



Conservation Commission Meeting Minutes

Wednesday, February 22, 2023

Town of Kingston
26 Evergreen Street, Room 200
Kingston, MA 02364

Present: Kalina Vendetti (Chairperson), Jim Franklin (Vice-Chair), Dorothy "Dot" MacFarlane, Megan Hickey, Vittorio "Buz" Artiano, Glen Duffy, Natalie Wiegman

Staff: Matt Penella, Conservation Agent

Location: Town Hall Offices, Room 200

Commission Meeting Opened: 6:30 p.m.

Chairperson Kalina Vendetti opened the meeting. The date was February 22, 2023 and the time was 6:30 p.m.

BUSINESS:

I. Signing Documents

Bills were signed for Voss Signs, Environmental Partners, and a fundamentals course for Commissioner Wiegman.

II. Action Items

a) Signatory authorization

Chairperson Vendetti reopened the discussion to provide signatory authorization to the Conservation Agent, Matt Penella. Agent Penella read off the edited signatory authorization statement, as follows: "The Conservation Commission votes to accept Conservation Agent, Matt Penella, as the authorized signatory for any invoices totaling less than two thousand

dollars needing to be paid from the Conservation Commission funds, including associated grants, special articles, and gifts. In the event of the absence of the Conservation Agent, or for invoices two-thousand dollars and higher, a Commission majority, Chairperson or Vice-Chairperson, will act as the signatory. A Commission majority, Chairperson, or Vice-Chairperson will still need to sign off on any personal reimbursement requests submitted on behalf of the Conservation Agent."

VOTE: Megan made the motion to accept the signatory authorization as stated. Jim seconded.
PASSED 7-0-0

b) Proposed Warrant Articles for Annual Town Meeting.

Chairperson Vendetti opened a discussion on Warrant Articles proposed by the Conservation Agent for Annual Town Meeting.

- Agent Penella proposed requesting funding for the remainder of current year and next year of stormwater support for the Municipal Separate Storm Sewer System (MS4) Permit.
- Dam safety inspection and an emergency action plan for Reed Mill Pond are needed.
- All three items can be put up as Free Cash Articles at Town Meeting.
- Agent Penella is working on a re-write of the wetlands by-law; following in more detail the model outlined in the Massachusetts Conservation Commissioners (MACC) by-law.
- The Agent is composing a tree-clearing by-law, that would potentially inhibit the clearing of large parcels of forested lands that are outside of wetlands jurisdiction; he is using the Cape Cod Commission by-law as a model. He wants the Commission's review before going to Town Counsel for review.
- Agent Penella is working on some transfer of land parcels, potentially converting a few town-owned properties to conservation. This includes a parcel of land next to Town Hall that is general municipal wooded land, about 50% wetlands, not likely conducive as buildable land. The parcel next to Town Hall could be accessible via trail for hiking, fishing, and/or hunting. The Agent presented the transference of tax title parcels to conservation that are in close proximity to other conservation parcels or sensitive resource areas. He spoke with the Town Administrator who recommended compiling all of agreed-upon parcels into one article. Regarding the properties that the former Tax Title Custodian did not agree should be transferred to conservation, Matt has a meeting set up with the Town Administrator to review all said parcels. All of the information regarding the tax title parcels, maps that show the parcels that were agreed upon, and those that were not agreed upon, are all included in the proposal for the board to review.

