

**Natick Conservation Commission**  
**June 26, 2017**

The meeting was called to order at 7:08pm by Chairman, Matthew Gardner.  
Additional members present: George Bain, Kathy Rehl, Mike Downey, Jeff Richards, and Doug Shepard.

**Discussion**

*Dog Park, use of land*

Jamie Errickson represented the Town as proponents for the dog park project. He presented a slide show which highlighted that the proposed dog park is not a conventional dog park, no anticipated wetlands protection act or bylaw impacts, wood chips would be used as substrate, the park would provide a community need. The wood chips are natural and absorb chemicals in dog urine. There is a dog park in Foxboro, Normandy Dog Park that uses them and they have been working out great in that location. They need to be refreshed 1-2 times a year depending on dog park use. The old chips disintegrate over time. There is currently a lot of dead, fallen, and dying trees as well as an inundation of Oriental Bittersweet Vines and other invasive species in the area currently. NHESP has been consulted and they find the dog park use to be a non issue and can issue a formal letter of no affect when a formal design is presented, if it ends up needing to be reviewed by NHESP.

Jim Almonte, of Waterman Design, design consulting firm hired to complete design work with Stanton Foundation Grant, discussed design details. There are 17 parking spaces, 19 permeable pavement additional spaces are proposed.

The elevation of the dog park is 10 feet higher than the water levels. The wood chips and the separation to groundwater address urine pollution impacts to the water resources. The perc test results came back were presented.

The perc tests results show a very thick A, top soil, horizon in the test hole closest to the dog park where a proposed stormwater BMP is proposed. There was no mottling, no water observed. The perc test resulted in 3 minutes an inch perc rate. The test holes in the dog park limits itself were not accessible as the locations proposed were much higher in elevation. This means that there is probably even more ground water separation the further you move into the proposed dog park location. The designer can do more confirmatory soil testing in the future.

The BOH Director Jim White as well as in consultation with a well respected expert soil scientist Peter Fletcher recommend that the A horizon be left in place which will act as an infiltration layer for any dog urine. Jim White also stated when sighting septic systems there must be 5 feet of groundwater separation with fast draining soils and that this park is located over double that depth to ground water. The more separation to groundwater you have the better. Jim Almonte stated that solid waste would be required to be taken offsite to throw in garbage receptacles.

A question was posed from the public as to when the Stanton Foundation grant for design work came in, the Community and Economic Development Office would look into it.

Jim White stated that affects of the dog park to the drinking water supply was a concern of the Board of Health membership previously.

No research to substantiate this concern was cited.

Jim White said that the Board of Health members stated they preferred to see the park located somewhere else, but they do not have the updated, downsized plan nor the results of the perc test. He does not know how they feel about the updated project currently.

Matt Gardener read out the EOEa guidance from 1998 on Article 97 Land Disposition Policy. Attorney John Flynn, Town Council is in attendance to help in any legal guidance the Conservation Commission is seeing. Matt read the Statement of Policy Section I in full.

Matt stated that feels they must discuss if the project is first a disposition of Article 97 Land and if they conclude it is not a disposition of Article 97 land they must decide if the use of the property for a dog park is consistent with their mission.

Kathy Rehl stated she felt that the use of the land is very active and not consistent with the Commission's mission.

Matt Gardener stated that within the Statement of Policy, after re-reading, parts A and B do not apply. He does not take issue with the dog park use with respect to Article 97 land and does not feel it is a disposition of land.

Matt Gardener read out excerpts of Town Council opinion - Karis North

“1.”Change in use” under the EEA guidelines is a legal question. It is defined as a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or license is not

considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

Currently, there are no plans to transfer or convey the ownership or other interests, or change the physical or legal control of the property. Thus items (a) and (b) above do not apply.

Item (c) only applies if there is a change in use of the land “deed, easement, lease, or other instrument effectuating such transfer, conveyance or change.” That also does not apply to the facts here.

Thus, I have concluded (and John concurs) there is no change in use with the project as contemplated and discussed, so long as the project and the land remains under the custody, care, and control of the Conservation Commission...

This is different than “change in use” on the ground, as a factual matter. Obviously, creating a dog park out of currently unmanaged land is a “change in use” but it is not “change in use” as a matter of law, under the EEA guidelines.

2. Active v. Passive goes to the question of the Commission’s mission. There is no case law that defines that mission, nor is there any definition in the conservation commission enabling statute, MGL c. 40, section 8C. In my research, I found an opinion of the Attorney General from 1967 which states: “a proposed swimming area complete with all necessary sanitary facilities, at Island Grove Park and Pond in the Cove may properly be regarded as a project which the conservation commission may execute under the powers granted to it by” MGL c. 40, section 8C. I believe this stands for the proposition that active recreational facilities, with accompanying facilities, are not outside the realm of a conservation commission.

