

**Hamilton Conservation Commission  
Minutes of Meeting of April 14, 2010  
Meeting held at Hamilton Town Hall**

Commissioners present when meeting convened at 7:34 p.m.:  
Nancy Baker (co-chair), Virginia Cookson, Peter Dana, Richard Luongo  
Staff present: Jim Hankin, Conservation Coordinator

The Commission is scheduled to meet on April 28, May 12, and May 26, 2010 at 7:30 p.m. at Town Hall.  
Site walk is scheduled for Saturday, May 1, 2010.

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Nancy Baker opened the meeting at 7:33 p.m.

Conservation Coordinator Jim Hankin noted that prior to this meeting, commissioners received hard copies of photos of an area where trees were cut at 438 Asbury St., and a hard copy of a written summary of information gathered on the Commission's site visit.

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Certificate of Compliance

265 Woodbury St.

Order of Conditions and Local Permit issued July 12, 2007

DEP File #172-0501, recorded July 30, 2007, book 27062 page 328

Conservation Coordinator Jim Hankin told commissioners he visited this property several times in recent weeks to check whether work necessary for issuance of a Certificate of Compliance had been completed. To date it has not. Mr. Hankin said he spoke early on with the property owner, who said he would have his contractor perform these tasks. Mr. Hankin said he spoke with the contractor recently, who said the homeowner asked him to perform the work, but he had not yet had time. The contractor told Mr. Hankin he would complete the work prior to the Commission's April 28 meeting.

By general consent, the Commission continued this matter to April 28.

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Violation Notice

438 Asbury Street

Philip C. Marcorelle, owner

Investigation of tree cutting and vegetation removal within Hamilton Conservation Commission jurisdiction and outside parameters of a filed Massachusetts Department of Conservation and Recreation Forest Cutting Plan

Conservation Coordinator Jim Hankin informed commissioners about the apparent sequence of cutting near wetlands at 438 Asbury St., and how and when he became aware of it and issued a Violation Notice to the property owner, Philip Marcorelle.

- In November, Mr. Hankin received written notice from the Department of Conservation and Recreation (DCR) of that agency's approval of a Forest Cutting Plan (FCP) giving Mr. Marcocelle permission to have licensed timber harvester Christopher Pirner cut and remove trees as detailed on the permit application.
- In March, a neighbor of Mr. Marcocelle e-mailed the Commission office to report that cutting was taking place in the woods. Mr. Hankin tried to contact Mr. Marcocelle to arrange a site visit, but could not reach him, so he went to the property but found no one there. While at the site he observed timber stacked by the house. He telephoned Mr. Pirner, who said he completed work at the site in November. Mr. Pirner told Mr. Hankin that he removed from the site the lower trunks of the cut trees, and left only the tops for the homeowner. Mr. Hankin called DCR and learned that the agency had received word the work was complete, but he could not ascertain if a post-cutting site inspection was the next step for DCR.
- Mr. Hankin sent first class and certified letters to Mr. Marcocelle but received no response other than the return receipt card from one of the certified letters.
- On March 31, Mr. Hankin issued a Violation Notice to Mr. Marcocelle and sent it to him by certified mail, but received no response.
- On April 10, Mr. Hankin, Ms. Baker and Richard Luongo inspected the site.
- On April 10 Mr. Hankin served the Violation Notice (VN) in person to Philip Marcocelle's brother, at the Marcocelles' residence adjacent to 434 Asbury St. He said the brother faxed it to Philip Marcocelle.
- On April 12, Philip Marcocelle phoned the Commission office. He informed Mr. Hankin that he is a long-haul trucker, and often on the road for long periods of time. He said he recently hired a contractor from Middleton to "clean up" the area in which Mr. Pirner had worked. He told Mr. Hankin he was unaware of Mr. Hankin's efforts to reach him until he received the faxed VN. He said he was out of town on a trucking run on the date of his call, and would not return to Hamilton by the date of this meeting, but would attend the April 28 meeting.

Mr. Hankin told commissioners that the timber cutting plan approved by DCR authorized only Mr. Pirner to work at the property; stated that a "filter strip" or "buffer strip" for cutting was to apply within 50' of delineated wetlands; and specified the species that Mr. Pirner was authorized to cut. Timber harvesting authorized by a DCR permit is exempt from the Wetland Protection Act, so the Commission received no information or filings, other than the FCP paperwork after DCR approved the plan. Mr. Hankin said he was unaware until March that the timber was harvested last fall; he said that when he received the e-mail from a neighbor, he assumed that the project was just getting underway.

Commissioners examined and discussed photographs taken during the site visit, field notes about the stumps' diameters and their distance from the wetland line, and a Site Visit Summary dated 4/10/10. Mr. Hankin said about two dozen large trees were cut within 50' of wetlands, some with trunk diameters of more than 30". Ms. Baker said some were within 10' to 15' of the wetland line. She said the wetland line was marked with a few scattered flags when commissioners made their site visit on April 10; the limit of work line 50' from wetlands was not flagged. Mr. Hankin noted that the area was not clear-cut; smaller trees remain.

