

**Hamilton Conservation Commission  
Minutes of Meeting of March 11, 2015  
Meeting held at Hamilton Town Hall**

Commissioners present:

Richard Luongo, Chair, Virginia Cookson, Bob Cronin, George Tarr.

Staff present:

Jim Hankin, Conservation Agent

Others present: Gretel and Peter Clark, Suzanna Colloredo-Mansfeld

The following persons signed the attendance sheet for the public hearing regarding the Notice of Intent for 470 Essex Street:

Warren Meibaum, 3 Whipple Road  
Tony Grimshaw, 5 Whipple Road  
Grace Belfiore, 5 Whipple Road  
Susanna Colloredo-Mansfeld, 445 Winthrop Street  
Richard Burke, 494 Essex Street  
Michele Stecyk, 494 Essex Street  
Patricia Johnson, 453 Essex Street  
Paul Johnson, 453 Essex Street  
Jonathan Wile (sp?) 9 Whipple Road  
Peter B. Clark, 823 Bay Road  
Gretel Clark, 823 Bay Road

---

Richard Luongo opened the meeting at 7:00 p.m. Jim Hankin reviewed HCC members' agenda packets which included information on the state regulatory requirements for 292 Bridge Street pond project (an Ecological Restoration Limited Project), and he also included in the packet George Tarr's essay on the recent MACC workshops.

---

**Notice of Intent** (Public Hearing continued from February 25, 2015)

292 Bridge Street

Remove nuisance vegetation from a pond

Peter Whitman Applicant, Tyler Ferrick DeRosa Environmental, rep.

The 36,000 square foot pond constructed in 2006 has a duckweed and algae problem. Proposal is for one to three herbicide treatments to control duckweed and one to two treatments a year to control algae with EPA approved chemicals. A fully licensed consultant will do the work with a hand broadcast sprayer some herbicide may be applied from a boat. This type of maintenance may be done annually. Discussion ensued about how there could be consideration of aerating the pond, and having the applicant send a summary annual report and photographic documentation related to pond treatments to Commission. A wetlands permit for the work has a three-year term and can be extended. The pond is surrounded by wetland plants such as cattails and the herbicide will not affect these plants.

Mr. Hankin noted that there was a comment from DEP on the filing relating to the original project when the pond was constructed in 2003. DEP no longer has a copy of the Water Quality Certificate from that

project. A copy on file with the Commission will be provided to DEP. Mr. Hankin summarized the Wetland Protection Act's regulatory requirements for an Ecological Restoration Limited Project for the removal of aquatic nuisance vegetation. The project must meet the definition of an ecological restoration project; it cannot be located within an estimated habitat zone, it must not involve marine fisheries, and it must not involve dredging, with all buffer zone activity appropriately regulated. The applicant presented information that the resource area is being altered but there will be no conversion or loss of resource area; that removal of nuisance vegetation will improve capacity of Whitman Pond protecting wetlands and the impact to the pond is limited to the eradication of nuisance vegetation.

Mr. Luongo asked for further comment from Commissioners or members of the audience. There was none. Mr. Luongo moved to close the public hearing. Ms. Cookson seconded the motion. The Commission voted unanimously in favor of the motion.

Ms. Cookson moved to issue the Order of Conditions. Mr. Cronin seconded the motion to include the Special Condition of annual report, and local permit will have a three-year term and applicant can file for an extension at the end of the term. VOTE: Unanimous.

**Notice of Intent**  
470 Essex Street

Construct single family house, septic system and associated activity in No Build and No Disturb Zones  
Roger LeBlanc Applicant, Bill Manuell rep.

Mr. Luongo opened the public hearing for 470 Essex Street. Bill Manuell, Wetlands and Land Management, described how the lot has been in existence since circa 1971, and remained undeveloped since that time. Mr. LeBlanc recently purchased the lot. According to the Applicant, the 470 Essex Street parcel is in accordance with the state zoning law's "grandfathering" provision which is located at M.G.L. Chapter 40, §6A. The Planning Director for the Town, Patrick Reffett, determined that this provision allows the project to be filed for permits with Conservation Commission and Board of Health. Mr. Luongo mentioned that zoning issues are not within the Commission's purview. Mr. Manuell agreed.

The 40,012 square foot, pie-shaped lot is located on Essex Street. Mr. Manuell reviewed the wetland line in the fall delineated by a prior consultant in the summer and found it to be accurately flagged. He asked for a cold weather delineation waiver due to snow making it difficult to verify wetland line. Mr. Manuell noted that the wetland line is distinct; sharply dropping off from land that is wooded from the street to the back of the lot. The B series line in the swamp does not affect the project.

Under Hamilton's Conservation Bylaw regulations there is a 50' No Disturb Zone and a 75' No Build Zone. These lines are shown on the filed plan for this project. The lot has not been developed prior to 2007 so the 50', 75' criteria applies. The proposal is to put a single family home on the lot and the house would be near the 50' NDZ line and within the 75' No Build Zone. A waiver is requested from those criteria. No testing has occurred for the septic system but Mr. Manuell stated that this should happen in the near future with the Board of Health.

