

MINUTES- 06 February 2006
Hopkinton Town Hall, Room 216

Called to Order: 7:30 PM
Adjourned: 10:00 PM

Members Present: Robert Murphy, Steven Radel, David Teitelman, Jeffrey Barnes, Jack Speranza, Ellen Chagnon: Conservation Scientist, Don MacAdam: Conservation Administrator

Members Absent: Brian Morrison

7:30 PM Commission Business

- The Commission signed the following documents:
 - Morrison-Erdman, Piazza Ln. – negative Determination with conditions (RDA 2005-26)
 - Bernard, 6 Barbara Rd. – negative Determination with conditions (RDA 2006-1)
 - Thalheimer, 28 Elizabeth Rd. – Certificate of Compliance for ERO (188-771)
 - Prime Properties, lot 37, 18 Wedgewood Rd. – new signature page for COC (188-641)
 - McLaughlin, 69 Winter St. – new signature page for COC (188-1113)
- Mr. Speranza made a motion to approve the minutes of 23 January 2006 as amended. The motion was seconded by Mr. Teitelman and it passed unanimously.
- Mr. Barnes made a motion to approve the minutes of 14 June 2004. The motion was seconded by Mr. Teitelman and it passed unanimously.
- Mr. Barnes made a motion to approve the minutes of 28 June 2004. The motion was seconded by Mr. Teitelman and it passed unanimously.
- Mr. Barnes made a motion to approve the minutes of 12 July 2004. The motion was seconded by Mr. Teitelman and it passed unanimously.
- A discussion was held regarding the draft comment letter to the Executive Office of Environmental Affairs (EOEA) for the Fruit Street Master Plan Second Supplemental Single EIR (SSSEIR). Relative to the discrepancy between the Zone II map used by VHB in the SSSEIR and the Zone II boundary on the Earth Tech plans produced in January 2006, Mr. Murphy stated that Dick Jubinville of Earth Tech told him that the most recent map shows the Zone II boundary within the proposed sewage disposal area. Mr. Radel asked if the plans in the SSSEIR can be amended. Mr. Murphy stated that the SSSEIR has already been submitted and cannot be amended. Mr. Murphy stated that the discrepancy will need to be corrected at the project change level of review in the future. Mr. Speranza stated that the plans in the SSSEIR are planning documents and that the baseline information should be correct. Mr. Speranza made a motion to issue the SSSEIR comment letter to EOEA, with the addition of a paragraph discussing the Zone II discrepancy. The motion was seconded by Mr. Radel and it passed unanimously.

**7:45 PM Bertschmann, 4 Cider Mill Road
Request for Determination of Applicability**

RDA 2006-2

Christopher and Jean Bertschmann, applicants/owners

Mrs. Bertschmann presented proposed plans to remove an existing deck and to construct an addition onto their existing home. Ms. Chagnon stated that she has inspected the site and that the addition is greater than 50 feet away from the bordering vegetated wetland on the property and is proposed to be constructed within the existing lawn. Mr. Radel made a motion to close the hearing and issue a negative Determination of Applicability with the standard conditions. The motion was seconded by Mr. Teitelman and it passed unanimously.

8:00 PM Commission Business

- Mr. Robert McKinnon presented a plan as a proposed project change to the approved building footprint for Lot 28, 8 Glen Road (DEP File No. 188-1215). Mr. Speranza made a motion to approve the plan titled "Proposed Change" and dated 06 February 2006 as an insignificant project change. The motion was seconded by Mr. Radel and it passed unanimously.
- A discussion was held regarding a written request from David Klay, 26 Twin Island Road to remove a tree on town property that is adjacent to his shed. The Commission determined that the applicant must provide written rationale to address the environmental concerns.

**8:15 PM E.W. Tarca Construction, 20 Wedgewood Drive DEP File No. 188-____
Notice of Intent**

Ed Tarca, E.W. Tarca Construction

Mr. Radel stated that he knows Mr. Tarca personally but that he believes that it will not affect his ability to make a judgment on the filing. Mr. Tarca provided an overview of the site work that has occurred to date. Ms. Chagnon stated that the Commission determined at the 07 November 2005 meeting to review the work on site and allow the work to continue if the structure was more than 25-feet from the wetland edge and an after-the-fact permit application was submitted. Mr. Tarca stated that the addition is 26 feet from the wetland at its closest point. A discussion was held regarding conditioning the work. Mr. Murphy stated that a permanent immovable barrier must be installed along the edge of the existing lawn and that no future structures can go any closer to the wetland than the approved structures. The Commission determined that a condition restricting the use of herbicides, pesticides and fertilizers within the buffer zone must be included in any order issued.

