

AGAWAM CONSERVATION COMMISSION
June 28, 2018

MEMBERS PRESENT:

Henry A. Kozloski, Chairman
S. Page Fallon
Magda Galiatsos
Frank Meagher
Jill Messick

MEMBERS ABSENT:

Sheryl Becker

ALSO PRESENT:

Pamela R. Kerr

Mr. Kozloski called the meeting to order at 6:00 PM.

1. REQUEST FOR DETERMINATION – North Street ROW – Eversource Energy

Simon Hildt of Eversource Energy was in attendance to present this RDA for work proposed as part of their Line 1302 Insulator Replacement and Lightning Arrester Installation Project. He explained that while most of the structures that are part of this project are located outside of wetland resource areas and buffer zones. However, one structure (Structure 43017), located west of North Street, will require a work pad to be constructed within the 100' buffer zone of a bordering vegetated wetland (W15D). He explained that due to the uneven topography, a gravel work pad will have to be installed to create a level, safe work area. He stated that the alternative to this would be to access the structure through Robinson Park and through a buffer zone. He stated that the pad will remain in place. The RDA states that the pad will then be covered with soil and a native seed mix. He stated that this work will provide for approximately 1600 sf of buffer zone impacts. Erosion controls will be placed. Ms. Messick asked how long this work will take. Mr. Hildt stated that the civil work will take about two days and the electrical work will take about one day to complete. Mr. Kozloski asked if they intend leave the pad in place and cover with soil and seed as outlined in the RDA. Mr. Hildt stated that they would do that if the Commission prefers. Ms. Galiatsos stated that she would prefer that it be covered and seeded. Ms. Messick stated that she agrees with that as well and stated that it must be a non-invasive mix. Mr. Hildt agreed with that.

Motion was made by Mr. Meagher and seconded by Ms. Messick to issue a Negative Determination of Applicability for the work proposed by Eversource Energy within the ROW of North Street – structure #43017) as part of their Insulator Replacement and Lightning Arrester Installation Project.

VOTE 5-0

2. PUBLIC HEARING CONT. – Amended Order of Conditions – South Westfield Street
–DePalma/Tirone

Filipe Craveau of R. Levesque Associates was in attendance for this item. He reiterated that the number of units on the revised plan has decreased from the originally approved 131 units in buildings with 5-8 units each to 80 units with two units per building. He explained that the Planning Board approved the revised plan last week and that the Engineering Department memo contained the same comments from 2013 with the exception of two new comments (Traffic Study and sidewalks on South Westfield Street). Ms. Messick asked if the change in the number of units has any effect on the resource areas. Mr. Craveau stated no, and that there are no changes to the roadway or drainage. He stated that there will be some micro grading that will occur as a result of the smaller building sizes. Mr. Kozloski asked if all work is still within the limit of work line. Mr. Craveau indicated yes. He went on to say that the revised plan allows for a 1.6 acre reduction in impervious area and no changes to the detention basins are proposed. He stated that all utility connections as well. Mr. Fallon asked if any changes to the outfall just off of the street are proposed. Mr. Craveau stated the plan remains unchanged in that area and the level spreader and outlet has not changed. There being no public input, Mr. Kozloski closed the public hearing.

Motion was made by Ms. Messick and seconded by Ms. Galiatsos to issue an Amended Order of Conditions for DePalma/Tirone on South Westfield Street referencing the amended plan dated 6-14-18.

VOTE 5-0

3. DISCUSSION – Lot 4 Cynthia Place

Motion was made by Ms. Messick and seconded by Mr. Fallon to remove Lot 4 Cynthia Place from the agenda until further notice from the applicant.

VOTE 5-0

4. PUBLIC HEARING CONT. – Notice of Intent – Paul Revere Drive – Town of Agawam

The Engineering Department requested that this item be removed from the agenda until they have had the opportunity to meeting with DEP and submit a full Notice of Intent.

Motion was made by Ms. Messick and seconded by Mr. Meagher to remove the Paul Revere item by the Town of Agawam from the agenda as requested.

