



Conservation Commission Meeting Minutes

Wednesday, April 10, 2024

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

Present: Kalina Vendetti (Chairperson), Dorothy Macfarlane, Marilyn Kozodoy, Vittorio "Buz" Artiano, Brian Payne

Virtual: Jim Franklin (Vice-Chairperson), Megan Hickey

Absent:

Staff: Matt Penella, Conservation Agent

Julianna Denum, Assistant Conservation Agent

Location: Town Hall Offices, Room 200

Commission Meeting Opened: 6:32 p.m.

BUSINESS:

I. Signing Documents

The Commission signed a \$2,570.00 invoice from Environmental Partners Group for MS4 support for the month of February, a \$140 reimbursement to the Conservation Agent for rain gear, a \$27.20 mileage reimbursement to the Conservation Agent, a \$9.45 mileage reimbursement to the Assistant Conservation Agent, and a \$12.51 reimbursement to the Chairperson for a vernal pool workshop.

II. Action Items

a) 20 Marion Drive (1 Royson Drive) Extension Request

Agent Penella stated that the Extension Request would be continued to April 24, 2024, due to not receiving any new materials.

VOTE: Commissioner Kozodoy made motion to continue the Extension Request to April 24, 2024. The motion was seconded by Commissioner MacFarlane. The motion PASSED with a vote 7-0-0.

b) Codification of Kingston Bylaw changes from the clerks office

Agent Penella stated that the town clerk is doing a codification of the general bylaw and had a legal analysis done. One change was made to the wetland protection section: the inclusion of hand delivery as a method for Notice of Intent applications. Commissioner Artiano asked if that was the only change. Agent Penella confirmed that it was the only change relating to wetlands protection.

VOTE: Commissioner Artiano made motion to approve the amendment. The motion was seconded by Commissioner Franklin. The motion PASSED with a vote 7-0-0.

III. Enforcement

a) 105 Monks Hill Road

Agent Penella stated that this was a property where he noticed unpermitted work while reviewing aerial imagery. He noted that the homeowner, Dave Blumenfeld, recently purchased the property and was not responsible for the unpermitted work. The unpermitted work includes a dock and a shed in close proximity to Smelt Pond. Commissioner Artiano asked what the plan was to resolve this. Agent Penella recommended a site visit with staff for an overall assessment. He noted that the shed would most likely need to be moved outside of the 50-foot no structure setback.

Dave Blumenfeld, the property owner of 105 Monks Hill Road, stated that he could not confirm or deny if the shed was permitted. He noted that there were two permits for storage sheds on the property, one filed in 2004 and one as a legacy permit for another shed. He mentioned that the shed near the pond might be within the same footprint as an abandoned cottage. Dave added that the dock is a removable, modular dock, and he believes it was not permitted. He stated that he has reached out to the state and started the pre-application for a Chapter 91 permit. Dave mentioned that he is open to a site visit to address the shed on the property.

b) 28 Raboth Road

Agent Penella stated that he noticed erosion control issues at 28 Raboth Road during a site visit to 46 Raboth Road. He added that, based on aerial imagery, there appears to be an unpermitted expansion of lawn that has caused the erosion issues, which are in close proximity to Smelt Brook. The agent noted that he sent out a Notice of Violation and received

correspondence from the firm Steinbeck and Taylor, who were hired by the property owner to address the issue. Steinbeck and Taylor have requested to continue the matter to April 24th to work on addressing the issue.

c) 56 Main Street

Agent Penella stated that it was agreed upon during the last meeting that Jacob Barns and Adam Harrington, co-owners of 56 Main Street, would hire a wetland scientist to take soil samples of the parking lot area to determine if a wetland was filled. Following that meeting, Adam and Jacob reached out with historical imagery from 1971 and 2005. They felt that the pictures showed the area was already developed. The agent noted that he did not necessarily agree with that assessment based on the imagery. He told Adam and Jacob they were welcome to present that information to the Commission.

Jacob Barns and Adam Harrington, co-owners of 56 Main Street, stated that they bought the building at 56 Main Street in 2018. They presented the historical aerial imagery to the Commission and noted that there was another parking lot in the area and small motels prior to their purchase of the property. Jacob and Adam noted that the DEP wetlands layer shows the wetlands over 200 feet away from the parking lot area. The agent noted that these maps are not always accurate. Adam stated that they would not have purchased the property if they had known they could not build the parking lot. Jacob inquired about why they were required to go through this process since the area has been developed for a long time.

Commissioner Franklin presented aerial imagery to the Commission, noting that a parking lot was installed in an area with a depression. Agent Penella noted that it was not his intention to force enforcement. He explained that the property was reviewed because there was a filing with the Zoning Board of Appeals (ZBA). The agent stated that if a condition on the property changes over time, there is no applicable grandfathering, and it is always the buyer's responsibility. He stated that the old parking lot was not maintained, and the latest aerial photo showed mature trees with tree canopy cover.

