

Chelmsford Conservation Commission
Town of Chelmsford
50 Billerica Rd. Chelmsford, Ma 01824
Meeting Minutes
May 23, 2023
Approved June 13, 2023

Members Present: Chris Garrahan, Marc Gibbs, Karl Bischoff, John Swenson, Peter Spawn, David McLachlan, William Vines

Members Absent:

Others Present: David Koonce-Conservation Agent

Meeting was called to order at 7:00PM by Mr. Garrahan.

All documents referenced in these minutes are available for review at the Community Development Office, 50 Billerica Rd., Chelmsford Town Offices Building. This meeting was hand recorded via the Recording Secretary, and televised by Chelmsford Telemedia.

Open Session / Citizen Concerns

No one came forward at this time.

Regulatory Hearings

• Request for Determination of Applicability (after-the-fact filing); Robert Johnson; Shore Drive Maureen Herald/Norse Environmental Services, Inc., representing Applicant

Legal Notice read. Work was to land under water bodies, placement of 160 square foot dock, installation of stepping stones, sand on the beach, a shed, and removal of debris.

Ms. Herald was present to help resolve the enforcement order, Vivian- ask David- think it was not an order and is requesting the Commission to allow the 8x10 shed which is used to store fishing equipment, as well as a stone walkway, wood steps and a dock. The dimensions of the dock are 8'x20', and the shed is 10 feet inside the wetland line. This request will require a waiver of the 25 foot no-disturb buffer requirement. The applicant has removed bittersweet, trash and broken glass which has improved the area significantly.

Mr. Koonce had requested additional info be added to the plans. The walkway, beach and setback lines are still not on the plans. Ms. Herald advised that the applicant was trying to save some money, and did the plan himself. The requested information can be added.

Mr. Garrahan requested more details on the dock.

Mr. Koonce added that more information is needed to justify the waivers for the shed and beach. Submitted plans should be accurate. The applicant was advised that the shed should be moved outside the 25 foot buffer. The applicant has not been officially ordered to move it yet. Mr. Koonce would not support the waiver at this point. A similar situation with a buffer violation will be heard later.

Ms. Herrold suggested that in lieu of moving the shed, they can raise the shed up. The slope of the land makes moving the shed difficult, and could damage the shed.

Mr. Spawn indicated he would support the bittersweet removal, and that the applicant plant more native plants. applicant clarified that the dock has been there 3 years, and consists of aluminum posts that sit on pads. Mr. Koonce acknowledged that abutters have not complained about the shed, outside of notifying the Commission of the work occurring without a permit. Changing a shoreline and creating a beach could have implications with the regulations. Mr. Spawn agreed to discuss this further with Mr. Koonce.

Mr. McLachlan noted that the lot is 1/10 acre in size, and he questioned whether the shed met the definition of a building. Mr. Koonce advised the shed did not need a building permit. There is an exemption in the bylaws for a shed, however, the shed isn't more than 50 feet away from a resource area. Mr. McLachlan was concerned about setting a precedent in granting a waiver for this request. He advised that future owners need to be aware that no chemicals should ever be stored in the shed ever.

Ms. Herrold stated that a Chapter 91 license requires local approval before the state will approve it. The dock is not a perm structure.

Mr. Vines stated that he has looked at the site. The shed is a premade structure on cinder blocks. To move it would require going up a two foot incline. No gas powered boats are allowed on the lake, so gas is not a concern. The dock is similar to what is at other homes around the lake. The sand is minimal. He feels no new edge is created along the shore, and he has no issues waiving the 25 foot no-disturb buffer requirement. The applicant has cleared his land of trash, and it looks nice. Other properties have much more substantial things going on.

Mr. Gibbs felt this is a minor disturbance. He complemented the cleanup, and has no issue with the shed. He advised that nothing else should be built on this parcel.

The dock is seasonal, and is walked out of the water by hand. Pads just sit on the ground. Posts are not driven in.

There were no comments received from the public.

Mr. McLachlan agreed that the regulations need to be communicated to the residents better. Many residents are not aware of Conservation regulations. There's always been a lot of activity by the lake. Apparently the Building department did not tell the property owner about the setback.