VOTE 5-0

The meeting with DEP has been tentatively scheduled for next Friday, early afternoon. Mr. Kozloski, Mr. Fallon and Ms. Galiatsos agreed to attend as well as Ms. Kerr.

5. PUBLIC HEARING CONT. – 311 Shoemaker Lane – TJA Solar

Rich Tabyczinski of Atlantic Design was in attendance. He stated that a site visit was held by Emily Stockman, Commission members, and a representative of Atlantic Design since the last meeting and that he received the report by Emily Stockman (peer review) on the wetland delineations this week and stated that the June 6th drawing was accepted with conditions that riverfront area be shown and that two of the isolated vegetated wetlands be changed to bordering vegetated wetlands and they will now show the 100' buffers associated with them. At this point Emily Stockman addressed the Commission with her findings. She began by saying that this is a complex site and that she concurs with the delineations with some changes. She went on to say this report is only focused on the delineation/boundaries and she has not yet reviewed the project. It was agreed that she would go over each wetland, starting at the entrance off of Shoemaker Lane. The first wetland series shown is T6 and she concurs with the mapping. The next is T7 and she also concurs. Next is T8 which was originally shown as isolated but she found that it borders a swale and connects and as such it is a bordering vegetated wetland and the 100' buffer is now shown. The next is the IVW T13 which she concurs is isolated. Going southerly, there is a BVW 400 series and a BVW 300 series which she concurs with. Then, the next is IVW T19 series which she concurs is isolated. Going westerly, next is the T10 and T15 series which shows bordering vegetated wetland which in Emily's opinion borders a large forested bvw off the property to the north – the two fingers are connected and are now bordering vegetated wetland and the 100' buffer must be shown. Mr. Kozloski asked if the Commission concurred with this finding as it was looked at during the recent site visit and holes were dug by the Commission members. Mr. Fallon stated that he feels they found sufficient indication in the field that these are bordering vegetated wetlands. Ms. Messick stated that she agrees they are connected and are bvw. Then proceeding westerly on the plan is IVW T-16 which Ms. Stockman concurs is isolated. Going southerly are "fingers" labeled bvw T17 and bvw T14 which she concurs with as shown. She did note that with the finger towards the south the flags then change to the W-100 series. Going easterly is a wet meadow finger W-200 and T1 series labeled as bvw and she concurs with those boundaries. Heading southerly is a small isolated wetland T-18 which she concurs with the classification and boundary. Westerly is T11 a bordering vegetated wetland that borders a wetland off-site and she concurs with that. She also concurs with the W-200 bvw; as well as IVW T12. She then brought up the stream and said that the original submittal documents did not overcome the presumption that this was a perennial stream. DEP reviewed the documents and found that the dates of the stream monitoring were an issue as one of them was done during a documented drought. The applicant's consultants then clarified the monitoring information and sent a revised stream report to the Commission with data showing that it overcomes the presumption. Ms. Stockman stated that she reviewed the documentation and found issues with the data and the dates of the documents that were provided. She explained that the four day documentation as required in the regulations was not provided to the Commission. Her report recommends that the stream be evaluated to see if it "is affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other human-made flow reductions or diversions". She stated it is her opinion that it does not meet the requirements of overcoming the presumption that it is perennial and that the entire reach of the stream within the project site should be classified as perennial, as depicted on the latest USGS topographic map. The plans shall be revised to depict the associated riverfront area boundary.

