.

New Business:

Site Visit: A **site visit** was made to **10 Old Lantern Circle** on 2/8/2013 by Marisa Ayvazian, Daniel Gehnrich, and Holly Robert to view the area where a septic system replacement is being proposed by Quinn Engineering on behalf of the applicants, Warren and Sue-Anne Bock. A PVC pipe of unknown origin was observed to be draining water onto the abutting Boynton Park property. The pipe outlet is an area upgradient from a stream. Plans indicated this pipe was presumed to be connected to foundation drains.

Correspondence: The Commission was copied on a letter and Superseding Determination dated 1/25/2013 addressed to Mark and Cynthia Love, **313 Richards Avenue**, from Philip Nadeau at DEP. The letter explains DEP's decision on the issuance of a positive Superseding Determination of Applicability and is in response to an appeal filed in September of 2012 by Holly Robert. DEP's ruling reverses the Commission's negative Determination with respect to a culvert repair project. The Superseding Determination will require the Loves to file a Notice of Intent for the project to proceed and is required because it involves work in a resource area (Bank). Holly Robert also provided the Commission with a copy of a letter dated 11/30/2012 addressed to DEP from Mark Love with comments on the appeal. The Commission was indicated to be copied on this letter, but had not received its copy. Holly Robert and James Robert have recused themselves from any matters pertaining to 313 Richards Avenue.

Public Hearings:

Request for Determination of Applicability to replace a septic system for **10 Old Lantern Circle**. Kevin Quinn of Quinn Engineering, Inc. presented the Plan of Subsurface Sewage Disposal System Repair dated 1/8/2013, on behalf of the applicants, Warren and Sue-Ann Bock. The Commission is being requested to make a Determination as to whether the area depicted on the plan is subject to the jurisdiction of the Wetlands Protection Act (WPA) and whether the work depicted on the plan is subject to the WPA. Mr. Bock would like to upgrade his existing on-site septic system to be in compliance with the current Title 5 Code. Grading will occur within 87 feet of an un-named stream that has been shown on the plan. USGS maps indicate that this is a perennial stream and show it flowing into another stream. This would suggest that the project is taking place in Riverfront, a resource area under the WPA, although regulations provide some grandfathering for existing systems which are being upgraded. The stream, however, appears on MA DEP's Watershed Protection Act maps as intermittent. Mr. Quinn advises that Mr. Bock believes that the stream is intermittent and not perennial. Quinn Engineering has performed

calculations using USGS StreamStat analysis and determined that the contributing watershed to the stream is .05 square miles which is below the threshold of .50 square miles typically used to determine if a stream is a river (and the resource is Riverfront) in cases where the stream is not shown as perennial on USGS maps, or shown as intermittent on USGS maps.

Commission members who visited the site remain concerned with the pipe discharging water to the Boynton Park property because this is a sensitive area and it is unknown what may be discharging from the pipe, or what the pipe connects to. Mr. Quinn advised the Commission that the pipe is presumed to be connected to foundation drains, however, the existing pipe and drains have not been located and indicated on the plan, except for that portion of the pipe which was visible at the outlet location. The pipe is also discharging water several feet off the ground and in such a manner that it may be causing erosion in a resource area or the buffer zone. Mr. Quinn advised that the exact location of the pipe may be located by the contractor during the construction of the upgraded system.

Additionally, wetland resource areas have not been delineated or indicated on the plan so the Commission can not verify wetland boundaries or buffer zones with respect to the proposed project.

Holly Robert has discussed regulatory issues with DEP who advised her that the regulations require the Commission to give more weight to the USGS mapping which indicates that the un-named stream is perennial and would therefore mean the project is being proposed in Riverfront, a regulated resource area under the WPA. DEP advises that the regulation language which makes mention of other more recent DEP maps may have been included in the regulations to cover a future situation if DEP ever developed statewide maps for this purpose that would differentiate between perennial and intermittent streams. To overcome the presumption that the stream is not perennial, the stream would have to be observed by a competent source once a day for a period of four days over a consecutive twelve month period. The observance must be documented with field notes and pictures and take place during a non-drought period. Michael Voorhis expressed having more faith in general with respect to maps prepared by the State rather than the USGS and the Watershed Protection Act Map provided by Mr. Quinn has more detail, showing the un-named stream flowing into or through several wetland areas. USGS mapping shows the un-named stream connecting with another perennial stream. The streams apparently flow southerly into the Cascades Park in Worcester and into Cook Pond.