The agent noted that a wetland delineation conducted on the adjacent property indicated there was a wetland in that area. He noted that trees were cleared within jurisdiction and recommended the Commission require an assessment to determine if a wetland was filled. Adam noted that it was not brought to their attention six years ago during prior permitting that there were wetlands on the property. The agent noted that he is not sure if his predecessor signed off on previous permits and reiterated that it is always the buyer's responsibility to assess if wetlands are on the property.

Commissioner Artiano stated that aerial imagery from the 1990s shows an existing foundation roughly 125 feet from the old building to the back of the foundation. He wanted to know the distance from the back of the original structure to where the original foundation ended. Artiano also asked how it could be determined from soil samples how long ago a wetland was filled. Agent Penella stated that it would be apparent based on the material present before reaching wetland soils. He stated that if the samples show new material directly above wetland soils, this will indicate that it was recently filled. The agent highlighted that the reason this was noticed is because a recent filing on the abutting property indicated that there was a wetland in that location. If it was historically filled, the wetland scientist would not have made that indication.

Commissioner Artiano asked if there is a definitive wetland line on the back of the property. The agent responded that he only has the definitive wetland lines for the neighboring property. He added that there is a wetland line on the ZBA application for 56 Main Street that does not necessarily line up with the one from the abutting property. He noted that he is not sure when the wetland delineation was done for 56 Main Street. Agent Penella presented the plan for 38 Crescent Street showing the wetland approximation at 56 Main Street.

Commissioner MacFarlane sought clarification on whether a wetland delineation was needed. The agent noted that it was not his recommendation to have a delineation but to have a wetland scientist on site to determine if a wetland was filled by taking soil samples. Adam noted that the historical imagery shows that there was a parking lot in that location previously. Commissioner MacFarlane asked if those old photos show an asphalt or gravel parking lot. Jacob noted that at one point it was asphalt, which was later removed. Agent Penella stated that it is clear there was development back there; however, wetlands were historically developed prior to the wetland regulations.

Chairperson Vendetti noted that during the last meeting, the Commission determined a wetland scientist would be hired to assess if a wetland was filled. Vendetti asked Adam and Jacob if they were asking the Commission to reconsider that determination. Jacob and Adam confirmed that was correct. Adam stated that they wanted to present new aerial imagery to the Commission. Commissioner Payne asked the agent if it was relevant that there was a hardscape parking lot in that area in the past. Agent Penella stated that once a parking area is removed, no grandfathering is applicable. The agent noted that the area was not consistently paved. The parking lot was removed, and the area revegetated.

Adam Harrington noted the required number of parking spaces required by ZBA. Commissioner Franklin noted that ZBA regulations and Conservation regulations are separate. Commissioner Franklin stated that things do not line up and recommended they hire a wetland scientist to

assess if there was a wetland in the area. Adam highlighted the cost associated with hiring a wetland scientist. Agent Penella stated that based on aerial imagery between 2019 and 2023, trees were cleared, and the parking lot was expanded. He added that it is clear there was modification within jurisdiction and at a minimum, it would require retroactive permitting for the work that was done. He highlighted that before the parking lot expansion happened, a wetland scientist noted on a plan that he saw a wetland in that area with the buffer zone extending onto the adjacent property.

Commissioner Kozodoy stated that for confirmation purposes, an on-the-ground assessment is needed. Commissioner Artiano stated that imagery from the 1990s shows a building foundation in that area 129 feet from the back of the original structure. He stated that the current measurement is a half inch over 129 feet. He noted that his concern with the auger samples is that the wetland could have been filled a long time ago. He stated that it is his opinion that it would be difficult to determine if the wetland was filled in 2021. Agent Penella stated that is not necessarily the case. The agent reiterated that a wetland scientist noted that there appeared to be a wetland in that location. Commissioner Artiano responded that historical imagery shows that there was a building in that location and that he is nervous about taking soil samples in that area. Agent Penella stated that wetland professionals will understand what they are looking at if they are digging through fill.

VOTE: Commissioner Payne made motion to proceed as was originally planned at the last meeting: for the property owners to hire a wetland scientist to assess the soil in the parking lot area with the Conservation Agent present on site to determine if a wetland was filled. The Commission provided 30 days for the property owners to hire a wetland scientist. The motion was seconded by Commissioner Hickey. The motion PASSED with a vote 6-1-0.

d) Braintree Avenue Discussion

Agent Penella stated that he would like to discuss an enforcement issue involving two properties, 2 Braintree Avenue and 11 Wharf Lane, with the Commission to determine the next steps. Residents of 2 Braintree Avenue reported that modifications made by their neighbors at 11 Wharf Lane caused stormwater issues on their property. The agent assessed aerial imagery and drove by the properties.