The house will have a deck and infiltration (drip) trench on the rear side of the home to capture roof runoff to infiltrate back into the ground. Erosion controls will encircle the construction area and function as the limit of work and clearing. Mr. Manuell stated that once the lot is cleared and built upon, there will be between 25,000 and 30,000 square feet remaining wooded and untouched. Mr. Manuell stated the design is compliant with the 50' No Build and 25' No Disturb setbacks that apply to developed residential lots in Hamilton. The house would be located as close to the street as possible, and as far away from

wetlands as possible while complying with zoning front/ street-side setback regulation. Mr. Manuell stated that the justification for the wetland waiver is appropriate because erosion controls would be used, the house would be located as far away from the street as possible, and that the Commission's failure to grant relief from the bylaw setbacks would be a regulatory "taking" of the lot.

Mr. Hankin clarified again that the Building Inspector referred all of the Applicant's information on this lot to Planning Director who determined that this matter could go forward with review by the Conservation Commission and Board of Health. Mr. Hankin acknowledged that the cold weather delineation request is in the NOI. Mr. Hankin was hopeful that by the April 4 site walk winter conditions would be alleviated sufficiently so that the Commissioners could look at the site. Discussion ensued about Essex Street public way boundary line being at the stone wall; 26' away from proposed location of house.

Mr. Luongo asked Mr. Manuell to further address the proposed location of septic system next to the house with the septic tank in front of the house. The size of the house will be determined based on the soil testing results. State Title V requires that a septic system be 50' from wetlands and 10' from side lot line. Ms. Cookson mentioned historic dumping that was done at the back of the property which Mr. Manuell did not notice at the site.

Mr. Hankin noted that the No Build Zone under the Commission's bylaw regulation functions as a presumption of adverse impact to the wetlands if building occurs in this zone. He stated that regulation does not establish a prohibition on building in that zone but it does require that the applicant rebut the presumption that building the house will impact the wetlands under the local regulation. Mr. Manuell repeated that the proposed house complies with the Commission's 50' No Build Zone that is applied to other residential projects.

Mr. Luongo said he has never seen a proposal for new construction in the No Build Zone which has no provision for mitigation. Mr. Manuell noted that circumstances on the lot are unique and predate enactment of the Commission's bylaw. It was re-stated that the Commission should do a site visit on April 4 to analyze details associated with Mr. Manuell's presentation. In response to a question from the audience, Mr. Manuell stated that neighbors would not be allowed on the property during the site walk.

The public hearing will be continued until the Commission's meeting on April 8, 7:00 pm Town Hall which Mr. Manuell consented to on behalf of the Applicant.

Mr. Cronin stated that the Commission had been to the site years ago and refused any development at the site. Mr. Hankin will research HCC files on this lot for the April 8 meeting.

Mr. Luongo then asked for public comment.

Warren Meibaum of 3 Whipple Road described how Zoning Board of Appeals (ZBA) had determined that the lot did not have the required 50% buildable land under applicable zoning. Mr. Hankin noted that it is not within the legal authority of the Conservation Commission to determine any zoning issue. He encouraged anyone interested in making a zoning claim to research the appropriate procedural vehicle to put the matter properly before the ZBA. Mr. Hankin acknowledged the frustration for some residents who were under the impression that a prior local ruling prohibited development of the lot. He explained that the demonstration made by the applicant citing state zoning statutory language persuaded the Planning Director to have this go forward to the Commission and Board of Health for their review of the project under their jurisdiction.

Suzanna Colloredo-Mansfeld, 45 Winthrop Street, mentioned that she was on the Conservation Commission at the time the property was originally reviewed by the Board of Health and Planning Board

and Town officials felt strongly at the time that this was not a buildable lot due to wetland issues, flooding and fill. She noted that the current wetland regulations and Town bylaw are a lot stricter than in the 1970s. Mr. Luongo mentioned again that the Commission does not have zoning jurisdiction and does not issue decisions as to whether or not a lot is buildable under zoning rules.

Michele Stecyk, 494 Essex Street, stated that she has owned the adjoin parcel since 2003. She noted that when she bought her property Mr. Liporto asked her if she would sell a portion of upland to make 470 Essex Street a buildable lot. She noted there is natural drainage culvert from Essex Street that goes over the property to the river. Also, construction materials were dumped at the site and she has communicated with the Town several times over the years to have this removed.

In response to Peter Clark, 823 Bay Road, Mr. Hankin said the Planning Director was persuaded by language in M.G.L. Chapter 40, section 6A to allow this to move forward relative to and grandfathering rules.

Mr. Clark said the Planning Director needs to have access to what was appealed by the ZBA.