- Camp Nekon in 2014 was taken from general municipal and put under conservation, but not all of it. One portion was given to recreation because it had the old camp and the beach and another portion stayed in general municipal that was south of Monk's Hill Road. Agent Penella spoke highly of the property due to its rare habitat and recommended the Commission move to have it transferred to conservation. Camp Nekon is an important area in town and needs to be protected; and in the last two years a good amount of illegal uses have been curbed there, including cutting down the use of off-road vehicles on the site. Commissioner Artiano asked about the beach and cabin, and if it was the former Boy Scout cabin. Matt clarified that yes it is, and he stated that he would be open to giving to the Recreation Department the cabin, the small road that leads to a dirt boat ramp, and the beach area. Having it go to recreation is preferable than to general municipal, where it might be developed in the future. He doesn't feel that using it for general municipal would be in the town's best interest and certainly is not in the best interests of the habitat that the Commission is set out to protect. He stated: "We are in CPC looking to buy a parcel that's contiguous with that part of Camp Nekon that will hopefully go through CPC and town meeting and get approved. This would be just a little bit more protection of that area around that." Buz also asked what would be the downside, if any, of conservation taking *all* the tax title properties. Matt explained that there are a lot places that are in tax title just because someone did not pay their taxes but they have nothing to do with anything the Commission would want. For example, very small lots that are in-between two residential lots that have been already cleared. Some lots would be fine for development or building. Rather than trying to take all the properties, and prevent any development to happen in the town, Matt said it is about prioritization. He took the whole tax title list and is most interested in parcels that are adjacent to existing conservation properties and to the Jones River or its tributaries. He also took parcel size into account and whether it is likely to remain in a forested condition. However, there are a lot of parcels that it makes sense for Conservation to *not* pursue. And from a fiscal side of things, the former Tax Title Custodian was trying to get some of the properties removed from the tax title list and also recoup some value for the town. In some cases, Matt perceived the potential for development on the Jones River or there was a strong urge to protect the habitat value that is adjacent to the Jones River and it would not be prudent to allow someone to purchase it. Certain parcels fit the Commission's mandate as well as planning documents that have been written in the town; addressing the importance of protecting the Jones River corridor and to improving water quality. So in regards to fiscal responsibility it makes sense in these cases to ensure that these few parcels could *not* be developed, even if it doesn't look as though they likely would be developed. In addition, there were a few parcels that are already protected through the development

process and things were already set aside for open space. Commissioner Duffy asked if there was a definitive list of all conservation restriction properties going back through the years. Agent Penella said there is a list that he is working on, but it is not yet definitive as such. Buz and Glen said they would like to have an ad hoc meeting to have an open discussion regarding the proposed town meeting articles. Matt said he would set up a Word document outlining each article. An ad hoc meeting was scheduled for Wednesday, March 1st at 6:30 p.m. to review and discuss the outline.

VOTE: Glen moved to convene a meeting on March 1st at 6:30 p.m. Megan seconded.

PASSED 7-0-0

III. Public Hearings

a) 8 Smelt Pond Road (Map 89, Lot 18)

Chairperson opened a continued hearing for a Notice of Intent (NOI) received for the construction of an addition to an existing dwelling 100' of a wetland resource area. The applicant is Daniel Pepe and the representative is Dillon Brady of Grady Consulting, LLC. The applicants requested to continue this matter to March 8, 2023, Section C.

VOTE: Buz motioned to accept the continuance to March 8, 2023. Glen seconded.

PASSED 7-0-0

b) 23 Spruce Street (Map 89, Lot 18)

Chairperson opened a continued hearing for a Notice of Intent (NOI) received for the proposed razing of a single-family dwelling and construction of a new single-family dwelling within 100' of a wetland resource area. The applicant is Charlene Nazaretian and the representative is Joseph Webby of Webby Engineering, Inc. Commissioner Franklin recused himself from the hearing since he had been absent during previous hearings regarding the property. Agent Penella stated that the staff notes had been sent to the Commission with an updated recommendation section. The Commission will need to determine whether the proposed mitigation outweighs the increase in impervious surface, building within land subject to storm flowage, and the buffer zone of the salt marsh and land subject to coastal storm flowage. In the initial plan, the square foot value for restoration area didn't match what Matt was measuring out. Mr. Webby supplied a new plan today and that resolves that issue. So, the mitigation area is measuring at 2,650 square feet. The substrate and process for the restoration area is also now detailed in the planting plan that was just updated. Mr. Webby informed Matt that upon looking at the grades in front of the new dwelling, there will be no need for fill inland subject to coastal storm flowage. Commissioner "Buz" Artiano would like it detailed in the special notes of the plan that biodegradable hydraulic fluid should be used in all construction machinery at all times. Buz also noted that under "During construction condition" it says "the first-floor elevation shall be two feet above the hundred year flood plane determined by the flood insurance study. He asked Mr. Webby for clarification on that point. Mr. Webby said that the FEMA zone in that location

is Elevation 12. They are proposing that the top of the foundation be at Elevation 14, which is two feet above. And they are also proposing that the live-in area would be at Elevation 15. Buz would like the wording to be edited to say "Shall be *at least* two feet". Buz also asked about the section of the plan that says "the erosion controls pictured on the plan shall be maintained throughout construction." He asked if there was language somewhere else that states the agent would install and inspect said controls prior to construction. Matt thought that it is in the Commission's standards, but he would check on that. Buz had a question as to how many growing seasons are required in the planting plan. Matt said that in the language it indicates that the first year doesn't count. For example, if plantings are done in May, a report on the plantings in December of the same would be of little significance. He would need to see a report the following year and the year after that. So at least 2 1/2 years would be reported. Buz would like enforcement language clarified in the standards, be it two or three years. Buz also asked what the by-law says regarding requiring property owners to retain records and plans. Matt was not sure.