The agent noted that unpermitted work had been done at 11 Wharf Lane both during and before the current ownership. This included tree removal near the coastal bank and the installation of a half-circle driveway years ago. More recently, additional trees were cleared, and a gravel driveway was installed. Neighbors at 2 Braintree Avenue claimed an area of lawn was also raised, although there is no evidence to support this.

During his review, the agent noticed that 2 Braintree Avenue had also removed trees without a permit. He sent a letter to the owners, informing them that the issue would be discussed by the Commission and emphasizing the importance of trees in stormwater management. The agent presented aerial imagery from 2015 to 2023, highlighting tree removal at both properties.

The owners of 2 Braintree Avenue informed the agent that the town required the removal of a tree near the road due to an issue with the school bus. While the arborist was on site, they also removed a dying tree. They believed they had received approval from the Conservation Agent after contacting town hall. Agent Penella noted that he does not think that was the case.

The agent explained to the property owners that resolving the stormwater issue would require permitting. Jurisdiction extends to the street at 2 Braintree Avenue and close to the street at 11 Wharf Lane. Commissioner Artiano noted no new structures in the imagery, and the agent confirmed this. The agent suggested that an engineering solution, including retroactive filing for the gravel parking area and a mitigation area near the coastal bank with conservation posts, could suffice instead of enforcement action. He emphasized the lack of trees as the main issue for both properties.

Commissioner Payne inquired if the gravel driveway replaced a hard surface driveway. The agent was unsure. Commissioner Payne then asked if a site visit would help determine any change in grade at 11 Wharf Lane. The agent replied that it depends on when the grading occurred. The agent asked the Commission if he should issue a Notice of Violation for the unpermitted work. Commissioner Kozodoy recommended a site visit by the Conservation Agent for a thorough assessment. Commissioner Payne supported issuing a notice to start the process, given the recent unpermitted modifications.

VOTE: Commissioner Payne made a motion to issue a Notice of Violation to 11 Wharf Lane and 2 Braintree Avenue, seconded by Commissioner MacFarlane. The motion PASSED with a vote 7-0-0.

IV: Meeting Minutes

Minutes for February 28, 2024, were submitted to the Commission for review and approval.

VOTE: Commissioner MacFarlane made a motion to approve the minutes February 28, 2024. The motion was seconded by Commissioner Franklin. The motion PASSED with a vote 5-0-2.

V. Updates

a) Chimney swift tower at Opachinski Field Complex

The agent reported that an Eagle Scout, Matthew Quinn, and his fellow troop 49 members installed a chimney swift tower at the Opachinski Field Complex.

VI. Public Hearings

a) 9 Jones River Drive: Notice of Intent (NOI) for the construction of an addition to the existing home, a deck, and associated site grading within the buffer zone to Land Subject to Coastal Storm Flowage.

Jed Hannon from Atlantic Coast Engineering was the representative for 9 Jones River Drive. Jed presented the site plan to the Commission for the proposed addition, noting that Brad Holmes from ECR performed the wetland delineation on site in 2023. Jed stated that the proposed addition would result in an overall net increase of 1,486 square feet in impervious surface, which they plan to mitigate by capturing the roof runoff.

Brad Holmes from ECR stated that several resource areas are on site, including a Bordering Vegetated Wetland, Land Subject to Coastal Storm Flowage, and FEMA flood zone, along with their respective buffer zones. He noted that the proposed work would occur within the buffer zone to Land Subject to Coastal Storm Flowage and within an existing maintained yard area.

Agent Penella stated that there are procedural issues that need to be corrected for the administrative record. He also noted that everything shown on the plan meets the regulatory setbacks and performance standards.

The agent pointed out an unpermitted shed at the periphery of the jurisdiction, installed between 2013 and 2015, and noted that the current owner purchased the property in 2019. Additionally, aerial imagery indicated the gradual expansion of the yard space within jurisdiction. A large tree was removed between October 2021 and July 2023 without a permit. The agent presented site photos to the Commission, highlighting a recently cleared area within jurisdiction that included cedar tree stumps and fill dumped near the wetland.

The agent emphasized the sensitivity of the salt marsh, noting that there is no buffer to the salt marsh, and suggested that meaningful restoration to protect the salt marsh should be considered by the Commission. Commissioner Artiano asked about the extent of the recommended restoration. Agent Penella suggested it should be significant and include conservation placards maintained in perpetuity to delineate the area and adequately protect the salt marsh and wetland.

