

Hamilton Conservation Commission  
Minutes of Meeting of October 28, 2009  
Meeting held at Hamilton Town Hall

Commissioners present when meeting convened at 7:33 p.m.:

Nancy Baker (co-chair), Robert Cronin, Peter Dana, Camilla Rich

Staff present:

Jim Hankin, Conservation Coordinator

Others present for all or portions of the meeting: Priscilla Davis and Will Fields of Woodbury St.; John Dick, consultant; John Tomasz, Superintendent of Department of Public Works; Jack Lawrence of Landfill Study Committee; Richard Luongo, potential candidate for open seat on Commission

The Commission's next regular meeting is scheduled for Wednesday Nov. 18, 2009. Site walk is scheduled for Saturday Oct. 31, 2009.

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Nancy Baker opened the meeting at 7:35 p.m.

Conservation Coordinator Jim Hankin stated that prior to this meeting, he e-mailed to commissioners an excerpt from state statutes relevant to authorized uses of the Conservation Fund; e-mails to and from a Department of Environmental Protection case officer regarding procedural issues relevant to a bike path and footbridge project along Woodbury Street; and a consultant's 3-page report, with pictures, documenting restoration planting at an island in Chebacco Lake.

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Notice of Intent (Public Hearing continued from Sept. 30 and Oct. 14, 2009)  
Woodbury Street adjacent to 122 Woodbury Street  
Town of Hamilton Department of Public Works, applicant  
Construction of footbridge over culvert, and associated road work

Nancy Baker reopened the public hearing. Conservation Coordinator Jim Hankin recapped the details of the Commission's deliberations on this Notice of Intent (NOI). The Hamilton Department of Public Works (DPW) filed the original NOI for this project in 2002, and the Commission granted an Order of Conditions (OOC). A resident appealed the OOC to the state Department of Environmental Protection (DEP). In 2003, DEP issued a superceding order (SOC) which included all of the Commission's OOC, plus some additional stipulations. State and local permits were extended, but expired in 2009. In order to have permits in place for the final phase of the project, the DPW filed a new NOI in 2009. The pending NOI includes the changes specified in the DEP's 2003 SOC, and also proposes a smaller bridge smaller than did the original NOI. Mr. Hankin sent commissioners copies of the original NOI and the SOC prior to this meeting.

Priscilla Davis of Woodbury Street asked the DPW not to widen the street by 2' at a curve near her home. She repeated her statement made at a previous meeting that she thinks this would cause drivers to drive faster, and create an additional hazard on what she said is a stretch of the road

where drivers already speed. She again asked why the DPW proposes this change. DPW Superintendent John Tomasz again explained that drivers cut into the oncoming traffic lane at that curve, so the DPW plans to widen the roadbed by 2' on one side and redraw the traffic lanes to reduce the angle of the curve. Ms. Davis said the land where the widening would take place used to be wetlands, but was filled.

Will Fields of 122 Woodbury said that years ago, Hamilton's selectmen told the committee planning this project that it should not include additional paving. However, he said, 2' of widening and a 300' paved berm are part of the plan. He also questioned the wisdom of collecting drainage along a 300' stretch of the road and channeling it to one outlet; he said that at present, "the road drains brilliantly." He predicted leaves and ice might clog the drainage outlet from the proposed berm.

Mr. Tomasz displayed a site plan and invited Ms. Davis and Mr. Fields to review details with him. He pointed out where the road would be widened, and where curbing would be added.

Virginia Cookson joined the meeting during this discussion, at approximately 7:45 p.m.

Mr. Tomasz said drainage along the berm would flow toward a catch basin. If drainage problems occur, the DPW would correct them, he said.

Mr. Fields said the Road Safety Committee has not listened to residents of Woodbury St. He said the committee promised no local tax dollars would be used for the project, but then applied for and received funding from the Hamilton Community Preservation Committee.

Virginia Cookson asked for more specific information about the point of discharge along the berm. Mr. Tomasz said run-off would go to a catch basin, and then disperse directly into wetlands.

Mr. Fields said the Road Safety Committee promised to provide updated plans for phase two of this project, and said it would consider a retractable bridge, to facilitate clearing below it should it become clogged. He said aspects of the current proposal are dangerous.

Mr. Tomasz offered to provide Mr. Fields with the technical plans for the proposed bridge; Mr. Fields said he would like to see them.

Camilla Rich made a motion for the Commission to close the public hearing. Mr. Dana seconded the motion. VOTE: Unanimous.