Motion: by Mr. McLachlan to close the Hearing for Robert Johnson-Shore Drive. Seconded by Mr. Bischoff. **Motion carries, unanimous, 7-0.**

Motion: by Mr. McLachlan to waive the 25-foot No-Disturb buffer Requirement for Robert Johnson-Shore Drive, based on Hardship. Seconded by Mr. Vines. **Motion carries, unanimous, 7-0.**

Motion: by Mr. McLachlan to approve the Request for Determination of Applicability for Robert Johnson-Shore Drive, with both Negative 2 and Negative Three Determinations, subject to revised plans being submitted that show the walkway dimensions, and the beach and setback lines. There will also be a restriction that no chemicals can be stored in the shed, and this restriction is to be recorded on the deed to the property. Seconded by Mr. Vines. **Motion carries, unanimous, 7-0.**

• Notice of Intent (after-the-fact filing; cont'd from 09.27.22); Keith Silva; 120 Gorham Street Susan McArthur/McArthur Environmental Consulting, LLC, representing Applicant

Ms. McArthur was present via Zoom.

This Hearing was continued to see how plants will grow, and whether excess soil was removed. The area was seeded, grass is starting to grow; boulders were put along the 25-foot buffer line, and are actually 35 feet from the wetland, to avoid further disturbance.

Mr. Silva was also present via Zoom, and he indicated that he's hired a landscaper to finish the requested plantings.

Mr. Koonce stated that he went to the site yesterday; there's still more work to be done to control erosion. The controls are down in multiple places. Mr. Koonce wants to meet with the landscaper to provide direction on erosion control. This Hearing is not ready to be closed yet.

The landscaper has a good reputation in the community. The landscaper needs to put more erosion control in place. Debris still needs to be removed, grading is still needed in the 25-foot buffer, and continued monitoring is still needed.

Mr. Silva agreed to ask the landscaper to contact Mr. Koonce. The Hearing will be continued to June 13, 2023. .

Mr. McLachlan asked why this matter is taking so long. Mr. Silva explained that he hired the wrong people, and has an attorney involved. Then winter happened. When project started, he didn't think he was

in the buffer zone. Mr. Koonce accepts some of the blame, as a couple of years prior, another project was approved for being outside the buffer zone. Mr. Gibbs supported the requirement to have a certified plot plan. Mr. Silva stated that the wetlands have taken over more of his property since 5 years ago. Work is expected to continue on Friday. Spawn, would like to see a restoration plan. Species of proposed plantings were listed, and will replace the existing knotweed.

Motion: by Mr. McLachlan to continue the Hearing for 120 Gorham St to June 13, 2023. Seconded by Mr. Bischoff. **Motion carries, unanimous, 7-0.**

• **Notice of Intent (cont'd from 05.09.23); Jayesh Master; 6 Doral Drive, Kenneth Lania/Cornerstone Land Associates, LLC, representing Applicant Discussion**

Mr. Lania stated they met with the Tree Committee as requested, and with Mr. Spawn and Mr. Koonce. Some of the driveway will be pulled back, and the tree will be protected better. Drainage will be sized down in order to protect the tree also.

Mr. Koonce agreed that the proposed changes and drainage improvements and tree protection efforts are sufficient. .

There were no Public comments received.

Mr. Spawn thanked the applicant for working with the Tree Committee.

Motion: by Mr. McLachlan to close the Hearing for 6 Doral Drive. Seconded by Mr. Bischoff. Mr. Vines abstained, all others in favor. **Motion carries, 6-0.**

Motion: by Mr. McLachlan to issue a Standard Order of Conditions with no Special Conditions for 6 Doral Drive, as presented. Seconded by Mr. Swenson. Mr. Vines abstained, all others in favor. **Motion carries, unanimous, 6-0.**

• **Ratification of Enforcement Orders at 0 Littleton Road and 35 Brick Kiln Road**

Mr. Koonce met with Susan MacArthur and Mr. St. John last week. Some work has been undone, and submission of a restoration plan is due by June 15, 2023. The storage container must be moved outside of 25-foot buffer zone. Wetlands have been delineated. A full plan is still awaited. Crushed stone has to be removed from the buffer area. An application for a Request for Determination of Applicability is due by July 1, 2023.

No town building permit is required for a storage container this small. This is a 20 foot, 160SF metal container.

The Applicant has not been available to Ms MacArthur nor the Conservation Commission.

The Commission wants this resolved as soon as possible. Ms. MacArthur will send an email about whether the container has been moved, and she will work on the restoration plan and RDA filing.

Immediate removal of the container from the buffer zone will be added to the enforcement order. Ms. MacArthur will advise her client that fines and legal action could be warranted if this is not resolved soon.