Any work in that area will have to meet the required performance standards. Rich Tabyczinski stated that the maps show stations 1 through 7 labeled intermittent. Only three consecutive days with documentation were provided. He stated that their consultant (GZA) indicated that another day of monitoring was done but they did not have the photographic evidence. They provided an affidavit stating that they did the monitoring on 9-18-15 and they found dry conditions, however no photographs were taken that day. He asked the Commission to accept the affidavit in lieu of photographic evidence as GZA is a reputable firm. He stated that they looked upstream and found no impoundments or man-made obstructions that would force it to dry up. Ms. Stockman stated that the affidavit is very beneficial and it was not uncommon practice previously to accept an affidavit however DEP has changed the regulations after 2002 and they now want the photographic or video documentation. She explained the regulations are to guide the Commission and the applicant through the process. Also, the affidavit only addresses up to three observations and not the required four. She further explained that it is her opinion that the presumption that the stream is perennial is a quintessential part of the Rivers Act and is stringent for good reason. Ms. Messick asked if it could be intermittent in one section. Ms. Stockman indicated that it is not unheard of and referenced an area of the Green River. Ms. Messick stated that she does not feel that the presumption has been overcome and asked what the drought date was. Ms. Stockman stated the July date, per DEP, was taken during a declared drought. Mr. Kozloski stated that approximately ten years ago he was on this site and the stream was flowing really well and was approximately 6"-12" deep. He stated that the area floods as there was water in the cornfield at that time. He went on to say that last Fall the stream was 6'-8' wide and approximately 1' deep when they were on the adjacent farmland site. He stated that he believes the stream is perennial. Ms. Messick stated that the stream monitoring documentation is from 2015, three years ago. During the most recent site visit the members did not look at the stream. There was a general discussion of whether the applicant could go out and re-monitor the stream and take photo documentation. Mr. Kozloski stated that is not uncommon and Six Flags did that a few years back and he and another member would periodically go out and monitor for their own visual proof as well. Mike Mocko was in attendance and has done the most recent wetland mapping on the project. He indicated that the stream is flowing now and that during the recent site visit it would have been 2"-4" deep and 3'-6' wide. He went on to say, however, that it is very likely that this reach of the stream would prove to be intermittent due to the size of the watershed above the site, the soils in the area, etc. He feels that is partial evidence that it is intermittent and agrees with the GZA documentation. Rich Tabyczinski then spoke of the direct impacts of delineating this as perennial with associated riverfront area. He explained that the impacts would include a portion of the access road and some of the solar panels. He stated that would have to cross through riverfront area with the access road. Mr. Kozloski stated that some work can be permitted in the 100' to 200' riparian zone. Ms. Stockman stated that the first 100' is to be kept pristine, performance standards including an alternatives analysis will be required and disturbance above 10% would require a wildlife habitat evaluation. Mr. Fallon asked if any of the area would be considered degraded land in the riverfront. Mr. Tabyczinski stated that there is no impervious area so, no. Ms. Stockman stated that the updated plans shown this evening show the project as well as the revised delineations. Mr. Fallon asked if the Commission was required to act on the delineations now or could the applicant request a continuance to get additional data. He stated that he feels reluctant to vote due to one photograph not being submitted. Mr. Kozloski stated that they can appeal the Commission's

vote. He went on to say that the decision is the Commission's. Ms. Stockman stated that voting on the delineation this evening will allow the applicant to move forward.

Motion was made by Ms. Messick and seconded by Ms. Galiatsos to approve the wetland delineation/boundaries for the 311 Shoemaker Lane property as listed and shown on the updated plans presented this evening and note that the Commission **does not agree that the presumption that the stream on the property is perennial has been overcome.** The following resource area boundaries have been approved: Beginning at Shoemaker Lane entrance:

T6 - BVW – approved
T7 – approved
T8 – originally isolated vegetated wetland – **now bvw with buffer**
T13 – IVW – approved
Then southerly,
BVW 400 series and BVW 300 series – approved
T19 series IVW – approved
Then westerly,
T10 and T15 – **now bvw with buffer**
Then westerly,
T26 IVW – approved
Then southerly,
T17 BVW – approved
T14 BVW – approved
Then easterly,
W-200 and T1 BVW - approved
Then southerly,
T18 small isolated wetland – approved
Then westerly,
T11 BVW – approved
W-200 BVW – approved
T12 IVW – approved

The stream is a perennial stream with riverfront area.

VOTE 5-0

The public hearing was continued to the next meeting (July 12, 2018).