Mr. Speranza made a motion to close the hearing and issue an Order of Conditions with a finding of fact, subject to the assignment of a file number by DEP and with the standard and above-noted special conditions. The motion was seconded by Mr. Barnes and it passed unanimously.

8:25 PM Commission Business

- A discussion was held regarding proposed site work for Damon, 13 Jordan Road. The Commission determined that an after-the-fact Notice of Intent must be filed for the existing well and site clearing and that the proposed site work may be included with the Notice of

Intent. The Commission determined that an attempt to contact the builder who performed the original site work must be performed.

**8:30 PM Paolini Construction, 194 South Street
Enforcement Hearing**

Angelo Paolini, Paolini Corporation

Ms. Chagnon stated that a construction trailer and associated erosion control measures were allowed on the property as an insignificant project change under the Order of Conditions for DPW, South Street (DEP File Number 188-1201). Ms. Chagnon stated that the work permitted under the Order is essentially complete and that the approved trailer was removed previously and that a different trailer is now being stored on the site. Ms. Chagnon stated that portions of the site are unstable and the erosion control measures are in disrepair. Ms. Chagnon stated that the current access/egress and utilization of the site must be properly permitted by the Commission. A discussion was held regarding the status of the current trailer. Mr. Paolini stated that he will submit an after-the-fact Notice of Intent to document the use of the site, that he will refurbish the erosion controls and will remove the trailer by the end of March.

8:40 PM Commission Business

The Commission reviewed a proposed project change submitted by Mr. Gerard Lindsey to raze an existing shed and to construct a two-car detached garage in a previously disturbed area and outside the 50 foot wetland set-back for Macchi, 130 Lumber Street (DEP File No. 188-1292). Mr. Barnes made a motion to approve the proposed change, as noted in Mr. Lindsey's letter dated 06 February 2006 and shown on the site plan entitled "Proposed Site Improvement Plan" dated 08 March 2004 with a final revision date of 31 January 2006, as an insignificant project change. The motion was seconded by Mr. Teitelman and it passed unanimously.

**8:45 PM Exxon Mobil Corp., 92 West Main Street DEP File No. 188-____
Notice of Intent**

Paul McKinlay, GES, Inc.

Mr. McKinlay provided an overview of the previous site work and groundwater treatment that has been conducted at the Mobil Station under DEP File No. 188-1195. Mr. McKinlay stated that the previous Order of Conditions has expired and they have filed a new Notice of Intent to permit the approximately two years of remaining ground water treatment. Ms. Chagnon stated that an Order of Conditions can be conditioned similar to the previous Order.

Mr. Speranza made a motion to close the hearing and issue an Order of Conditions subject to the assignment of a file number by DEP and with conditions similar to those in the original Order minus the conditions that referenced the previous construction and removal of contaminated soils. The motion was seconded by Mr. Barnes and it passed unanimously.

**9:00 PM Rudden, 44 Front Street
Request for Determination of Applicability**

RDA 2006-3

Francis Rudden, applicant/owner

Mr. Speranza stated that Mr. Rudden's daughter works for him but that he believes it will not affect his ability to make a judgment on the filing. Mr. Rudden presented proposed plans to construct a two-car attached garage and a detached carriage house, perform septic maintenance work, and to document a removal of a detached garage after the fact. Ms. Chagnon stated that the isolated wetland appears to be a vernal pool, that the work is proposed within a previously disturbed area, and that the existing lawn extends to the vernal pool edge. A discussion was held regarding the distance between the now-demolished garage and the proposed carriage house to the vernal pool and it was determined that the proposed carriage house will be no closer to the vernal pool than was the garage. Ms. Chagnon stated that the plan must identify the isolated wetland as a vernal pool and that use of herbicides, pesticides, fertilizers, and road salt on the driveway must be restricted as standard conditions. Ms. Chagnon stated that any future structures must not be located closer to the wetlands than the currently proposed structures as an on-going special condition.

