

NATURAL RESOURCES COMMISSION
Meeting Minutes
May 18, 2016

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, first floor conference room, Concord, MA at 7:00 p.m. on Wednesday, May 18, 2016. The following Commissioners were present: Lynn Huggins, Chair, Greg Higgins, Jeff Adams, Chip Poutasse, and Judy Zaunbrecher. Delia Kaye, Natural Resources Director, Lori Capone, Assistant Natural Resources Director, and Natural Resources Administrative Assistant Karen Bockoven, were also present.

Chair Huggins opened the meeting at 7:00 p.m. in accordance with the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Concord Wetlands Bylaw.

Normandy Baker LLC, 300-310 Baker Avenue, DEP File #137-1342	7:00 pm
Town of Concord - CPW Engineering, Assabet Avenue, DEP File #137-1323	7:00 pm
Concord Municipal Light Plant, 214Y Main Street, DEP File #137-1342	7:15 pm
Milltarry Offices Registered LLP, 91 and 97 Lowell Rd & 105 and 13B Keyes Rd, DEP File #137-1315	7:20 pm
Karen Kirsten, 280 Estabrook Road, DEP File #137-1339	8:00 pm
White Pond Associates, 90Y Plainfield Road, RDA File #16-7	8:20 pm

Notice of Intent Application for Normandy Baker LLC, 300-310 Baker Avenue, DEP File #137-1342

Chair Huggins informed the public that the hearing for approval to construct 114 additional parking spaces with associated grading and drainage within Bordering Land Subject to Flooding and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands would not be heard tonight because the Applicant did not properly notify all abutters. This matter will be heard on June 1, 2016.

CONTINUANCES

Notice of Intent Application for the Town of Concord - CPW Engineering, Assabet Avenue, DEP File #137-1323

Chair Huggins reopened the hearing for approval to install two overflow pipes and rip-rap swales within Bordering Vegetated Wetlands, Land Under Waterbodies and Waterways, Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Assabet River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Higgins moved to continue the hearing to June 1, 2016. Commissioner Zaunbrecher seconded. All so voted.

Blanding's Turtle Report and 2016 Request for Funding - Bryan Windmiller.

Bryan Windmiller attended tonight's meeting.

Mr. Windmiller said that 2015 was the 13th year that work has been done with Blanding's turtles at Great Meadows and things are going well. Last year they found nine nests and although it was the lowest overall hatch success that does not indicate any trend. They have 34 hatchlings that are being headstarted in schools and they continue to radio track those turtles. They will be removing radios from turtles that have been tracked for more than five years. They estimate the survival rates as being very high. More than half of the turtles they release through the headstart program will survive to adulthood. Not more than 1% of hatchlings survive in the wild. When they trap turtles, they are starting to catch some of the previously headstarted turtles. Blanding's turtles do not swim enough to catch them until they are about six or seven years old. They have been releasing headstart turtles since 2008. Last year was the second year that they released headstarted turtles at Estabrook Woods and they will continue to do so. They have only tracked low numbers at Estabrook Woods and that is probably a result of the harsh winters in 2014 and 2015 and then the summer drought last year. Many turtles died over the winter, which is rare for headstarted turtles. They have eight actively radio tracked headstarted turtles and they have caught six so far this spring; all have been in good condition. They have shifted their release locations to Mink Pond and the pond on the Rasmussen property. Mr. Windmiller further informed the Commission that new initiatives are being used such as small pens to feed and protect hatchlings from predators. They continue to work with Fish & Wildlife on trying to improve the habitat. Habitat for the younger turtles is lacking. They have been experimenting with techniques to plant native shrubs mostly button bush, sweet gale, and swamp rose. They are also experimenting with ways of growing seedlings from cuttings and seeds. They get help from various partners from Fish & Wildlife, Zoo New England, and the New England Aquarium. Mr. Windmiller reminded the Commission that he has also been getting funding from the NRC for radio transmitters for wood turtles at Hanscom. They are currently tracking four adult female wood turtles. The population is about a dozen turtles.

Commissioner Adams commented that the adult population in the last 40 years has been down approximately 60%. Mr. Windmiller agreed. Commissioner Adams asked when the turtles are considered adults. Mr. Windmiller responded they do not consider the turtles adult until about 16 years of age. The adult population seems to have stabilized to around 50. He expects the adult population to increase in another eight years.

