

**Hamilton Conservation Commission
Minutes of Meeting of Nov. 17, 2010
Meeting held at Hamilton Town Hall**

Commissioners present:

Nancy Baker, Virginia Cookson (7:35 p.m.), Robert Cronin, Peter Dana, Richard Luongo (co-chair), Camilla Rich

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Staff present:

Jim Hankin, Conservation Coordinator

Others present included:

John Tomasz, Hamilton Superintendent of Public Works

Anna Standley, 240 Linden St.

Frank Tavaris, attorney

Greg Hochmuth of the Neve-Morin Group, consultant

Patrick Seekamp of Seekamp Environmental Consulting, consultant

Richard Hayes, 31 Bradford Rd.

Bea Britton, 466 Highland Street

The Commission is scheduled to meet at 7:30 p.m. on Dec. 15, 2010. Site walk is scheduled for Sat. Dec. 11, 2010.

Richard Luongo opened the meeting at 7:30 p.m.

Conservation Coordinator Jim Hankin noted that prior to this meeting, commissioners received copies of several documents: a 2-page report from the Commission's consultant Seekamp Environmental about delineation of wetlands at 354 Highland St., and three photocopied pages of sections of Commission regulations relevant to Mr. Hankin's recommendation that a clerical error in the regulations be corrected.

Notice of Intent (Public Hearing continued from Nov. 3)

Linden Street

Hamilton Department of Public Works, applicant

Replace existing culvert in public way

Richard Luongo opened the Public Hearing.

Hamilton Superintendent of Public Works John Tomasz described proposed work to upgrade culvert # 23 on Linden St., to alleviate flooding. He said the old 24" diameter corrugated metal culvert slopes incorrectly, contains a lot of sediment, and is probably damaged. He proposes to replace it with 55' of 24" pipe. Two associated catch basins and outlet pipes would be cleaned. The culvert runs under Linden St. between Lois St. and Woodside Rd., so a section of road and sidewalk would be excavated, and later repaired.

At Nancy Baker's request, Mr. Tomasz made copies of the site plan for the proposed work and distributed them to commissioners.

Peter Dana suggested the Commission inspect the site before voting. Commissioners scheduled a site inspection for Sat. Dec. 11.

Anna Standley of 240 Linden St. expressed concern that if culvert 23 is upgraded, but no repairs are made to culvert 24 at the intersection of Linden and Howard Sts., more water will rise from the Linden & Howard culvert under storm conditions, and her property and those of her neighbors will be more severely impacted. She said she spent \$12,000 on work on her basement following severe flooding in March. She asked Mr. Tomasz what he thought about repairing both culverts at once.

Mr. Tomasz said the DPW cannot afford to repair both at this time; he proposes repairing culvert 23 first because it is the less expensive of the two. He agreed that "a little more water" would emerge from the culvert at Howard St. after culvert 23 is upgraded, if the Howard St. culvert remains unchanged. He said he hoped to upgrade culvert 24 in 2011. He said that the flooding in March, and in 2006, would have occurred regardless of the condition of these culverts.

In response to a question from Richard Luongo, Mr. Tomasz explained that water flows through these culverts toward Highland St.

Mrs. Standley and Mr. Tomasz referred to recommendations made in 1998 by a consultant the Town hired to study flooding problems in the Linden and Howard neighborhood. She said residents of the neighborhood brought flooding issues to Town officials' attention many years ago, and it is not fair that the water problems have not been addressed. Conservation Coordinator Jim Hankin said he would send to commissioners copies of Mrs. Standley's recent email on the 1998 consultant's report.

Mr. Tomasz said that upgrading culvert 23 is one of four projects the DPW plans in order to alleviate flooding in that neighborhood. The others are to upgrade culvert 24, clear brush along the brook that runs east of Linden St., and to improve a retention area. He noted that the DPW already received permits to clear the brush; he said the work has not taken place because he has not found someone to do the job "at the right price."

Commissioners scheduled a site visit for 8:15 a.m. on Sat. Dec. 11, and continued the Public Hearing to the meeting of Dec. 15.

Abbreviated Notice of Resource Area Delineation (Public Hearing continued from Oct. 6, Oct. 20, and Nov. 3)

354 Highland Street

Jerry Dawson, applicant; Prime Engineering, representative

Delineate wetlands

Greg Hochmuth of the Neve-Morin Group displayed a site plan of 354 Highland St. and pointed out the wetland boundaries and three apparent vernal pools that his firm mapped on the grounds of the existing Canter Brook Equestrian Center. He said to determine with certainty whether three ponded areas meet the statutory definition of vernal pools would require reexamining the areas in the spring when amphibians are active; however, the applicant concedes that they are probably vernal pools, and instructed him to label them as such on the plan, so that the permitting process could move forward over the winter. He asked the Commission to issue an Order of Resource Area Delineation (ORAD) to indicate its agreement that the wetland delineation shown on the plan is accurate. He said a more detailed site plan that would be submitted with the

anticipated Notice of Intent (NOI) for the redevelopment of the property would show all setbacks and buffer zones.