Ultimately, the Commission will have to make a judgment, in consideration of its mission, as to whether a dog park on land under its control is consistent with that mission. Courts are generally deferential to local agencies, when implementing their mission, and should be here, so long as the Commission carefully discusses and documents to the extent possible why and how a dog park is consistent with its mission. In that discussion, the Commission should consider specifics of the dog park, including who would have responsibility for the dog park, its care and management. The Commission should also consider the specific uses allowed at the park, the specific activities allowed, and whether equipment or facilities – of either a temporary or permanent nature is required.”

Mike Downey asked if the proposed additional parking constitutes a change in use.

Attorney Flynn stated that it is his opinion along with Attorney Karis North, not in attendance, that the project does not constitute a change in use as expressed and written in the EOEA guidance document.

George Bain reminded the public and the Commission members that any allowance they give with respect to the project proposal is revocable if they feel that a use becomes inconsistent with their mission.

Jeff Richards stated it is important to note that everyone should be able to use all Town amenities and feels the project is consistent with the mission of the Commission.

John Flynn stated it is not a question of disposition of Article 97 land but it is a question if the park is consistent with the Commission's mission.

Doug Shepard stated the project is overall an improvement to the area. He feels the railroad tracks are leaching chemicals over many years and is more of a concern. He stated that he feels there is no evidence or research available nor presented from any side that shows that the dog urine would negatively impact drinking water. He stated he did some rough calculations and the urine would have to run through 1.1 billion gallons of water to get to any drinking water well, and that would assume no filtration through the ground was happening along the way. He feels the project is protecting and maintaining as well as improving the land from what it is now.

Melissa Post, member of the public stated she feels that this project is not consistent with the mission per the website and read out the website overview section of the Conservation Commission.

“The Natick Conservation Commission's mission is to serve as the conservation conscience of the town, providing community leadership for natural resources planning. By coordinating closely with Town agencies, boards, and commissions related to town development, the commission works to protect, and where possible, enhance, plant and wildlife habitats. This is crucial in maintaining our natural resources and preserve the quality of life for inhabitants of Natick. The commission strives to keep informed of advances in the field of environmental protection and of the activities of neighboring conservation commissions to maintain current and regional perspectives on environmental matters.”

Martin Kessel who serves on the Open Space and Recreation Planning Committee stated that this type of use is consistent with the Open Space and Recreation Plan and that the Conservation Commission's mission is in line with a dog park use on this particular property. He cited JJ Lane park and explained that there is a continuum of a variety of uses that are allowed on Conservation and other Town owned land.

Glen Kramer stated the regulations Melissa Post discussed are for projects that have no bearing on this discussion or project. It comes down to the mission of the Conservation Commission. He stated 310 CMR 5.02 LAND and PARC Grant program is a specific grant program.

Attorney Flynn stated that the 310 CMR 5.02 definition of active use is not broadly applied to Article 97 land.

A. Richard Miller doesn't believe it is limited to LAND and PARC land and that the definition of 310 CMR. 5.02 is significant to change in use. He doesn't want a project to add to the pollution of the land. He thinks that this project will need MEPA review.

Matt Gardener wants to appropriate and holistically manage lands that the Conservation Commission owns that believes this is part of their mission. This project fits under this need and this part of the Commission's mission.

A resident asked if other land has been looked at. A FIDO representative, Kelly McPherson, stated that other land has been looked at. She stated there were several site visits with FIDO representatives and town personnel a couple years ago to investigate various possible project site locations. Everyone concluded that the present proposed location would be the chosen location to move forward with design.

A resident asked if traffic is a concern and Jamie Errickson stated that the safety committee has looked at this project and traffic was not a particular factor or concern in their original analysis.

Peter Thompson stated that all over Natick there is heavy traffic during commuting times.

James Howe spoke and said that this project is a change in use and there will be pollution to the water system.

Glen Kramer reiterated that the Commission has to go back to questioning if the project is in line with their mission or not.

Mr. Gardner asked for a motion to vote to support that the proposed dog park is consistent with the Conservation Commission mission. Doug Shepard moved, George Bain seconded, all in favor 4-2. Kathy Rehl and Mike Downey voted against.

Mr. Gardner asked for a motion to vote to support the use of this parcel as proposed, a dog park, with continual Commission discussion and review throughout the design process. George Bain moved, Jeff Richards seconded, all in favor 5-1. Kathy Rehl voted against.

Meeting adjourned 9:00 pm.