Mr. Hankin said it is unclear whether Mr. Pirner or the contractor who worked at the site this spring cut the trees within 50' of wetlands.

Mr. Hankin said the parcel has been offered for sale for some time. A Violation Notice does not block transfer of a property. Were the property sold before the Violation Notice is resolved, the VN would transfer to the new owner. He said he would research whether it is appropriate for the Commission to record an Enforcement Order.

Ms. Baker suggested copying correspondence about this matter to DCR. She and Peter Dana said DCR should notify local conservation commissions when work is about to take place, so local commissions could make sure wetland and buffer zone lines are properly flagged.

Commissioners briefly discussed the possible environmental impact of the cutting, and possible options for Commission action.

Commissioners directed Mr. Hankin to contact DCR to find out whether that agency has enforcement authority in this case, and if so, what it can do; to request that DCR staff inspect the site prior to the April 28 Commission meeting; and to ask whether DCR was aware that multiple firms worked at the site under the same FCP.

Mr. Luongo made a motion for the Commission to ratify the Notice of Violation dated 3/31/2010, issued to Philip C. Marcorelle of 438 Asbury Street. Virginia Cookson seconded the motion. VOTE: Unanimous.

Mr. Dana made a motion for the Commission to amend the Notice of Violation to require Mr. Marcorelle to appear before the Hamilton Conservation Commission on April 28, 2010 at 7:30 p.m. Mr. Luongo seconded the motion. VOTE: Unanimous.

Commissioners who missed the April 10 site visit decided to visit the site on April 26 at 6 p.m. Mr. Hankin said he would inform Mr. Marcorelle in advance of this planned site inspection.

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#### Request for Determination

100 Maple Street

Camilla Rich, applicant; DB Johnson, representative

Install Title V compliant septic system; closest work 75' from wetlands

Conservation Coordinator Jim Hankin showed commissioners a site plan for a proposed new septic system to replace three existing cesspools at 100 Maple Street, and pointed out features of the proposal. He noted for the record that the applicant, Camilla Rich, is a member of the Conservation Commission. She was not present at this meeting. The property on which the work is proposed was the home of her late mother.

There are wetlands behind the existing 8-bedroom house, carriage house, and garages. As proposed, the new septic system would include a 2500-gallon septic tank between the house and wetlands, and two 1500-gallon tanks, one on either side of the cluster of buildings. The tanks would be between 52' and 60' from the wetland line. The leaching field would be more than 100' from wetlands, outside the Commission's jurisdiction. All pipes from the septic tanks to the leaching field would extend away from wetlands. Hay bales would be placed between the work area and wetlands to provide erosion control during construction. Mr. Hankin said the Hamilton Health Agent has approved the septic design. He said the proposal is an improvement over the existing cesspools. He recommended the Commission grant a negative determination.

Nancy Baker inquired about how construction would take place. Mr. Hankin said excavation would take place in areas that are now lawn, a dirt carport, and an unpaved driveway. He said a backhoe and truck would be used on site.

Richard Luongo made a motion for the Commission to grant a negative determination under the Wetland Protection Act and the Hamilton Conservation By Law. Peter Dana seconded the motion. VOTE: Unanimous.

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Commissioners signed vouchers.

Commissioners deferred action on the minutes of March 24, 2010.

After learning from Conservation Coordinator Jim Hankin that the original schedule for the May 2010 site walks would conflict with Hamilton Town Meeting, the Commission agreed by general consent to reschedule the site walks for Saturday morning May 1.

Mr. Hankin informed commissioners of changes to the Massachusetts Open Meeting Law that are to take effect on July 1, 2010. At present, the legal posting of a meeting consists of displaying written notice of the date, time and place of the meeting; in Hamilton Town Hall these notices are posted in the public area of the Town Clerk's office. Starting July 1, the agenda of the meeting also will have to be posted for at least 48 hours prior to the meeting, and notices will have to be posted where they are visible to the public 24 hours a day. Mr. Hankin said the state attorney general considers postings on a website or local access TV channel insufficient, so Town officials are considering building an illuminated structure in front of Town Hall to display such notices. In addition, starting July 1, government boards and committees will be permitted to discuss only matters that are listed on the duly posted agenda. Other topics that come up are to be placed on the agenda for a future meeting. Virginia Cookson asked what would happen if in the 48 hours prior to a posted meeting, the Commission should learn of a situation requiring enforcement. Mr. Hankin replied that he still would be able to issue a cease and desist order, but the Commission would either have to change the agenda (if time permitted prior to the upcoming meeting), or hold discussion until the next meeting.

Commissioners and Mr. Hankin briefly reviewed a narrative description forwarded to them by Hamilton Planning Coordinator Marcie Ricker, summarizing information from an April 13 pre-application conference the Planning Board held with a developer who may apply to develop homes at Canter Brook Farms at 354 Highland St. Ms. Ricker also forwarded the developer's conceptual layout plan. She requested town boards' input. Mr. Hankin said this project would come before the Commission in the future.

Richard Luongo made a motion for the Commission to adjourn at 8:34 p.m. Virginia Cookson seconded the motion. VOTE: Unanimous.

Minutes submitted April 14, 2010 by Ann Sierks Smith