VOTE: Buz made a motion to close the hearing. Glen seconded.

PASSED: 6-0-1

VOTE: Buz made a motion to approve the NOI for 23 Spruce Street, #SE 037-0932, with the standard conditions and the addition of special conditions, i.e. add biodegradable hydraulic fluid to the pre-construction conditions. As well as any other conditions as outlined in the document: special conditions, during constructions conditions, post construction conditions, and perpetual conditions. Buz also made a motion to approve the two variances required; KWPR7.08 and 10.08B. Dot seconded.

PASSED: 6-0-1

IV. Enforcement

a) 164 Pembroke Street (Map 17, Lot 16)

Chairperson re-opened a public meeting to discuss enforcement at 164 Pembroke Street. Agent Penella had looked over the plan that was received on the day of the Commission's last meeting, and he had shared his notes on it with board. The notes highlight landscaped areas and are a good representation of existing conditions. For the record, the swing-set that is in the yard is not indicated on the plan. Matt mentioned that there had not yet been much, if any, discussion on the ditches on the plan. The plan shows an existing ditch running along the south and north of the property. Matt noted that on the 1999 plan, there is an "existing stream" notation by where the ditch is on the current plan; and that the Commission should state that they are not making a determination on that. The majority of said stream or ditch is not on the property. He recommended that the Commission state that it is not applying determination to that resource area. He wanted the Commission to see where the actual landscaped areas are

on the plan. The landscaped area actually extends all the way to the wetland area. There are a couple areas that have lawn underneath tree canopy. Acceptance of the plan would be through an enforcement action. The owners still need to file for a Certificate of Compliance (COC), which is a whole separate process. Agent Penella stated that the Commission now has the tools it needs to assess the project when a COC is brought forward.

Member of the public, Marilyn Kozodoy of abutting property 160 Pembroke Street stated that at a previous meeting, Commissioner Franklin asked if there were any photographs of earlier conditions on the property. She presented some photographs for the Commission to see what the property was prior to and during construction. She stated that it was August 25, 2021 when she first appeared before the Commission and brought to their attention that the orders of conditions had expired, had never been recorded, and that there is a certified vernal pool on the property. Some of the current members of the Commission were not on the board at that time. She said that in January she had also raised the question about the sketch the Commission had because there is no engineer plan for the 2002 NOI filing. On that sketch for the pool filing, it said the pool was located 50' from the wetlands line and the current plan shows it to be 30' away from the wetlands line. She reminded the Commission of their oath and have the authority to protect the wetlands system and the wildlife habitat on and around 164 Pembroke Street. She expressed appreciation for the Commission's due diligence in the matter and hopes it will be resolved soon. Jay Creed, representative for the property owner, was online and expressed he wanted to see a vote on the plan. Agent Penella said that if the Commission does not require any further revision to the plan then it can be voted on to accept the plan or not, with the stipulation that it is not a determination on the stream/ditch. Commissioner Jim Franklin commented that requesting revisions to plans is part of the process to ensure accuracy. In this particular case, the Commission had asked for revisions to several items on the plan several times from the onset. Commissioner Buz Artiano wants the plan to state clearly if the ditch in question is a ditch or a stream, or that it is "undetermined" in the language. Chairperson Vendetti reviewed what the current language is on the plan, i.e. "existing stream on 1999 plan, no determination on ditch/stream." She then invited property owner, Joseph Casna, who was online, to speak. Mr. Casna said that when they bought the property in 1998 or 1999, there were a series of ditches surrounding the property to conduct the drainage from Route 27 into the rear of the property. He also stated that: "They are just ditches that had been hand-dug to relieve the water from that area that has since been designated as a vernal pool and spilled it into the rear area of the property. They relieved the water coming down off the road alongside the right side of the property. It was a small hand-dug ditch. They are still there to this day when the property was flagged in 1999, they flagged the edge of those ditches at that time. And that's what we've had all these years...those are ditches hand-dug years ago for the purpose that they served. They still do that." In reply, Agent Penella stated that there is a plan from 1999 for the property that says "existing stream". Commissioner Franklin said that