Mr. Barnes made a motion to close the hearing and issue a negative Determination of Applicability with the standard and above-noted special conditions. The motion was seconded by Mr. Teitelman and it passed unanimously.

**9:15 PM Chirco Land Development, 45 Granite Street DEP File No. 188-1248
(9:10 PM) Extension Permit**

Benedict Chirco, Chirco Land Development Co., Inc.

Mr. Chirco stated that the driveway, well, and septic system have been completed but that he has not started construction of the house, which is outside the Commission's jurisdiction. Mr. Chirco stated that he is seeking a three-year extension to the current Order of Conditions. Mr. Speranza made a motion to issue a three-year extension permit for the current Order of Conditions. The motion was seconded by Mr. Teitelman and it passed unanimously.

9:15 PM Commission Business

- The Commission signed the following documents:
 - Bertschmann, 4 Cider Mill Rd. – negative Determination with conditions (RDA 2006-2)
 - Rudden, 44 Front St. – negative Determination with conditions (RDA 2006-3)

Mr. Speranza showed the Commission a copy of the letter and attached information that he submitted to the State Ethics Commission. Mr. Speranza stated that the information was centered on activities that Mr. Morrison performed following his maintenance work on Piazza Lane. Mr. Speranza stated that the state has set standards for public officials and these standards can be followed with common sense and common decency.

Mr. Speranza stated that prior to the first public hearing for Piazza Lane Mr. Morrison engaged in ten private email exchanges with Commission members and staff relative to his site work on Piazza Lane. Mr. Speranza stated that the law states that a board member with a filing before the board on which he serves must act in a way that does not create the appearance of any bias, manipulation, or influence. Mr. Speranza stated that he believes that behavior was not followed

in this instance. Mr. Speranza stated that for him the most troubling aspect was when, at the conclusion of the Piazza Lane hearing when everyone was milling around, Mr. Morrison suggested conditions to Ms. Chagnon to incorporate into the Determination of Applicability that the Commission had voted to issue. Mr. Speranza stated that Mr. Morrison continued to engage in communications with the Commission and the staff relative to his filing prior to the conclusion of the matter, even after it was suggested to him to stop. Mr. Speranza stated that the emails Mr. Morrison made public through his attorney did not include some emails that he sent to Ms. Chagnon at her home office.

Mr. Speranza stated that he believes that the Conservation staff, as well as the Commission members, has been placed in a difficult position. Mr. Speranza stated that this behavior is wrong and illegal and that the current political "witch hunt" does not excuse Mr. Morrison's behavior. Mr. Speranza stated that he believes there has been some polarization in the community and probably some political motives have been involved, but that he is not a part of any conspiracy to remove Mr. Morrison from the Commission. Mr. Speranza stated that he is disappointed that Mr. Morrison is not present and that he wishes to hear what Mr. Morrison has to say on the matter. Mr. Speranza stated that the Commission can discuss this issue now that the hearing is over and cannot be prejudiced. Mr. Speranza asked the Commission to review the matter.

Mr. Murphy asked what the status was of the information that Mr. Speranza compiled for the State Ethics Commission. Mr. Speranza stated that he has filed the information with the State Ethics Commission already. Mr. Murphy stated that he believes there is nothing left to act on and asked Mr. Speranza to clarify what he believes the Commission should do next. Mr. Speranza stated that he believes Mr. Morrison's conduct was unbecoming of a chairman and that the Commission may wish to discuss the possibility of reorganizing the Commission. Mr. Murphy stated that he believes that the Commission has been fair and even-handed for the past couple of months and that the appropriate time to discuss this matter was not until the public hearing for Piazza Lane was concluded. Mr. Murphy stated that much of the communication from Mr. Morrison was clarification of the work that was done. Mr. Radel stated that the things that happened after the work was done are the things that disturb him and that the violation of trust disturbs him.