Mr. Luongo stated again that zoning issues are not within the authority of the Commission to determine.

John Hamilton, attorney and former member of the Hamilton Conservation Commission, stated that in 2005 he and Mr. Hankin had visited the site with Mr. Liporto who had complained he could not build unless he had additional upland. Hamilton presumed that was the result of the ZBA decision.

Mr. Hankin stated that up until this filing no one had presented the §6A statutory language about grandfathering to Town officials as far as he knew.

Richard Burke, 494 Essex Street, spoke to drainage requirements, and the sale of land at \$35,000, and statements by a realtor that the lot was for sale as a non-buildable lot.

In response to Elaine Daugherty (sp?), 4 Whipple Road, Mr. Manuell stated that 40,012 square feet is size of lot. She suggested that this project seems to be for a 2,000 square foot building built on a 13,000 square feet of the lot. She also raised her concern that if wetlands are disturbed on the former Liporto property this could potentially cause substantial flooding of her backyard.

Applicant Roger LeBlanc noted that there is a sewer stub on the property that he purchased last June. He described how a title search was done at the Registry of Deeds with results sent to Building Inspector and Planning Director. He stated that there was no ZBA variance, wetlands Order of Conditions, or prior action recorded at the Registry. Mr. LeBlanc referred to a 1999 letter from current Building Inspector that discussed contiguous land requirement, and two-acre zoning. He again referenced M.G.L. Chapter 40 §6A and that the lot in question fit all criteria listed in that statute. He discussed his lack of knowledge of whether or not there was any material dumped on the land, and that the application for perc testing is underway with Board of Health for a septic system for a three-bedroom home. Also, he noted that on the deed is a 15' easement for drainage from Essex Street. He stated that the side lot line setback is measured from the property line not the easement.

Mr. Burke noted that the drainage ditch on the property gets filled and floods 494 Essex Street pasture. Discussion addressed how maintenance of drainage easement would be responsibility of Town and homeowner.

Mr. Manuell explained that silt fence would be installed as erosion control and the limit of work at the site during construction.

Ms. Stecyk expressed concern about the potential new house and impact of storm water from site coming onto her property into her horse paddock. Mr. Manuell responded by reviewing the project's plan for an infiltration trench behind house for directing roof runoff into the ground to mimic pre-construction conditions, and also recharging groundwater. He repeated that back of home is 52' from the nearest wetland flag. The proposed infiltration trench is 43' feet from the wetland at the nearest point. Discussion ensued about how the septic system would be designed to handle 100 plus gallons/day of flow.

Mr. Hankin discussed, in general, the role of Board of Health and Health Agent relative to witnessing of perc tests and rate of drainage, and compliance with Title 5 requirements for leaching field.

In response to Grace Belfiore, 5 Whipple Road, Mr. Hankin explained if the Commission issues an Order of Conditions and Bylaw permit allowing the /project to proceed, a building permit would be issued and residents could appeal that building permit to the ZBA and raise their zoning concerns. He also noted that the wetlands permits themselves have appeals processes independent of ZBA actions.

General discussion ensued again about whether or not the property was a buildable lot and that the Planning Director has said this property can go forward with applications to Conservation and Board of Health for their review.

Mr. LeBlanc repeated his claim that his rights to develop the lot are based on state law. He further noted that he searches for these types of "grandfathered" lots around the state and seeks to develop them.

The hearing was continued to April 8, 2015 at 7 p.m. at Hamilton Town Hall, with no objection to the continuance being heard from the applicant. The Commission will conduct a site visit on April 4, 2015 at 8:15 a.m.

## **Discussion**

### **"Re-booting" the Open Space Committee**

Gretel Clark, Peter Clark and Susanna Colloredo-Mansfeld were recognized by the Chair to discuss the dormant Open Space Committee (OSC) that was appointed as a sub-committee to the Commission in 2012. Mr. & Mrs., Clark and Ms. Colloredo -Mansfeld were in favor of re-activating the OSC. Mr. Clark made the point that since there are estates in Town coming up for sale, there is some interest in Town to encourage developers to use cluster zoning by-law to maintain open space as well as role of OSFPD by-law relative to preserving farmland. OSC could be helpful in these areas.

Mrs. Clark stated the OSC could also work on an extension of the Open Space and Recreation Plan which is overdue. She indicated that funding opportunities for some grants are contingent on the Open Space and Recreation Plan being current. The Commission discussed how to advertise vacancies on the OSC and the Commission.

### **Peter Dana tribute**

Discussion ensued about individuals from the Commission contributing to hospice \$100 in honor of longtime Commission member Peter Dana who passed away on March 1.

Mr. Cronin moved to adjourn. Mr. Tarr seconded the motion. The Commission voted unanimously in favor of the motion. The Commission adjourned at 8:57 p.m. The Commission's next meeting is on Wednesday, March 25, 2015.

Minutes submitted March 23, 2015 by Jane Dooley