Peter Dana asked whether the design calls for sufficient riprap at the point source discharge. Mr. Hankin said the proposed riprap meets typical road construction specifications, and that it is "not atypical" for such structures to discharge runoff, appropriately treated by best management practices, into wetlands. Ms. Baker said the Commission could ask for a 4' sump with catch basin, to be consistent with stormwater handbooks.

Commissioners decided to make Conditions 31, 32, and 34-38 of the 2002 OOC conditions of the new OOC as well, and also to require that point source discharge into wetlands in the new asphalt paving area be consistent with best management practices as laid out in stormwater handbooks.

Camilla Rich made a motion for the Commission to grant an Order of Conditions with the above conditions. Robert Cronin seconded the motion. VOTE: Unanimous.

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## Discussion

### Landfill Study Committee request for funds for habitat study

Jack Lawrence and wetland consultant John Dick updated commissioners on the ongoing study of the development potential of the former Town landfill on Chebacco Rd. Mr. Lawrence said state Natural Heritage maps show that priority habitat for the blue spotted salamander cuts through the sections of the parcel that the Landfill Study Committee (LSC) has identified as potentially developable, but that Mr. Dick believes the state maps are inaccurate. He would charge the Town \$4,000 to file a site report and application for redelineation with Natural Heritage. Mr. Lawrence asked the Commission to pay for this out of the Conservation Fund.

Mr. Lawrence and Mr. Dick pointed out on a site plan of the former landfill the areas in question. The mounds near Chebacco Road known as Cell 1 and Cell 2 are high, dry areas very inhospitable to blue spotted salamanders, Mr. Dick said, yet the state maps indicate that portions of both are habitat areas for this species. He said the salamanders are prevalent in wetlands at the foot of those cells; he pointed out a salamander breeding area near the road at one end of the cells.

Mr. Lawrence said Windover Development officials met with the LSC members a month ago. He reported Windover is contemplating developing a commercial facility at the site to which businesses could relocate that are currently located in, but inappropriate for, the downtown areas of North Shore communities, such as a towing company located in downtown Manchester, and a tree service located near downtown Wenham. He said this would enable those towns to redevelop some sites in historic downtown areas. He said Windover is amenable to a wind turbine also being on the landfill site.

Peter Dana said that if such a project were proposed at the dump, the Conservation Commission would be involved in project reviews and permitting; he said it could be viewed as conflict of interest if the Commission had provided funds to bring such a project about. Nancy Baker agreed. She said the LSC's request seems inconsistent with the Commission's past use of the Conservation Fund.

Mr. Dana said it also is important to build the Town's tax base.

Conservation Coordinator Jim Hankin suggested that were the Commission to provide funds for the LSC's study, other applicants who in the future wanted to disprove something on a Natural Heritage map might also request Commission funds to pay for the necessary consulting work. Also, he said, were the Commission to issue an Order of Conditions in the future for a project at the site, and were an appeal of that OOC to be filed, the issue would come up that the Commission helped prepare the filing.

Virginia Cookson said it would be good to establish an accurate habitat line, but she does not think the Commission should fund the study.

Commissioners reached a consensus that they would not release money from the Conservation Fund to pay for the proposed study, because it could constitute a conflict of interest in the future. They tabled the proposal.

Notice of Intent (Public Hearing continued from Aug. 12, Sept. 16, Sept. 30, and Oct. 14, 2009)  
236 Moulton Street (Map 42 Lot 43)  
Estate of Elizabeth Laughlin, applicant; John Dick of Hancock Associates, representative  
Construction of single-family dwelling; septic system

Wetland consultant John Dick presented a revised proposal for a house and septic system on undeveloped land at 236 Moulton St. The owners propose the siting they specified in their initial filing, and agree to undertake mitigation to compensate for construction of a long driveway. They would agree to conditions that conservation markers be attached to a proposed fence along the driveway to mark the wetland line; recharge trenching be created; and mitigation landscaping take place within the buffer zone.

Mr. Dick provided details of the proposed mitigation measures. He said that a clearing of approximately 14,000 to 15,000 square feet has been mowed for many years on this property. The owners propose that after the driveway is completed, this area be seeded with approximately 12 pounds of wildflower mix, and harrowed. He said the owners agree to a condition that the resulting meadow could be mowed just once a year. Mr. Dick said the area now is vegetated with honeysuckle, bittersweet and buckthorn. He said harrowing and mowing it would selectively replace these invasive species with vining species including Virginia creeper, and near the edge, virgin's bower, which he said can inhibit the regrowth of buckthorn.