Mr. Speranza stated that he is concerned that the staff was placed in an awkward position. Mr. Murphy stated that he believes the staff and the Commission have dealt professionally with this and other pressures that have been brought before them. Mr. Murphy stated that he was not made aware of the Piazza Lane matter until after the Board of Selectmen notified him. Mr. Murphy stated that he does not interpret email communications from Mr. Morrison as being meant to influence him. Mr. Speranza stated that the interpretation of the meaning is not the point; the point is that the email communications exist at all. Mr. Radel stated that he is sorry that work commitments have made him miss some recent time with the Commission, that he appreciates the time Mr. Speranza has devoted to Commission and that he hopes to review Mr. Speranza's information.

Mr. Speranza stated that what he finds most disturbing is that during the Board of Selectmen's 15 November 2005 meeting Mr. Morrison stated on four occasions that he had talked with the staff and they told him that no permit was required to perform the work. Mr. Speranza stated that he previously asked Ms. Chagnon and Mr. MacAdam if they gave Mr. Morrison permission to perform the maintenance work on Piazza Lane and they responded that they had not. Mr. Speranza again asked Ms. Chagnon and Mr. MacAdam if they told Mr. Morrison that permits were not required to perform the maintenance work. Both Ms. Chagnon and Mr. MacAdam stated that they did not give Mr. Morrison permission to perform the work nor did they inform

him that permits were not required. Mr. Speranza stated that Mr. Morrison either lied to the Board of Selectmen, the Commission, or both boards.

Mr. Murphy stated that he is very puzzled that Mr. Morrison did not inform the Commission prior to performing the maintenance work. Mr. Murphy stated that Mr. Morrison's credibility has been irreparably harmed and he does not see how Mr. Morrison can be effective in the Chairman's position any longer. Mr. Speranza stated that Mr. Morrison made a series of tremendous errors in judgment and that he is asking to be treated differently from others. Mr. Speranza stated that he believes Mr. Morrison is very intelligent but that he can't figure out why Mr. Morrison has acted in this manner.

Mr. Teitelman asked the Commission what they believe the options are. Mr. Speranza stated that the Commission can remove Mr. Morrison as chair or censor him and that it is up to the members. Mr. Speranza stated that if the Board of Selectmen does not remove Mr. Morrison from the Commission and if Mr. Morrison does not resign then the Commission only has the ability to remove Mr. Morrison from the chairmanship. Mr. Speranza stated the he is unsure if any type of censure exists but that he believes no action should be undertaken until they can meet with Mr. Morrison as a Commission. Mr. Murphy agreed that no action should be taken at this time. Mr. Radel stated that he does not see why the Commission cannot vote at this time to reorganize for the chairmanship. Mr. Barnes stated that he believes that no one wishes to take on the responsibilities that are inherent with chairmanship at this time. Mr. Speranza stated that he thinks a member must serve knowing that he must take on that role at some point and that the chair should rotate through the members periodically.

Mr. Barnes stated that what the Board of Selectmen decides is out of the Commission's purview, but that he thinks Mr. Morrison should not be removed from the Commission because it will create a void of institutional knowledge. Mr. Speranza agreed that losing Mr. Morrison's voice and view point will leave a big void on the Commission that may not be replaced. Mr. Radel asked if Mr. Morrison needs to be present for the Commission to find consensus on the chairman position. Mr. Speranza stated that he wants to learn what Mr. Morrison has to say on the matter and does not think the Commission should take any actions without Mr. Morrison present. Mr. Barnes and Mr. Murphy agreed with Mr. Speranza.

Mr. Teitelman stated that he believes some sort of "whistle blower" protocol should be established for the future relative to individual Commission member actions. Mr. Teitelman stated that he believes some sort of protocol should be established for the future relative to Commission members requiring wetlands permits. Mr. Speranza stated that he believes the way the Commission dealt with Mark Bullinger's situation (a former Commission member proposing work within 100 feet of a wetland) was an example of a procedure to follow. Mr. Speranza stated that the staff should not be put in an awkward position and that members of the Commission should come before the Commission directly to discuss their need for a filing. Mr. Speranza suggested that the Commission review the advisories and other information on the State Ethics Commission website. Mr. Murphy stated that it makes sense to him for any member who wishes to be above-board to discuss issues with the Commission first before seeking advice from the staff.

Minutes Approved: 27 February 2006