Commissioner Zaunbrecher asked when the Town purchases other properties such as Ball's Hill, are there other opportunities to see if they provide good Blanding's habitat. Mr. Windmiller responded that Blanding's turtles are there and they often overwinter at Ball's Hill. The property owners have not been receptive to allowing people to perform research work on their property. Through radio tracking from Great Meadows, they know turtles go in that direction.

There were no public comments.

Mr. Windmiller explained that he has been getting \$3,000 a year from the NRC since 2005 and is requesting the same amount. They use the money to primarily fund nest surveys. They have two people out every evening in June usually for about three hours. The money also pays for checking the nests on a daily basis for about 40 days. Mr. Windmiller requested \$3,000 from the NRC to continue this program and \$350 for the wood turtle radio transmitter.

Commissioner Adams moved to authorize the expenditure of \$3,350 from the Wetlands account to Grassroots Wildlife Conservation for Blanding's turtle and wood turtle population monitoring and restoration work. Commissioner Higgins seconded. All so voted.

Abbreviated Notice of Resource Area Delineation for Concord Municipal Light Plant, 214Y Main Street, DEP File #137-1341

Chair Huggins reopened the hearing seeking confirmation from the Natural Resources Commission of the Bordering Vegetated Wetland and Bank of the Assabet River delineations. List of plans and documents discussed at this meeting:

- Abbreviated Notice of Resource Area Delineation prepared by Industria Engineering, received April 6, 2016;
- Existing Conditions Plan, Sheets 1-8, prepared by Odone Survey & Mapping, revised on May 12, 2016; and,
- Wetlands Site Report prepared by Lucas Environmental, LLC, dated January 11, 2016.

Christopher Roy, Concord Municipal Light Plant, and Mike Lotti, Industria Engineering, attended tonight's meeting. Mr. Lotti informed the Commission that their wetland scientist was on site back in December and the site has been reviewed and resurveyed. All changes have been agreed to by staff and his firm.

There were no public comments.

Commissioner Adams moved to close the hearing and issue an Order of Resource Area Delineation. Commissioner Higgins seconded. All so voted.

Notice of Intent Application for Milltarry Offices Registered LLP, 91 and 97 Lowell Road & 105 and 13B Keyes Road, DEP File #137-1315

Chair Huggins reopened the hearing seeking approval to construct a commercial market/office building, with associated parking, walkways, and drainage, a portion of which work is within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to Mill Brook, and the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Correspondence from Hughes Environmental Consulting dated May 13, 2016;
- Correspondence from Dewing Schmid Kearns dated May 5, 2016;
- Materials Plan prepared by Brown/Sardina revised on May 5, 2016;
- Correspondence from Hughes Environmental Consulting dated May 6, 2016; and
- Project Narrative prepared by Hughes Environmental Consulting revised on May 6, 2016.

Tom Kearns of Dewing Schmid Kearns, Tom Hughes of Hughes Environmental Consulting, Mike Sardina of Brown/Sardina, and Sean Malone, Oak Consulting Group, LLC attended tonight's meeting.

Mr. Kearns informed the Commission that the Planning Board has mandated the construction of the parking deck as part of the initial phase of construction. They have made a proposal to make improvements to Town property. The applicant is meeting again with the Planning Board next Tuesday evening and perhaps again on June 7th. Based on feedback from the May

10th meeting with the Planning Board, they did not foresee any plan changes. They are meeting with the HDC tomorrow evening and they have a ZBA meeting on June 9th.

Tom Hughes updated the Commission on several items. They made changes to the location for compact cars. They have consolidated the parking spaces for the compact cars on one side, reducing pavement in this area by two feet. The Planning Board was concerned about the truck access behind Rite-Aid from the parking area and by removing some of the parking, they were able to obtain additional green space. Mr. Hughes further explained by creating the compact car spaces they are able to shrink the parking deck. Trees and shrubs will be planted around the deck. They have added an area of approximately 8,100 square feet of invasive species removal on Town land. They will replant the area with the plants listed on the existing plan and perhaps adding witch hazel, hazelnut, and other shrubs that will add additional food value. They are creating more vegetated Riverfront than presently exists on the site. They are improving almost every aspect of the project. The only place they are increasing imperviousness is the outer Riverfront by a small amount.

Commissioner Higgins inquired about the Planning Board's insistence on the deck because of the parking issue. Mr. Kearns replied that their parking consultant felt even without a deck there was enough parking. Mr. Kearns stated they have made changes in order to get another eight parking spaces. Mr. Kearns believes they need approval for the parking deck and without that, they will not receive a favorable recommendation from Planning Board.