He said the proposed path of the driveway is now vegetated with meadow grasses and multiflora rose. The driveway would pass over the proposed septic system. Snow could be plowed through the proposed split rail fence.

Peter Dana noted that the property owners do not intend to construct the house for which they are requesting permits, but rather intend to market the property for someone else to build on. He asked how the Commission could make the proposed conditions carry through to future property owners. Mr. Dick said the Commission could state them as perpetual conditions.

Nancy Baker asked about a retaining wall shown on the site plan. Mr. Dick said it would be located below the driveway, where the grade drops from 41' to about 36' to 37'; it would probably be constructed of poured concrete, would run about 100', and would meet grade at both ends. The driveway would drain off the opposite side. Ms. Baker asked also why Mr. Dick designed recharge trenches rather than vegetated swales; Mr. Dick replied that trenches drain better.

Mr. Dick displayed a site plan of the entire parcel, and pointed out the proposed area of construction along one property line extending back from Moulton Street. The remainder of the large lot is mostly wetlands. Robert Cronin and Mr. Dick agreed that an abutter's yard extends onto this property. Mr. Dick said the Board of Health has approved the proposed septic design. He said the owners could put the back of the property under a conservation restriction, because it is acreage that cannot be developed.

Ms. Baker asked Mr. Dick to add information to the NOI narrative about the proposed harrowing and seeding. She asked how long it would take for vegetation in the cleared area to selectively replace what is now present; Mr. Dick said it would take two years.

Camilla Rich made a motion to continue this matter to the meeting of Nov. 18. Mr. Dick consented to the continuance. Mr. Cronin seconded the motion. VOTE: Unanimous.

Mr. Dick said he would amend the narrative portion of the NOI and send it to the Commission office. Commissioners and Mr. Dick agreed it is unnecessary for him to be present at the meeting of Nov. 18.

Virginia Cookson commented that she does not want to see a house built on this parcel, which she described as "a crummy piece of land." Ms. Baker remarked that she "see(s) enforcement issues for years to come." Mr. Dana said the Commission would need to check the property one or two times a year to confirm that ongoing maintenance was being done per conditions stipulated in an OOC.

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Request for Determination

2 White Road

Jean and Paul Fucillo, applicants

Title V compliant septic system, and demolish and rebuild dwelling on existing footprint

Conservation Coordinator Jim Hankin provided basic information about a project proposed for 2 White Rd., and property owners Jean and Paul Fucillo displayed a site plan and answered questions. Mr. Hankin said White Rd. is a dirt road off Lake Shore Ave., near Chebacco Lake. The Fucillos want to demolish an existing 3-bedroom house and deck, and replace it with a 3-bedroom house and a deck on the same footprint. The new house, like the existing one, would be on a cement slab foundation. The deck would come within 48' of wetlands, so it would intrude by 2' into the no build zone. Mr. Hankin noted that the 50' no build zone applies in this case because the project would not be new development.

Mrs. Fucillo said the interior floor plan would be different but the exterior design would be similar to the existing structure. The roof would be higher, but the pitch would be the same.

Mr. Hankin noted that separate permits are required for the house and the septic system. Mr. Fucillo said the Hamilton Board of Health has approved the septic design. He said the existing septic system passed inspection, but because it is old, the Fucillos wish to replace it and shift the system to higher ground. The Fucillos reported also that they have filed with the Hamilton Zoning Board of Appeals for approval of a nonconforming use, and this filing was on the ZBA's agenda for a meeting to take place a week after this Commission meeting.

Nancy Baker asked how construction equipment would get to the site. Mr. Hankin replied that he visited the lot three weeks prior to the meeting and found that the wetland line on the site plan is accurate, and the parcel is quite clear of trees, so no trees would need to be cut down to provide vehicle access. He said the area is saturated and probably drains to Chebacco Lake. He said the lot is typical for the neighborhood.

Camilla Rich made a motion for the Commission to grant a negative determination under the Wetland Protection Act and the Hamilton Conservation By Law. Robert Cronin seconded the motion. VOTE: 4 yes, 1 abstention (Virginia Cookson abstained because she is a neighbor and friend of the applicants).