regardless of whether or not the stream/ditch was hand-dug or not does not preclude it from being a stream, other factors determine whether something is a stream or a ditch. Matt said that since the property is surrounded on three sides by wetland resource areas and is already developed, whether the ditch is a stream or not is not important for the purposes of the plan in question. Commissioner Artiano agreed that is not relevant to what the Commission is trying to accomplish. He wanted to ensure that the language in the plan indicates it *may* be either a ditch or a stream, and that is all he is asking for on the plan regarding the ditch/stream. Chairperson recognized Mr. Creed again. He said that the best evidence is that the 1999 plan served as the basis for the NOI in question, and on the 1999 plan it identified that area as a stream. He felt that adding a note on the plan saying: "Previously identified as a stream on 1999 plan" would be a good solution. Buz and Kalina agreed and noted that that was the exact language hand-written by the Agent on the plan that the Commission is reviewing. Commissioner MacFarlane asked for clarification on Mr. Casna's statement that the ditches were dug to drain a vernal pool. Buz also heard that statement but he thought Mr. Casna misspoke on that point. Commissioner Glen Duffy asked Agent Penella how significant is it to have the swing-set on the plan. Matt felt that is was not necessary to have it on the plan at this time. The owners still need to come forward with a COC, and when they do, he will need to go to the property and assure that everything is in order.

Buz made a motion to accept the new plan, with the stipulation that language is added from the 1999 plan stream note. And that the owners have met the requirements of the Enforcement Order, providing an as-built plan as requested by the Conservation Commission. Dot seconded. PASSED 7-0-0

Chairperson recognized Mr. Casna who said that it had been a long drawn-out process. He does not blame it on anyone and believes that trees falling on the house and flooding had added to the length of the process. He hopes that they can continue to work through the process, get the COC, and move on. He then thanked the Commission.

V. Minutes

Minutes for 1/25/2023 were submitted to the Commission for review and approval. Buz made the motion to approve the minutes of 1/25/2023, seconded by Jim. PASSED 7-0-0

VI. Updates

a) 120 Country Club Way

Chairperson requested an update for 120 Country Club Way for a request for minor modifications to Orders of Conditions (OOCs). Agent Penella said that there has been a lot interaction with prospective buyers of the property over the last year or so. He has been making sure that the real estate agent has the most current plans and was informing people

about the conservation posts. A restoration had already completed at the property a couple years ago. There are conservation posts and a buffer restoration was done around the vernal pool and the Isolated Vegetated Wetland (IVW). In 2019, a request was made for a minor change and that was issued by the Commission. The current property owner wants to add a front porch, so in order to make the setback off the road, they made the house smaller and shifted it to the West or to the left on the plan. This minimized the amount of the house that would be in jurisdiction from 28 square feet to 16'. Matt had issued an administrative approval of a minor deviation without Commission review. That would not be legal if it were under jurisdiction of the Department of Environmental Protection (DEP). It was under Kingston Wetlands Protection Regulations (KWPR) only. For some reason, there were two permits issued originally on that property, DEP and KWPR, as well as the 2019 amendment, but this appears to be an error. It was a very minor change that minimized impact, not appropriate for an amendment, so the Agent approved it only under KWPR. The owners have an overlay plan that shows the shift.

b) 70 Elm Street

Agent Penella received a request for an administrative review of tree removal within jurisdiction at 70 Elm Street. This is the condo complex next to the Jones River Trading Post. There were 14, mostly immature, white pine trees marked with blue tape by an arborist. The homeowner wants to plan ahead and prevent potential damage to the house. Matt visited the property and looked at the trees and site conditions. He had some questions regarding site conditions relative to the original permitting, which is quite old at this point. Some of the landscaped areas may have been expanded. The Orders of Conditions had some requirements of the condo association, in that they are supposed to provide storm water reports annually. That was part of the approval of the development. The storm water systems are to minimize impact in the wetlands. They were supposed to be regularly cleaned and inspected annually. However, the last inspection report Matt could find was 2009 or 2010. He informed the homeowner that the request could not be approved yet, that he would need to get up to speed with the condo association. Matt then spoke with the condo association president and informed him of the requirements going forward. The condo association has reached out to Grady Engineering to have an inspection done. While that is being handled, Matt will continue the rest of the assessment to site conditions; including whether possible expansion of landscaping towards the wetlands had been done.