Mr. Sardina explained to the Commission where the pedestrian concrete pavers will be located and how the porch columns are supporting the roof. He also pointed to the plans as to the location of the emergency vehicle access from either the back side or the front side. The Planning Board had requested that they differentiate areas that have service vehicles from the areas that are for pedestrian use by using colored paving but it is impervious.

Commissioner Adams commented that he believes tremendous strides have been made to this project. He does have some concern about the change in parking spaces by going to compact cars.

Commissioner Zaunbrecher asked for clarification in the project narrative where it refers to non-jurisdictional wetlands. Mr. Hughes responded that the Army Corps of Engineers refers to the isolated wetland as an adjacent wetland and subject to Section 404 and 401 (Clean Water Act). They have to get a permit from Army Corps of Engineers and said the permit is pending. They also have to get 401 Water Quality Certification. After they receive NRC approval and Army Corps approval, they can start that process. It is not jurisdictional as a wetland, however, it is jurisdictional as Bordering Land Subject to Flooding.

Commissioner Zaunbrecher asked what the elevation was where the compactor is located and what the slope was between the compactor and Mill Brook. Mr. Hughes explained that the compactors are on curbed pads with underdrains. Stormwater goes into the underdrains, ends up in the stormwater system, flows through the piping and ends up in the same location as the rest of the stormwater from everywhere else on the site. The land slopes towards Mill Brook once you get past the curbing. Commissioner Zaunbrecher asked how high the curbing is around the compactors. Mr. Malone answered that it is 6 inches. Commissioner Zaunbrecher asked if the drains were kept clear so there is no back up of water. Mr. Malone said the drains are kept clean and that is included in the Operation and Maintenance Plan.

Commissioner Poutasse asked for further clarification regarding impervious numbers within the Riverfront area. Mr. Malone explained that site wide there would be a 2,000 s.f. increase in impervious surfaces but in the Riverfront Area alone, there is a 3,000 s.f. increase in pervious surfaces. Commissioner Poutasse asked about mitigating the deck and if they were going to dig deeper to get more cubic feet of water storage. Mr. Hughes replied they are making it wider. The stormwater flows into stormwater structures for treatment for removal of sediment but the water ends up coming out of the discharge points. The area under the deck is still going to have wetland hydrology and wetland soils. It will not be vegetated. The reason the numbers in the narrative are broken out the way they are is because of the relevant performance standards. Within the Riverfront area, they have a degraded site and they need to demonstrate that they are not making it any worse and ideally making it better. DEP commented on the aprons underneath the parking deck. They responded both with sizing of the aprons to make sure that they are unlikely to need to be maintained but they have also added through an email to DEP and Assistant Director Capone, eight inch inspection ports will be used to both evaluate it and to vacuum out any sediment. There should be no sediment as long as the stormwater system is functioning.

Commissioner Poutasse asked how much space would be between the bottom of the platform and the surface of the water. Mr. Hughes stated it varies but in general, it is a couple of feet under the lowest points. In between the structural beams, it may be as high as four feet underneath with about 6 inches at the minimum. Most of the deck is 18 inches above the water. Commissioner Poutasse inquired if someone would be able to walk underneath. Mr. Hughes replied that if someone needs to go in to maintain, there is enough head clearance to conduct the required maintenance. The area will be surrounded with vegetation. They do expect the area to flood in a 100-year flood. However, the depression tends to fill up with stormwater earlier than it would flood. Commissioner Poutasse asked if the area would flood in a 10-year flood. Mr. Hughes answered the deck platform will be above the 10-year flood elevation.

There were no public comments.

Chair Huggins wanted confirmation from the applicant that the recycling compactor cannot come out of the 25-foot No Disturb Zone. Mr. Hughes responded that they decided to use compactors to keep the footprint as small as possible. He also stated that because of the curbing and the underdrain system, it does not matter from an environmental perspective, where on site that is. They did not really have any other options and by comparing the function before and after the project, the Buffer Zone will function equally. It is a neutral issue environmentally and there will be overall improvement within the 25-foot No Disturb Zone.

Commissioner Zaunbrecher asked what the floodplain elevation is in the area of the curbing. Mr. Hughes answered that the area is out of the floodplain. Mr. Kearns explained that within the existing floodplain in that area where the compactor is going to be, the compactor would be raised up, six inches above the 100-year floodplain elevation.