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Violation Notice (Status report)

358 Chebacco Road

Michael Pallazola, property owner; DeRosa Environmental, representative

Status report on compliance with restoration plan, patio setback, number of diseased trees in buffer zone

Conservation Coordinator Jim Hankin reported on his visit to 358 Chebacco Road with wetland consultant Mike DeRosa to inspect trees that Mr. DeRosa had reported are infested with wooly adelgid beetles. Mr. Hankin said all hemlocks on the parcel are infested. Mr. DeRosa identified a number of trees the owner wishes to cut down, two of which are within Commission jurisdiction. He suggested the Commission allow the owner to cut down the tree within jurisdiction that is farthest from the lake. He recommended the other be left in place for another year, to see if it survives. He reported that Mr. DeRosa considers that tree to be too heavily damaged to survive long, perhaps 1 to 5 years. Peter Dana asked Mr. Hankin to inquire with Mr. DeRosa whether treatment of the tree might save it from beetle damage. Nancy Baker said if treatment would not help, it would be a waste of the owner's and the Commission's time to postpone removal of the tree.

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Enforcement Order (Status report)

Small uninhabited island in Chebacco Lake

Columbia Pictures / Sony Entertainment; DeRosa Environmental, representative

Status report on photos of replanting; removal of poison ivy and other vegetation in 3'-6' strip around 60% of the shoreline of a 100' diameter (rough approximation) circular island

Conservation Coordinator Jim Hankin said he inspected the island from which vegetation was removed without authorization during a film shoot in summer 2009. Restoration planting has taken place. He said he would check the area again in the spring. Commissioners reviewed the written report and photos submitted by wetland consultant Mike DeRosa to document the replanting.

Commissioners briefly discussed their observation that less loosestrife was visible elsewhere in town during summer 2009 than in previous summers. They said water levels are higher, and beetles that eat loosestrife have been prevalent.

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Request for Determination

89 Ortins Road

Stephen Fersan, applicant

Construct shed in disturbed associated upland resource area at 80' from edge of wetlands

Conservation Coordinator Jim Hankin provided details about Stephen Fersan's proposal to add an 18' x 18' storage shed behind his house at 89 Ortins Rd., 80' from the edge of wetlands located on the parcel beyond his rear property line. He pointed out features of the parcel and proposed project on a site plan. The shed would be located in a flat back yard, where there is existing lawn. Mr. Fersan keeps chickens, and proposes to use the shed for related storage.

Nancy Baker asked whether construction of the shed would involve crossing the stream; Mr. Hankin said it would not be necessary to do so, and the Commission could specify in its official determination that this should not take place.

Camilla Rich made a motion for the Commission to issue a negative determination under the Wetland Protection Act and the Hamilton Conservation By Law. Virginia Cookson seconded the motion. VOTE: Unanimous.

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Robert Cronin made a motion for the Commission to approve the minutes of Sept. 30, 2009 as presented. Camilla Rich seconded the motion. VOTE: Unanimous. Commissioners deferred action on the minutes of Oct. 14, 2009.

Conservation Coordinator Jim Hankin reported that as of the date of this meeting, there was nothing on the agenda for the regular meeting scheduled for Wed. Nov. 4, nor were any site walks scheduled for Sat. Oct. 31. Camilla Rich made a motion for the Commission to cancel the Nov. 4 meeting, and to cancel the Oct. 31 site walks with the understanding that site walks might be scheduled for a date in early November should the Commission receive any filings which could be considered at its Nov. 18 meeting. Robert Cronin seconded the motion. VOTE: Unanimous.

Peter Dana suggested the Commission put on the agenda for the meeting of Nov. 18 a discussion of the candidates for the open seat on the Commission, so that the posted agenda would alert the public that this matter would be discussed, and would give them an opportunity to ask questions about the candidates. He suggested also that the Commission go into executive session to vote on which candidate to invite to join the Commission. Mr. Hankin said he would research whether that is a valid reason for executive session; he suggested that simply asking the candidates to leave the meeting while commissioners decide which of them to invite would accomplish the same purpose. Nancy Baker asked Mr. Hankin to send the resumes of the three candidates to commissioners prior to the Nov. 18 meeting.

Mr. Hankin informed commissioners that minutes of past meetings are now posted on the Commission web page, and agendas will be posted there prior to each future meeting.

Robert Cronin made a motion for the Commission to adjourn at 9:20 p.m. Camilla Rich seconded the motion. VOTE: Unanimous.

Minutes submitted Nov. 10, 2009 by Ann Sierks Smith