6. PRE-CONSTRUCTION REVIEW – Order of Conditions – Pond View Hollow

Terry Reynolds (site engineer), Matt Shalepin (new owner) and Norm Pelley (contractor) were in attendance this evening. Rob Levesque of R. Levesque Associates was in attendance and informed the Chairman that he is recording this item. Ms. Kerr informed the Commission that

Mr. Levesque's attorney submitted a letter to the Town stating that the "permitting plans" that were approved for Mr. Russo's Pond View Hollow Apartment complex cannot be used by a third party. The members then went over the Order with those in attendance. Mr. Kozloski stated that the infiltration basin must be protected during construction. It was noted that any trees to be removed must be tagged and approved by the Commission prior to construction. Mr. Reynolds stated that he understands and he will help to ensure compliance with the Order of Conditions. He went on to say that he is confident that Mr. Shalepin's attorney and RLA's attorney can work this out. Mr. Levesque then addressed the Commission. He stated that the letter from his attorney indicates a liability issue with a third party using these plans. He explained that he and his clients sign a design contract which stipulates that the drawings cannot be used without RLA's permission. He went on to say that it is a liability for the Town as well since these plans are labeled "for permitting". He explained that construction drawings would be prepared when the project is ready to be built. He further explained that their attorneys are communicating however there is currently no legal plan for the new owners to use for construction as they have not authorized their use.

7. ENFORCEMENT ORDER UPDATES

North West Street – Kudlic – Nothing new to report.

Federal Street – Mr. Kozloski stated that he makes daily inspections to this site and the haybales are working. Val Shevtz, builder, was in attendance and agreed with Mr. Kozloski that the staked haybales are holding well.

Motion was made by Ms. Messick and seconded by Ms. Galiatsos to lift the Enforcement Order issued to Oak Ridge Custom Home Builders, Inc., dated June 14, 2018 and that as soon as the foundation is in on Lot A the original limit of work line shall be adhered to.

VOTE 5-0

Lenox Street – Mr. Kozloski and Mr. Fallon went back out at the owner's request to view the work that he had accomplished. He asked to leave some of the wood chips in place but was told to remove more. He called the office today to say that the work was done. Mr. Fallon stated that he could make a re-inspection tomorrow.

8. APPROVAL OF MINUTES – June 14, 2018

Motion was made by Ms. Messick and seconded by Mr. Fallon to approve the minutes of June 14, 2018 as written.

VOTE 5-0

9. Correspondence and Complaints

Anatoliy Paliy was in attendance to request some minor changes to his 116 Adams Street Order of Conditions. Mr. Kozloski stated that he met on-site with Mr. Paliy to view the area of the proposed garage which was laid out recently by his surveyor. He stated that the location is not as shown on the approved plan. Mr. Paliy explained that as measured is now 15' instead of 10' from the slope. He would like to move it over 5'. Ms. Messick asked if this would require more fill. She recalled telling him during the last Amendment to his Order that no more fill would be allowed in this area which is riverfront. Mr. Kozloski stated that it may be that the house is not in the right location according to the approved plan as the surveyor measured from the house, not the street. After a lengthy discussion it was agreed that a site visit be scheduled with other members of the Commission and Mr. Paliy's surveyor.

Sequoia Drive – The Commission received a letter from Peter Levesque regarding the replacement of a retaining wall on Sequoia Drive asking whether an RDA or NOI would be required. Ms. Messick stated that she met with the owner on-site previously and viewed the area. She stated that she questions how this work could be done under a Determination as the area of the retaining wall drops down steeply to a stream and associated b/w. She recommends a Notice of Intent. The members agreed with her.

Lot 4 Windermere Drive – The buyer's attorney contacted the office to say that the grass is fully established on this lot and requested that the \$1,000 holdback be released. Mr. Kozloski stated that he will re-inspect tomorrow.

Motion was made by Ms. Messick and seconded by Ms. Galiatsos to issue a full Certificate of Compliance on Lot 4 Windermere Drive allowing for the \$1,000 holdback to be released pending a favorable inspection by a Commission member.

VOTE 5-0

The meeting adjourned at 8:25 PM.