James Robert inquired of Mr. Quinn as to whether a continuance of the Public Hearing might make sense to enable Mr. Bock to obtain additional evidence as to the intermittent status of the stream. The Commission is willing to go out and observe field conditions if Mr. Bock contacts the Commission and advises when there is no flow occurring. Mr. Quinn agreed to the continuance to allow him time to speak further with his client and provide the additional information. A motion was made by James Robert to continue the Public Hearing and seconded by Marisa Ayvazian. The motion was unanimously approved to continue the hearing to the Commission's next regularly scheduled meeting on March 14, 2013.

Old Business:

Recruiting – Recruiting: Paul Lefrancois and Gerald Ryan have returned questionnaires that the Commission finalized and mailed out in January to interested parties. The Commission would like to invite them to the next meeting.

Other/Miscellaneous:

- A bill for advertising of \$33 was received from the Holden Landmark and a bill for \$163.84 was received from the T&G. On motion by Michael Voorhis, seconded by Marisa Ayvazian, the bills were approved unanimously.
- Holly Robert presented an updated policy for the hiring of outside consultants to the Commission for review. This written policy was adapted directly from the Massachusetts Association of Conservation Commission (MACC) Handbook except that language referring to a Town wetland bylaw has been removed because Paxton does not currently have a wetland bylaw. The written

policy will update the Commission's rules for the hiring of outside consultants under MGL Ch. 44 § 53G. Under this provision of the law, the Paxton Conservation Commission may impose reasonable fees on project applicants for the employment of outside consultants, engaged by the Commission, for specific expert services. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirements of the WPA (GL Ch 131§40), the Conservation Commission Act (GL Ch 40§8C), or any other state or municipal statute, bylaw, or regulation. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring. Funds received under these rules must be deposited to a special account and separately tracked, and require payment by the applicant within ten business days of the request for payment. The policy also provides rules for appeal of the selection of the outside consultant to the Selectboard. Michael Voorhis made a motion that the Commission approve the written policy and send it to the Chairman for his review. The policy should also be reviewed by the Town Accountant. The motion by Voorhis was seconded by James Robert, and approved unanimously.

The meeting was adjourned at 9:10PM after a motion by James Robert which was seconded by Marisa Ayvazian.

The next regularly scheduled meeting of the Commission will be on Thursday, March 14, 2013 at 7:30PM.

Respectfully submitted,


Holly Robert
Associate Commissioner

Reference Documents: (on file with the Paxton Conservation Commission)

WPA Form 1 – Request for Determination of Applicability – 10 Old Lantern Circle, on file with Paxton Conservation Commission with accompanying Subsurface Sewage Disposal System Repair Plan dated 1/8/2013 prepared by Quinn Engineering, Inc., and letter of 2/12/2013 from Shelley E. Hammond to the Commission with Enclosures (USGS Map, MaDEP Watershed Protection Map & Legend)

Mass DEP Letter dated 1/25/2013 to Mark L. and Cynthia L. Love, 313 Richards Avenue, from PhilipNadeau, Chief, Wetlands Protection Program with Superseding Determination of Applicability dated 1/25/2013

Letter dated 11/30/2012 from Mark Love, 313 Richards Avenue, to Philip Nadeau, Mass DEP, Central Regional Office regarding appeal by Holly Robert of Paxton Conservation Commission's negative Determination in September of 2012

Paxton Conservation Commission Policy for the Hiring of Outside Consultants under MGL Ch 44§53G updated February 14, 2013





***Paxton Conservation Commission
Policy for the Hiring of Outside Consultants
(under MGL Ch. 44§53G)***

Updated February 14, 2013

Purpose. As provided by G.L. Ch. 44 §53G, the Paxton Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of: the Wetlands Protection Act (G.L. Ch. 131 §40), the Conservation Commission Act (G.L. Ch. 40 §8C), or any other state or municipal statute, bylaw [ordinance] or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.

Special Account. Funds received pursuant to these rules shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

Consultant Services. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by, and report only to, the Commission and/or its administrator.

Notice. The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

Payment of Fee. The fee must be received prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Commission to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 or its regulations. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant review identified as necessary by the Commission. The Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g., the questions it needs answered.

Appeals. The applicant may appeal the selection of the outside consultant to the Selectboard, which may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Selectboard and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the

Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

Return of Unspent Fees. When the Commission's review of a project is completed and an Order of Conditions issued, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.