

**Hamilton Conservation Commission
Minutes of Meeting of Aug. 18, 2010
Meeting held at Hamilton Town Hall**

Commissioners present:

Nancy Baker, Robert Cronin, Peter Dana (7:34), Sarah Getchell (co-chair), Richard Luongo, Camilla Rich

Staff present: Jim Hankin, Conservation Coordinator

Others present:

Paul Furnari, landowner, 49 Bridge Street
John Rodenhizer of 6 Pilgrim Road, abutter
Sarah Elmer, abutter

The Commission is scheduled to meet on Sept. 15 and 29, 2010 at 7:30 p.m. at Town Hall. Site walk is scheduled for Saturday, Sept. 11, 2010.

Sarah Getchell opened the meeting at 7:32 p.m.

Conservation Coordinator Jim Hankin told commissioners that at the applicant's request, the Notice of Intent (NOI) for a retaining wall and grading at 6 Don Byrne Way has been continued to the meeting of Sept 15. He briefly described the documents that commissioners received prior to this meeting related to that NOI. Three were copies of sections of wetland statutes and regulations that were relevant to the Don Byrne Way filing. The fourth document, included in reference to the Notice of Intent filed for 49 Bridge St., was a state riverfront regulation stating that septic system work on a single family lot is not subject to the alternatives analysis requirements that would otherwise apply.

Mr. Hankin reported that earlier on the day of this meeting he issued an Enforcement Order (EO) to the owners of 484 Bay Rd., also known as Devon Glen Farm, because asphalt tailings have been spread near wetlands, on an access road to the property off Cutler Rd.; the landowner did not file with the Commission prior to this work. Because the open meeting law prohibits the Commission from discussing any topic not appearing on the agenda posted 48 hours prior to a meeting, the Commission, without comment, placed this matter on the agenda for the meeting of Sept. 15. Mr. Hankin informed the Commission that the three properties are slated so far for commissioners' site walks on Sept. 11: 484 Bay Rd.; a pedestrian footbridge in Bradley Palmer State Park that the state Department of Conservation and Recreation proposes to repair; and 408 Bridge St., where the landowner planted wetland species, as a condition of an Enforcement Order (EO), to mitigate for unpermitted cutting around a pond.

Notice of Intent

49 Bridge Street

Paul Furnari, applicant; Merrimack Engineering, representative
Install Title V compliant septic system in riverfront zone

Sarah Getchell opened the public hearing. Paul Furnari showed commissioners a site plan for 49 Bridge St., which abuts wetlands associated with the Miles River, and described the septic work

he proposes. He noted that the Commission granted a prior owner of the property an Order of Conditions to the prior owner to install a 4-bedroom pump-up septic system at one corner of the property, and to alter structures; Mr. Furnari said this work did not take place. Mr. Furnari noted also that his NOI proposed additional work, but after speaking with commissioners during the site walk in mid-August, he decided to request approval only of the septic system at this time. He said he might propose more projects in the future. He said the septic design he proposes would have a bit less impact on wetlands than the previously approved design. In answer to Nancy Baker's question, he reported that the Board of Health approved the septic design about three weeks prior to this meeting. He said the existing house has 2 bedrooms, and he would decide later whether to propose adding a second floor with additional bedrooms.

Abutter John Rodenhizer of Pilgrim Rd., whose house lies across the wetlands from Mr. Furnari's, asked for details. Mr. Furnari said he wants to install a 4-bedroom "butterfly system" along the road. He noted that the walk-out basement at the back of the house has flooded in the past; the area at the front of the property where he wants to install the septic system lies outside the flood plain.

Conservation Coordinator Jim Hankin said Wenham has repaired and expanded several culverts along the Miles River but holds back the flow through them so land in Hamilton does not flood.

Richard Luongo made a motion for the Commission to close the public hearing. Peter Dana seconded the motion. VOTE: Unanimous.

Camilla Rich made a motion for the Commission to issue an Order of Conditions. Mr. Luongo seconded the motion. Mr. Hankin noted that the septic system appears straightforward, and the proposed location is as far from wetlands as is possible on this lot. VOTE: Unanimous.