Chair Huggins confirmed that the applicant would be addressing how dewatering will be managed as part of the Stormwater Pollution Prevention Plan. She also inquired about the snow storage. Mr. Hughes said that the plan has been revised to stockpile snow greater than

50 feet from wetlands. Chair Huggins asked for a detailed invasives removal plan and replanting plan for the mitigation area on Town land. Mr. Hughes would like to work with Town staff regarding this matter. Mr. Hughes wanted to get a conditional approval prior to construction and the invasive plan as a condition of approval prior to construction. Chair Huggins said the Commission reviews this information prior to closing the hearing.

The Applicant agreed to the Commission continuing the hearing to June 1, 2016.

Notice of Intent for Karen Kirsten, 280 Estabrook Road, DEP File #137-1339

Chair Huggins reopened the hearing seeking approval to remove trees and vegetation, plant a meadow, and remove invasive species within the 200-foot Riverfront Area of a tributary to Dakin's Brook and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Dan Gordon of Dan Gordon Associates, Inc. attended tonight's meeting.

Chair Huggins stated that the Commission had their site visit which was very helpful. Chair Huggins said that since the last meeting they have received correspondence regarding the Conservation Restriction from Atty. John Brady and an advisory opinion from the Conservation Restriction Stewardship Committee. Chair Huggins requested Town Counsel provide an opinion including what the ramifications of a Conservation Restriction (CR) placed on the adjacent property that was subsequently subdivided into the applicant's property has, prior to additional dialogue on the CR interpretation and relevance to the project.

Commissioner Adams commented that it is the preference of the Commission to nail fencing to posts instead of damaging trees. Mr. Gordon agreed to address this concern. Commissioner Zaunbrecher asked for more clarification about why the meadow is better than the forested land. Mr. Gordon responded that they would provide a scientific based argument in writing to support their position.

Commissioner Poutasse questioned how the definition of a lawn compared with a meadow as it relates to the exemptions under the Wetland Protection Act concerning the conversion of lawn to swimming pools or other accessory uses to a residence. Chair Huggins stated that the Commission could include a special condition that prevents the conversion of the meadow to the accessory uses without further review and approval from the Commission.

David Meyers of 116 Estabrook Road commented that Mr. Gordon stated in a theoretical way that a meadow is better than woodland and that he would like a chance to respond to any documentation submitted by the Applicant. Chair Huggins informed Mr. Meyes that any documents filed would be public and available for anyone to review at the Natural Resources office. Mr. Meyers asked with regard to the bylaw, if there is work done in the Buffer Zone, could you assume there is significant disruption. Commissioner Adams stated that they evaluate a project holistically to determine if there is a net benefit.

Commissioner Adams moved to request Town Counsel review the CR on this property in relation to this application. Commissioner Zaunbrecher seconded. All so voted.

The Applicant agreed to the Commission continuing this hearing to June 15, 2016.

NEW APPLICATIONS

Request for Determination of Applicability for White Pond Associates, Inc., 90Y Plainfield Road, RDA File #16-7

Chair Huggins opened the meeting for approval to repair the existing infiltration system and to reconstruct the existing timber retaining wall within the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Request for Determination of Applicability Application for White Pond Associates, Inc., 90Y Plainfield Road, received on May 4, 2016; and
- Topographic Plan of Land Plan prepared by BSC Group revised on May 6, 2016.

Scot Indermuehle, Bob Hale, and Dick Hale representing White Pond Associates, Inc., attended tonight's meeting.

Mr. Indermuehle stated the plans show two drainage structures, one from the main driveway/county road to the larger of the two structures located about 120 feet from White Pond based on a site walk with Director Kaye on May 2nd. The smaller structure captures runoff water from the parking area. The upper structure has four galleys. The lower structure has two galleys. There are two sets of catch basins, one opposite the upper galley and one opposite the lower galley. There is an asphalt berm that directs the runoff into the catch basins and then into the galleys. They clean out the catch basins periodically. The structures have been in place for 25 years and are in need of repair. Their plan is to remove the structures, stone, and fabric. They would replace the stone. The galleys would be cleaned up at the parking lot and then reinstall. There is a 12-inch cast pipe that connects the basins to the structures that would not be touched. No work would be done on the county road. All work would be on White Pond Associates' property. Siltation barriers would be used along the length of the parking and along the beach. The next part of the project is the reconstruction of a timber retaining wall which is about 25 feet from White Pond. They propose to use siltation wattles. They anticipate doing this project in the fall after the swim season. Construction access is through a turn out on the upper parking lot staying off the county road. They would continue to maintain the catch basins.