CLOSING REMARKS

Chairperson Kalina Vendetti made closing remarks at 7:50 PM. An interim meeting will be held on Wednesday, March 1, 2023 at 6:30 PM in Room 200. The next regular meeting will be held on Wednesday, March 8, 2023 at 6:30 PM in Room 200.

VOTE:

Jim made the motion to adjourn, seconded by Buz. PASSED 7-0-0



KINGSTON CONSERVATION COMMISSION



26 Evergreen Street, Kingston, MA 02364

SIGN-IN SHEET

PLEASE NOTE THIS MEETING IS BEING VIDEO & AUDIO RECORDED

DATE: Feb 22, 2023

NAME	INTEREST	ADDRESS
Marilyn Kozodoy	164 Pembroke St	160 Pembroke St
Joe Wehby	23 Spruce	



TOWN OF KINGSTON **NOTICE OF MEETING**

BOARD:	Conservation Commission
DATE & TIME:	Wednesday, February 22, 2023 @ 6:30 PM
MEETING LOCATION:	Town House-26 Evergreen St. Room 200 & VIA ZOOM
AUTHORIZED SIGNATURE:	Matt Penella, Conservation Agent

This meeting notice is being posted on the Official Town House Bulletin Board, pursuant to General Law Chapter 30A, Section 20. Said notice and agenda must be filed in the Office of the Town Clerk at least **48 HOURS** prior to such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

For those who want to watch this meeting, it is being broadcast by PACTV on Comcast 15 or Verizon 42 and streamed on YouTube at www.pactv.org/stream.

For anyone wishing to speak during the meeting, you are welcome to join us in person in room 200 or to join the Zoom call.

This meeting is being recorded by PACTV. Anyone intending to make an audio or video recording of this meeting should notify the Chair.

AGENDA

6:30 PM – CALL TO ORDER – ROOM 200

SIGNING DOCUMENTS:

1. Voss surveillance signs for Conservation properties - \$184.50
2. January '23 MS4 support - Environmental Partners - \$2,663.00
3. MACC Fundamentals courses for Commissioner Wiegman- March 2023 - \$110.00

ACTION ITEMS:

1. Signatory authorization (as edited at Feb 8th meeting)
2. 11 Kingston Street, Lot 4- Request for Amendment to OOCs
3. Discussion- Town Meeting Articles- Land transfers

ENFORCEMENT:

1. 164 Pembroke Street

MEETING MINUTES:

UPDATES:

1. Administrative Review - 70 Elm Street - request to remove trees
2. 120 Country Club Way - request for minor modification to OOCs

PUBLIC HEARINGS:

1. A: 8 Smelt Pond Road - continued hearing for addition to a single-family house ***CONTINUED***
The applicant has requested continuance to March 8, 2023

2. B: 23 Spruce Street - raze/rebuild of single-family house

ADJOURN:

NEXT REGULAR MEETING:

1. March 8, 2022

Join Zoom Meeting

<https://pactv.zoom.us/j/96816332793?pwd=WmZRUWhTc0dsWUxrNGhSSjBNdDFldz09>

Meeting ID: 968 1633 2793

Passcode: 756156

Or, dial by your location

+1 929 205 6099 US (New York)

This meeting of the Conservation Commission will be held in-person at the location provided on this notice. Members of the public are welcome to attend this in-person meeting. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless otherwise required by law. Members of the public with particular interest in any specific item on this agenda should make plans for in-person vs. virtual attendance accordingly.

The Town of Kingston advises its employees and the public that it does not discriminate based on a person's disability in employment or in access to its programs, services, and activities. This meeting location is accessible to people with disabilities. The Town of Kingston has designated Paul Armstrong to coordinate efforts to comply with the requirements of Executive Order 526, the Americans with Disabilities Act, the federal Rehabilitation Act and various other federal and state laws protecting the rights of people with disabilities.

If you have a disability and require a reasonable accommodation to fully participate in this event, please contact the ADA Coordinator no later than forty-eight (48) hours prior to the event by phone at 781-585-0505 or email parmstrong@kingstonma.gov to discuss your accessibility needs. Requests for accommodations or modifications made within the forty-eight (48) hour window will be honored to the maximum extent feasible, but it may not be possible to fulfill them.