Mr. Furnari inquired about an appeal period. Mr. Hankin explained that he would probably officially issue the OOC on the day after this meeting, and that a 10-day appeal period would follow, during which applicants are permitted to work at their own risk. Mr. Furnari said he would wait until the appeal period concludes before beginning work.

Notice of Intent

6 Don Byrne Way

Matt Mulgari, applicant; William Manuell, representative

Retaining wall and grading in buffer zone

Camilla Rich asked Conservation Coordinator Jim Hankin to explain why this matter has been continued. Mr. Hankin said the Notice of Intent (NOI) was filed by potential buyers of the property with current owners consent. Some abutters have voiced objections to the manner in which they were officially notified of the scheduled public hearing; some of them visited Town Hall and looked over the site plan. Potential buyers' reached the conclusion that their proposed plan was unlikely to be approved without extensive review and probable revision. The potential buyers decided not to purchase the property. The current owner now is working with Mr. Manuell on a less extensive Notice of Intent.

Sarah Getchell asked for details about the abutter notification. Mr. Hankin said the state Wetland Protection Act (WPA) states that abutters must be notified by hand-delivered or certified mail; however, regulations pursuant to the WPA state it is acceptable to notify abutters using a

certificate of mailing, which is less expensive. He said Mr. Manuell used a certificate of mailing. He also noted that the WPA requires notification of owners of property within 100', or directly across a road or directly on a water body, but Hamilton's Conservation By Law regulations require notification of abutters within 300'.

Certificate of Compliance

18 Ricker Circle

Allen & Barbara Ikalainen, owners

DEP file #172-0186 issued Sept. 30, 1991

Recorded Book 11134, page 515

Construction of a dwelling and septic system and associated site work

Conservation Coordinator Jim Hankin said the owners of 18 Ricker Circle are selling the property and need a Certificate of Compliance (COC) for the closing. The Commission approved the plan for the house in 1993, and it was built in 1994. Mr. Hankin said he inspected the parcel recently and found it entirely in compliance with the Order of Conditions issued in 1993. He recommended the Commission grant a COC.

Richard Luongo made a motion for the Commission to grant a Certificate of Compliance. Camilla Rich seconded the motion. VOTE: Unanimous.

Certificate of Compliance

214 Echo Cove Road

William Watson, owner

DEP file #172-0504 issued Dec. 6, 2008

Recorded Book 2744, page 080

Construct a dwelling, septic system and associated site work

Conservation Coordinator Jim Hankin recapped the details of this project. The Commission granted an Order of Conditions (OOC) in 2008 for the landowner to tear down an existing house on a parcel bordering Chebacco Lake, and replace it with a new structure, plus a deck, and a ramp to the entry. The distance between the deck and the lake is the same as the distance between the original building and the lake. Mr. Hankin said he inspected the property and found everything built as specified on the plan; there is no evidence of any disturbance near the lake. He recommended the Commission grant a Certificate of Compliance.

Robert Cronin made a motion for the Commission to grant a Certificate of Compliance. Camilla Rich seconded the motion. VOTE: Unanimous.

Certificate of Compliance

51 Central Place (Asbury Grove)

Stephen Kent, owner

DEP file #172-0506, issued Sept. 13, 2007

Recorded Book 27264, page 181

Installation of a Title V compliant septic system

Conservation Coordinator Jim Hankin said that the septic system that the Commission authorized in 2007 for 51 Central Place in Asbury Grove was constructed in 2009. It lies between two small houses, #45 and #51; beyond the buildings, the land drops abruptly to wetlands. Mr. Hankin said he recently inspected the site and found grading took place as specified in the plan, vegetation is well established, and the erosion control remains in place. The Board of Health has issued a Certificate of Compliance for the septic system; Mr. Hankin recommended the Commission also grant a Certificate of Compliance.

Nancy Baker asked Mr. Hankin to direct the owner to remove the erosion control.

Richard Luongo made a motion for the Commission to grant a Certificate of Compliance. Camilla Rich seconded the motion. VOTE: Unanimous.

