

**TOWN OF NEEDHAM  
CONSERVATION COMMISSION  
MEETING MINUTES  
Wednesday, March 31, 2010**

LOCATION: Town of Needham Public Services Administration Building, Charles River Room

ATTENDING: Carl Shapiro (Acting Chair), Paul Alpert, Sharon Soltzberg, Dawn Stolfi Stalenhoef, Patricia Barry (Agent), Amy Holland (Administrative Assistant)

GUESTS: Patricia Carey, Bob Gray, Kevin Naughton, Lance Remsen, Brian Wall, John Whalen and Susan Whalen

C. Shapiro opened the meeting at 7:34 p.m.

**COMMISSION ACTIONS**

C. Shapiro accepted the written certifications from P. Alpert and D. Stolfi Stalenhoef that these members have missed no more than one single session of the hearings pertaining to the Rosemary Lake Draining and Pool Maintenance Project (DEP File#234-577), and have examined all evidence received at the missed session including a transcript of the meeting in accordance with MGL Chapter 39, Section 23 D Adjudicatory Hearings.

**PUBLIC HEARINGS**

**178 ROSEMARY STREET (DEP FILE #234-577) – NOTICE OF INTENT**

C. Shapiro opened the continued public hearing at 7:35 p.m. and stated that this was a special public hearing specifically for this project, being held after the regularly scheduled Conservation Commission public hearing. For this special hearing, the Conservation Commission reviewed additional information submitted by the Whalens of 297, 315 and 323 West Street in Needham, MA at the March 25, 2010 meeting, and additional proposed recommended conditions dated March 30, 2010.

P. Carey represented Needham Park and Recreation Department and discussed the annual draining of Rosemary Lake by the Park and Forestry Division, required to maintain the existing Town pool in accordance with the Board of Health requirements. She stated that the Park and Recreation Department believes the proposed project is in compliance with the MA Wetlands Protection Act, previous Orders of Conditions and proposed maintenance plan. She further stated that the Park and Recreation Department would be happy to comply with any additional monitoring requirements set forth by the Commission. P. Carey further stated that the pool employs twenty-two (22) high school and college students and provides valuable public recreational service and programs for the town and surrounding communities.

P. Carey further stated that most of the recommended requirements from the Whalen response letters do not appear to be applicable to the project. The Town's consultant (Aquatic Control Technology) indicated that the proposed work qualified as maintenance of the pool, and that 'withdrawal projects' as defined in the Massachusetts Water Management Act are subject to different compliance rules than the proposed annual draining project.

L. Remsen of the Needham Park and Forestry Department explained the 'not-to-exceed' discharge flow rate and monitoring requirement recommended in the Wildlife Habitat Report by Aquatic Control

Technology of 3.2 cubic feet per second. He mentioned that the Town's Engineering Department conducted the calculations indicating that the discharge rate in previous years has been well below the recommended withdrawal flow rate of 3.2 cubic feet per second.

C. Shapiro asked if the West Street pump station was an area that was already monitored under the previous Order of Conditions for this project, and if the town had access to other locations for testing that were closer to the discharge outlet at Rosemary Lake. L. Remsen indicated that the West Street pump station is a location where water levels are taken, in addition to the Central Avenue underpass. L. Remsen also stated that the Petrini Apartments located on West Street, across the Lake, could be an additional location for testing. P. Carey informed the Commission that Greg Petrini has given the town verbal access approval to conduct testing.

P. Carey indicated that she has historic aerial photography documents on file that show that Rosemary Brook has not been breached, as described in the Whalen response letters. The Engineering Office reviewed the aerial photos and conducted a site visit at the stream in the location of the "breach," and determined that there is no breach in the stream.

C. Shapiro opened the hearing to public comment at 7:46 p.m.

Attorney Bryan Wall of Troy Wall Associates in Sandwich, MA represented the Whalens. He stressed that the town is proposing to drain a 12.5 acre lake, and that the Whalens believed the project should not be approved. The Whalens submitted suggested conditions prior to this meeting without waiving the preferred action that the Commission deny the issuance of an Order of Conditions. One recommended condition requested that the Lake be drained in October through November, and refilled in March of a given year.

Attorney Wall stated that the NOI is incomplete because it does not encompass the downstream resources and associated potential project impacts. He further stated that there has not been an adequate demonstration by the town of required practicable alternatives, and recommended the Commission require an adequate alternatives analysis.

Attorney Wall discussed the GEIR report referenced in the Town's Wildlife Habitat Assessment, and recommended that the Commission condition the project as recommended in that report. Additionally, he stated that the MA Fish and Game Division should review the proposed project as recommended under the GEIR, particularly because fish and amphibians spawn in the spring and the withdrawal of 18 million gallons of water would have an impact on these species.

Attorney Wall stated that the Whalens believe that the stream's (alleged) breach is located on Town owned land and is a result of the annual draining of Rosemary Lake, therefore all of the downstream area would be subject to the permit and hence the town would be responsible for fixing the breach in the stream.

P. Alpert asked P. Carey if it is a practicable alternative not to clean the pool. P. Carey answered that the swimming pool would not meet the required Board of Health criteria for a public swimming pool and could not be opened.

Robert Gray, PWS of Sabatia Inc. in Pocasset, MA represented Mr. and Mrs. Whalen and presented 2001 and 2008 aerial photographs of the site. R. Gray noted that recreation is not one of the interests protected by the MA Wetlands Protection Act, but fisheries and wildlife are protected. He also provided comments on the Town's wildlife habitat assessment, and indicated that it was only a baseline of information and

that some conclusions presented in the assessment were weak, at best, particularly one conclusion that the wildlife acclimates to the drawdown activities. R. Gray requested further protection of fisheries and fisheries habitat, and requested that the assessment show how deep is the remaining standing water during a lake draining, and document fish kills. He also stated that sediment has deposited into the stream bed on the breached stream and onto Mr. Whalens Property.

L. Ramsen responded that water levels are taken 200 yards from Mr. Whalen's property. Mr. Gray recommended a location change for turbidity, and also recommended water level collection locations to be added to this Order of Conditions. He also disclosed the past nuisance case against the town.

**Motion to close the public hearing by S. Soltzberg, seconded by P. Alpert, approved 4-0-0.** The public hearing was closed at 8:20 p.m.. The Commission reviewed the draft Order of Conditions.  
**Motion to issue an Order of Conditions for DEP File#234-577 by S. Soltzberg, seconded by P. Alpert, approved 4-0-0.**

### **OTHER BUSINESS**

#### **REVISED RIDGE HILL AGREEMENT – Discussion, Vote and Approval**

Paul Alpert informed the Commission of the changes between the existing agreement and the revised agreement as follows:

- The original agreement between the Board of Selectman and the Conservation Commission stated that if the town does not vote to fund the Senior Center by 2010, the property would revert back to the Commission. However, the revised agreement now states that the property will continue to remain in the hands of the Selectmen regardless of Senior Center;
- Revision also includes elimination of language regarding rangers and the Commission would like to discuss the final decision to eliminate rangers;
- Original agreement stated the Commission had reserved storage space in the barn.

**Motion to continue the Revised Ridge Hill Agreement discussion to the April 8, 2010 public meeting by P. Alpert, seconded by D. Stolfi Stalenhoef, approved 4-0-0.**

**Meeting was adjourned at 8:57 p.m.**

Next Meeting: *Thursday, April 8, 2010 at Town of Needham Public Services Administration Building, Charles River Room.*

Respectfully submitted,

**Patricia L. Barry**