Potential for chemical storage in the container is very concerning. The Commission questioned what activities are proposed for this area- For example, storage of lawn maintenance equipment would not be appropriate close to the wetlands,

Motion: by Mr. Gibbs to ratify the Enforcement Order for 0 Littleton Rd. as amended to require removal of the storage container from the buffer zone. Seconded by Mr. Vines. **Motion carries, unanimous, 7-0.**

Hearing is continued to June 13, 2023.

35 Brick Kiln Rd. Enforcement Order

Mr. Koonce received calls about activity near the wetlands. He visited the site and saw extensive clearing of buffer zone and wetlands, and filling in the wetlands. A previous delineation had been done when the garage was constructed. Wetland flags needed to be replaced, and this was done. All fill-logs and tree debris and excess soil is to be removed from the wetland and buffer zone. Some of the work has been started, more work needs to be done.

An RDA filing will be needed.

The property owner wants to expand his lawn, build a retaining wall, and add trailer storage. The application is due by July 15, 2023. A Restoration Plan is due by June 15, 2023.

Audience Comments:

Kerry Conway 3 Moore St. advised there's a lot more going on. A landscaping business is being run out of this home, and there are 4-5 big trucks and 2 trailers parked here. A large driveway has been constructed. There is also possible encroachment on their property. The garage was built last summer. All business materials are being stored in this building. There is a carport holding machinery here. There are trucks parked on the grass, employees are parking here. Ms. Conway is working with other departments on this matter as well.

The area is across from the Sheriff's Department, near the UPS facility.

Kurt Stall 25 Brick Kiln Rd., stated he has lived here since 1999. There were never any issues until last year. Now there is noise pollution, lots of traffic, illegal burning for which the Fire Department responded, and there are strong odors.

Phil Petchek, 5 Moore St., stated that he can see them burning, and they are using diesel fuel to start the fires.

Kurt Stall added that he was aware there were wetlands nearby. Dirty fill is being brought, clear cutting of trees is being done. He is very concerned about multiple violations in this area.

Many Town Departments will be involved in this matter, including the Building Department, Public Health Department, Zoning Board and the Conservation Commission.

Phil Petchek, 5 Moore St., added that there are trucks, plows, hydraulic equipment, sanders, and other equipment parked on the property. The washout trailer is a dump trailer. There are oils coming off the fill that was brought in, and some soil was removed. These issues are impacting the wetland. Trash is being dumped as fill-photos were shown to the Commission.

Michael Longo, 31 Brick Kiln Rd., felt the damage is done. Things and habitat are ruined. He is immune compromised from cancer; and he has spoken with the owner, who was dismissive. Mr. Longo hopes the property owner will need to replicate the area.

Mr. Garrahan explained how the enforcement order works. Actions include Cease and Desist, and restoration. There are local, state and federal jurisdictions. Abutters were encouraged to contact Mr. Koonce if more problems ensue.

Mr. McLachlan suggested getting DEP involved sooner rather than later. Community Development Director Evan Belansky should be advised to coordinate the actions of all the departments involved in this matter. This site is at the end of an 11 acre parcel that is all wetlands. Multiple parties about this property. There have been a number of past issues in this area. This needs to be monitored closely.

Kerry Conway came back to state that abutters have been sending e-mails to Town departments, and have not had much luck with response. They are being told it will be looked into, but no follow up is done with them.

Mr. Garrahan will reach out to the Select Board liaison as well.

Mr. McLachlan suggested that the enforcement order should be stricter. Mr. Spawn added that storm water permits may be needed as well. The retaining wall that is being built may be in the buffer zone. Many trees have been removed.

Motion: by Mr. McLachlan to ratify the Enforcement Order for 35 Brick Kiln Rd. with additional requirements to restore the entire 25-foot buffer zone and wetland. Also that the restoration plan covers all of the disturbed area in the 100 foot buffer zone. Seconded by Mr. Bischoff. **Motion carries, unanimous, 7-0.**

Motion: by Mr. McLachlan to request the Community Development Director to call a meeting of the Conservation Commission, Public Health Department, Fire Department and Building Department to discuss continuing issues at 35 Brick Kiln Rd . Seconded by Mr. Vines. **Motion carries, unanimous, 7-0.**

Motion: by Mr. McLachlan to request the Mr. Garrahan meet with the Select Board Liaison to discuss continuing issues at 35 Brick Kiln Rd. Seconded by Mr. Vines. **Motion carries, unanimous, 7-0.**

Mr. Koonce will reach out to DEP for assistance. There is the potential for Town Counsel assistance through the Town Manager.