Certificate of Compliance

290 Bridge Street

Peter Whitman Jr., owner

Order of Conditions issued April 18, 2007

Recorded Book 26761, page 320

Construct single-family dwelling and associated site work

Conservation Coordinator Jim Hankin noted that during construction of the house with the address 290 Bridge St., on a private way off Bridge St., spoils from excavation were placed in a meadow adjacent to bordering vegetated wetlands, and the Commission directed the owner to relocate the spoils, re-grade, and re-vegetate the meadow. He said he recently inspected the site and found that the house was constructed as specified in the plan, and the meadow has re-grown thick and lush; he described it as a vibrant ecosystem.

Camilla Rich made a motion for the Commission to grant a Certificate of Compliance. Robert Cronin seconded the motion. VOTE: Unanimous.

Robert Cronin made a motion for the Commission to approve the minutes of the meeting of July 28, 2010 as presented. Sarah Getchell seconded the motion. VOTE: Unanimous.

Election of Commission Co-Chair

Peter Dana said he contacted commissioners about who should serve as co-chair for the 2010-2011 term, along with continuing co-chair Sarah Getchell, and all agreed to ask Richard Luongo to serve. Mr. Dana said Mr. Luongo knows a lot about issues relevant to the Commission.

Mr. Luongo said that before deciding whether to accept the post, he wanted to know the history of this Commission's approach to enforcement of regulations about the no build zone (NBZ) and no disturb zone (NDZ). He asked how often the Commission allows work in these zones, with mitigation, and to what extent past rulings create a precedent.

Commissioners discussed this issue for some time. Among the points made were these:

- Mr. Dana said the Commission tends to be "a bit liberal" in allowing applicants to disturb the NBZ.
- Conservation Coordinator Jim Hankin said the Commission approves projects with a requirement for compensation and mitigation more frequently than it issues "flat out denials," and he said his impression is that the Commission's sense is that this may have gone too far.
- Robert Cronin suggested Mr. Hankin take photos before a project begins, during construction, and after completion of the project, and add the photos to Commission files.
- Nancy Baker said members should become more familiar with ecosystem function, and reach decisions based on meaningful wetland function rather than by computing a trade-off of mitigation area versus area disturbed.
- Commissioners and Mr. Hankin discussed how Hamilton's varying setback lines, depending on the nature and date of development of a particular parcel, have affected past filings and may influence future ones. In some cases the no build zone extends to 50' from wetlands; in others, it extends 75'. Mr. Luongo noticed that in some cases, the no build zone in the riverfront zone extends farther than 75'.
- Mr. Dana said that the Commission has more flexibility in its decisions when the 75' no build zone is in effect, compared to Conservation Commissions in other towns that have no build zones 40' o 50' from wetlands, which he said are more "firm" than Hamilton's Commission in their rulings.
- Mr. Cronin said some owners of land that has been in their family for generations claim that regulations adopted since their families took ownership of a particular parcel do not apply. Mr. Hankin and Mr. Luongo said such regulations do apply in such cases. Mr. Cronin said the Commission nevertheless has sometimes acceded to claims of "grandfathering."
- Mr. Hankin said there is some precedent for allowing compensatory planting schemes for incursions in the NBZ. He said if the Commission is considering changing its approach, it would be good to inform consultants who frequently represent clients before this Commission, and get their comments before making any changes.

Commissioners decided to discuss these issues further at the meeting of Sept. 15.

Mr. Luongo accepted nomination as co-chair.

Camilla Rich made a motion to elect Richard Luongo co-chair of the Commission for the term expiring June 30, 2011. Robert Cronin seconded the motion. VOTE: Unanimous.

Mr. Hankin stated two topics to be placed on the agenda for the Commission's Sept. 15 meeting:

- formulation of a Commission policy about incorporating a photographic record into case files
- further discussion and deliberation about whether the Commission should use stricter criteria regarding the no disturb and no build zones.

At Ms. Getchell's request, he provided some details about a development proposal that is in the works for Canter Brook Farm, off Highland St. He said the Planning Board held a public hearing the night before this meeting on the developer's application for a special permit to construct senior housing. The developer has not filed with the Commission. Mr. Hankin noted that under

Hamilton's inclusionary by law, if a developer includes affordable housing units, the Town allows construction of a greater total number of units; he speculated this developer may do so.

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

Minutes submitted Aug. 20, 2010 by Ann Sierks Smith