Commissioner Artiano asked about the status of the driveway. Jed stated that there is no planned change for the driveway and that it will remain as is. Jed reiterated that there is no proposed change to the driveway and mentioned that he had already reviewed this with the property owner. Jed noted that some trees on the property had fallen during nor'easter storms. The agent added that there are still a couple of large dead trees on the property, which could be addressed either through this filing or in the future through Administrative Review. Brad Holmes stated that he could prepare a restoration plan before the next Conservation Commission meeting.

VOTE: Commissioner Artiano made a motion to continue the hearing April 24th, seconded by Commissioner Franklin. The motion PASSED with a vote 7-0-0.

CLOSING REMARKS

Chairperson Kalina Vendetti made closing remarks at 8:24 p.m. The next meeting will be held on April 24th, 2024, starting at 6:30 p.m. in Room 200.

VOTE: Commissioner Kozodoy made the motion to adjourn, seconded by MacFarlane; PASSED 7-0-0

Note on Voting Format: In the vote tallies mentioned in these minutes, the format used is "Yes-No-Abstain".

Prepared by: Julianna Denum, Assistant Conservation Agent, Kingston Conservation Department

Approved by: Kingston Conservation Commission

Documents used at the meeting:

- 04/10/2024 agenda
- 02/28/2024 meeting minutes
- Extension Request documents for 20 Marion Drive (1 Royson Drive)
- Kingston Bylaw change codification document
- Enforcement documents relating to 105 Monks Hill Road
- Enforcement documents relating to 28 Raboth Road
- Enforcement documents relating to 56 Main Street
- Enforcement documents relating to 2 Braintree Avenue & 11 Wharf Lane
- Notice of Intent documents relating to 9 Jones River Drive



TOWN OF KINGSTON

NOTICE OF MEETING

BOARD: Conservation Commission

DATE & TIME: Wednesday, April 10, 2024 @ 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 the Local Seen on Comcast 9 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 the Local Seen. 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. \$2,570.00 invoice from Environmental Partners Group, LLC for MS4 support for the month of February
2. \$140 reimbursement to the Conservation Agent for rain gear purchase
3. \$27.20 mileage reimbursement to the Conservation Agent
4. \$9.45 mileage reimbursement to the Assistant Conservation Agent
5. \$12.51 reimbursement to Kalina Vendetti for a vernal pool workshop

ACTION ITEMS:

1. 20 Marion Drive (1 Royson Drive) Extension Request
2. Codification of Kingston Bylaw changes from clerks office

ENFORCEMENT:

1. 105 Monks Hill Road
2. 28 Raboth Road
3. 56 Main Street
4. Braintree Avenue Discussion

MEETING MINUTES:

1. 02/28/2024

UPDATES:

PUBLIC HEARINGS:

1. 9 Jones River Drive: Notice of Intent (NOI) for the construction of an addition to the existing home, a deck, and associated grading within the buffer zone to Land Subject to Coastal Storm Flowage.

ADJOURN:

NEXT REGULAR MEETING:

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 or remotely. All Town Board and Commission meetings are required to provide remote participation. If there is a technical problem and remote participation cannot be provided, the meeting will end and be rescheduled.

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.



KINGSTON CONSERVATION COMMISSION

26 Evergreen Street, Kingston, MA 02364



PUBLIC HEARING NOTICE

The Kingston Conservation Commission will hold a public hearing on Wednesday, April 10th in Section A, in accordance with the Wetlands Protection Act, M.G.L Chapter 131, section 40, as amended, and the Town of Kingston Wetlands Protection By-Laws, Kingston G.L. Chapter 13. This meeting is regarding the Notice of Intent received by Atlantic Coast Engineering, LLC on behalf of the applicant Paige Starr regarding the property at 9 Jones River Drive. The project proposes the construction of an addition to the existing home, a deck, and associated grading within the buffer zone to Land Subject to Coastal Storm Flowage, and work within the buffer zone to a Bordering Vegetated Wetland. Public Hearings begin at 6:45 p.m. and will continue alphabetically by section assigned. This meeting will be held in person in Room 200 of the Kingston Town House. The public will also be able to attend the meeting virtually through Zoom.

Please visit the link below to join the webinar:

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

Meeting ID: 968 1633 2793

Passcode: 756156

Or dial-in by telephone:

US: +1 929 205 6099

This notice is also available at masspublicnotices.org

Conservation Agent: Matt Penella



KINGSTON CONSERVATION COMMISSION



26 Evergreen Street, Kingston, MA 02364

SIGN-IN SHEET

PLEASE NOTE THIS MEETING IS BEING VIDEO & AUDIO RECORDED

DATE: 04/10/2024

NAME	INTEREST	ADDRESS
May Hill	observing	11 Wharf Lane
Brian Hill	OBSERVING	1 KINGSTON COLLECTION
Dave Blumfeld	on agenda	105 Monks H. 11 Rd
JACOB BARNES	56 MAIN	_____
ADAM HARRINGTON	56 MAIN	_____