This matter will be continued to the next meeting on June 13, 2023.

Mr. Petchek asked whether all of the fill behind the retaining wall would need to be removed. It was noted that some of the wall is outside the Commission's jurisdiction.

Motion: by Mr. McLachlan to publish all Enforcement Orders on the Town website until they are resolved. Seconded by Mr. Spawn. **Motion carries, unanimous, 7-0.**

Continual Business

Land Management

• Update on Warren-Pohl Reservation

Mr. Bischoff reported that the Conservation Restriction document is awaiting more changes, and is still being reviewed. The trails were mowed on Sunday.

Other:

A garden shed roof at Russell Mill reservation needs to be replaced, and volunteers are willing to do the work. This is a white shed near the front of the reservation. The New England Mountain Bike Association may help also. The Commission had no issues with this request.

Mr. Bischoff did his presentation for the Master Plan Implementation Committee. The DPW will provide more input.

Community Development Director Evan Belansky is trying to get funding from NMCOG to get a grant for an updated Open Space and Recreation Plan.

The next Commission site walk is scheduled for June 3, 2023, beginning at 9:00AM, at Red Wing Farm. Attendees will look at existing conditions.

Mr. Spawn reported that DPW Director and Tree Warden Christine Clancy came to the last Tree Committee meeting. She has allocation for a lot of trees/shrubs paid for by National Grid that need a

home. Mr. Spawn would like to work toward organizing a planting program to get these trees and shrubs planted. Tree Warden approval is required for many of these removals and replacements. Mr. Koonce has asked her to follow up on cutting in easements in jurisdictional areas. Further discussion to be had. Commissioners should indicate whether and where they would like trees and shrubs planted.

Agent's Report

• Update on 221 Littleton Road

Mr. Koonce spoke with the property owner's attorney. There was supposed to be a site plan presented, and Mr. Koonce would like to meet with the engineer. The attorney has indicated she will attend the June 13, 2023 meeting. If she doesn't appear, an enforcement order can be issued.

Mr. Koonce was told the oil trucks are empty, and this use for the site is allowed by right under zoning. Commission not so sure as a change of land use may need more consideration. The trucks are right next to the wetland, and there is serious concern about leaking of fluids from the trucks, engines, and equipment.

• Update on 18-20 Boston Road IRA

Mr. Spawn recused himself from this discussion at 8:59PM.

Mr. Koonce stated an emergency certificate was previously issued on this matter. A new source of contamination was found where a PVC pipe was found and removed from under a pine tree. The pipe was stained, and it seemed apparent to the LSP that petroleum had been in the pipe. No idea when this was happening, or source of petroleum. Several yards of soil was also removed. The tree could have been 40 years old. Since the work was done, the sheen on the brook has cleared.

Mr. Spawn returned to the meeting at 9:02PM.

For Approval/Signature

• Meeting minutes of April 25, 2023; May 2, 2023; May 9, 2023

Motion: by Mr. McLachlan to approve the Meeting Minutes of May 2, 2023, as presented.
Seconded by Mr. Gibbs. **Motion carries, unanimous, 7-0.**

Motion: by Mr. McLachlan to approve the Meeting Minutes of April 25, 2023, as presented.
Seconded by Mr. Swenson. **Motion carries, unanimous, 7-0.**

Motion: by Mr. McLachlan to approve the Meeting Minutes of May 9, 2023, as presented.
Seconded by Mr. Spawn. Mr. Vines abstained, all others in favor. **Motion carries, 6-0.**

Chris Lavalley, Planning Board Liaison, announced that there would be a workshop tomorrow on Planning Board policies. Draft policies can be read, they are part of the agenda. A project for 11 School St. is being presented tomorrow, and the applicant will be before the Commission to discuss a walkway.

The applicant is converting an office building into a health and wellness spa. The location is near Stony Brook. Martel Tree has a Hearing regarding their contractor yard at Turnpike and Mill Roads. There are no wetlands in this area.

Adjourn

Next Meetings: June 13, 2023 June 27, 2023

Motion: by Mr. Bischoff to adjourn the meeting at 9:12PM. Seconded by Mr. Swenson. **Motion carries, unanimous, 7-0.**

Respectfully submitted,
Vivian W. Merrill

Supporting documents:
-Applications for Regulatory Hearings.
-Draft Minutes