Commissioner Poutasse asked about a stanchion. Mr. Indermuehle replied that part of the original project was stanchions at the base of the drop-off area to prevent vehicles going down the beach. The stanchions are still in place. Those were installed in 1991.

There were no public comments.

Commission Adams moved to Issue a Negative Determination of Applicability #3 with the following conditions: 1) A preconstruction site visit shall be held to review erosion controls and the limit of work; 2) All stockpiled materials, trucks, and/or machinery shall be stored and/or positioned on the White Pond Associates property in a manner that does not block access to the boat launch and/or parking facilities; and, 3) After the project has been completed, the Applicant shall submit a letter to the NRC stating that all work has been conducted in accordance with all conditions of this Determination of Applicability. Any changes from the RDA shall be described. Commissioner Higgins seconded. All so voted.

CLOSE AND ISSUE PERMITS

Sayegh, 131 Assabet Avenue, DEP File #137-1340

Chair Huggins reopened the hearing for approval to construct an addition, driveway extension, patio; conduct landscaping; and remove three sheds within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Assabet River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Commissioner Higgins moved to close the hearing and issue an Order of Conditions for DEP File #137-1340 with Findings A through C, Standard Conditions 1 through 19, and Special Conditions 20 through 48. Commissioner Adams seconded. All so voted.

Damonmill Square Properties, LLC, 9 Pond Lane, DEP #137-1307

Chair Huggins reopened the hearing for approval to repair and maintain an existing dam, stabilize the embankment, repair a section of wall, remove trees, and close the headrace and tailrace, a portion of which work is within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Assabet River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Commissioner Higgins moved to close the hearing and issue an Order of Conditions for DEP File #137-1307 with Findings A through D, Standard Conditions 1 through 19 and Special Conditions 20 through 59. Commissioner Adams seconded. All so voted.

CERTIFICATES OF COMPLIANCE

Crowley, 75 Ayrshire Lane, DEP File #137-351

Assistant Director Capone said the project was back from the 1980's with the original house construction. Commissioner Adams moved to issue a Certificate of Compliance for 75 Ayrshire Lane, DEP File #137-351. Commissioner Higgins seconded. All so voted.

Nguyen, 760 Main Street, DEP File #137-1111

Assistant Director Capone said that a garage was put in the 25-foot No Disturb Zone so it was removed. A partial Certificate of Compliance had been issued for mitigation plantings that were required. They were put in place but subsequently mowed down. This wetland has since been determined not to qualify for local and State jurisdiction through the Keuka Road appeal. The site is stable. Commissioner Adams moved to issue a Certificate of Compliance for 760 Main Street, DEP file #137-1111. Commissions Higgins seconded. All so voted.

OTHER BUSINESS

Director's Report

- Director Kaye informed the Commission that she sent a letter to the homeowners of 270 Border Road regarding a violation of the Forest Ridge Conservation Land and a request for a restoration plan by June 18th for tree removal on conservation land.
- Director Kaye informed the Commission that she is meeting with the homeowner's association tomorrow to review the placement and size of signs to be used in the South Meadow Conservation Restriction.

- Director Kaye informed the Commission that this year's Town Meeting approved CPA funds for slope restoration and water quality monitoring at White Pond. A Request For Quotes for the water quality monitoring will be prepared so that work can be completed this summer. The slope restoration is intended to go out to bid over the summer, with design and permitting over the winter and construction next year.
- Director Kaye informed the Commission that she is preparing a Request for Proposals for continued invasive species management at Old Calf Pasture which will include a survey of the state-listed Britton's violet.

Administrative Approvals

- **920 Sudbury Road, DEP File #137-1335: Regrading**
Director Kaye said the applicant would like to raise the ground around the studio about a foot and a half to prevent the new structure from rotting. It is grading within the 50-foot No Build Zone but is in a disturbed area adjacent to the building. Approval was granted.

Approve Meeting Minutes

- Commissioner Adams moved to approve the March 16, 2016 NRC meeting minutes, as amended. Commissioner Higgins seconded. All so voted.
- Commissioner Adams moved to approve the March 30, 2016 NRC meeting minutes, as amended. Commissioner Higgins seconded. All so voted.

Commissioner Comments

- Commissioner Higgins informed the Commission that the Community Preservation Committee is evaluating raising the Community Preservation Act surcharge from 1.5% to 3%.

Commissioner Zaunbrecher moved to adjourn. Commissioner Adams seconded. All so voted. This meeting adjourned at 8:45 p.m.

Respectfully submitted,

Karen Bockoven
Administrative Assistant