Patrick Seekamp, the wetland consultant hired by the Commission at the applicant's expense to perform a peer review of Neve-Morin's delineation, reported that he inspected the site with Mr. Hochmuth and substantially agreed with the wetland flags Mr. Hochmuth had placed. He said he recommended minor changes where he found hydric soils in a grassy swale, and suggested moving a flag 28'. He said the ponded areas appear to him to be vernal pools. He noted that an outlet ditch connects 2 areas of bordering vegetated wetlands (BVWs), and water was flowing through it when he was onsite; by definition, vernal pools have no outlet, so using an invert as the limit of a vernal pool is acceptable. He said the 3 ponded areas are distinct and unconnected when water recedes.

Mr. Richard Hayes of Bradford Rd., an abutter present at the meeting, reported that many spring peepers are audible in that area in the spring; Mr. Seekamp agreed that the presence of this species is one indicator of a vernal pool.

Nancy Baker asked whether the entire perimeter of the vernal pools that lie across the property line should be delineated as part of the upcoming permitting process, because of relevance for future activity on adjoining properties. Mr. Seekamp, Mr. Hochmuth, and commissioners discussed technical details of the delineation of vernal pools, and differing Town and state regulations. Mr. Seekamp said that during public hearings on the anticipated NOI, the Commission could ask the applicant whether he is willing to do so.

Conservation Coordinator Jim Hankin asked whether the outlet connecting the BVWs on this parcel is better described as bank, or BVW. Mr. Seekamp said it is a narrow steep ditch; he explained that "bank" describes an area through which a perennial or intermittent flow is channeled, and "BVW" means a broader, annually-saturated area beyond the channel. The site plan showed the ditch as BVW. He noted that intermittent banks are measured in linear feet of the channel's distance, while the measurements of perennial streams include the linear feet of both banks of the channel, and BVW is measured in square feet. Mr. Hochmuth said it is easier, statutorily, to alter bank than BVW; Mr. Seekamp agreed.

Abutter Richard Hayes asked Mr. Hochmuth to explain various colored lines on the site plan, which he did. One line marked the wetland resource boundary; another marked the buffer zone line; and a third marked vernal pool areas.

Mr. Luongo invited further questions and comments from commissioners and the public. None were forthcoming.

He noted that Mr. Seekamp submitted his second written peer review report on the day of this meeting, and also that Michael DeRosa, a wetland scientist hired by Peter Britton and other abutters to perform an additional peer review of the Neve-Morin wetland delineation, submitted a two-page memo to the Commission on the day of this meeting. Mr. Hankin noted that the Commission's official policy is that supplemental materials must be submitted 7 or more days prior to a session of the public hearing in order for the Commission to consider them during that hearing; however, by majority vote, the Commission can waive that requirement.

Commissioners spent several minutes reading Mr. DeRosa's memo.

Camilla Rich made a motion for the Commission to waive in this particular case the Commission policy requiring that supplemental filings reach the Commission 7 days or more prior to a session of a public hearing. Robert Cronin seconded the motion.

Commissioners discussed at some length whether to waive the supplemental filings policy; several commissioners expressed concern about setting a precedent by taking into consideration materials that were filed late. Frank Tavares, the applicant's attorney, asked the Commission to vote at this meeting about whether to approve the delineation; he said a delay of this vote could set the project back several months. Mr. Hankin noted that the applicant's consultant submitted the site plan on Nov. 12, 5 days prior to this meeting.

VOTE: Unanimous.

Mr. Luongo said that this would be the only time the Commission would waive the supplemental filing policy regarding this proposed project.

Peter Dana made a motion for the Commission to close the Public Hearing. Ms. Rich seconded the motion. VOTE: Unanimous.

Mr. Cronin made a motion for the Commission to grant an Order of Resource Area Delineation. Virginia Cookson seconded the motion.

VOTE: Unanimous.

Commissioners signed the ORAD.

Certificate of Compliance

435 Bay Road

Myopia Hunt Club, applicant

Installation of septic system

DEP file # 172-0525; Order of Conditions recorded Book 28384 page 20; amended Order of Conditions recorded Book 29635 page 322

Conservation Coordinator Jim Hankin recapped the details of this project. Myopia Hunt Club's upgrading of a septic system involved laying septic pipe down one side of the main Myopia driveway; effluent is now pumped through this septic line along the driveway, across the bridge over the Miles River, and behind a paddock to the leaching area. Some work was within Commission jurisdiction. Hayes Engineering filed an as-built plan following completion of the project. Mr. Hankin reported that he inspected the site on the day of this meeting and found all work areas within jurisdiction stabilized and established. He recommended the Commission grant a Certificate of Compliance.

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

Commissioners signed the COC.

Certificate of Compliance

435 Bay Road
Myopia Hunt Club, applicant
Electric service upgrade
DEP file #172-0516; Order of Conditions recorded Book 28031 page 120

Conservation Coordinator Jim Hankin reported that the electrical project for which Myopia Hunt Club requests a Certificate of Compliance (COC) was completed in late 2009. New utility poles and overhead electric lines were installed along the border of the polo field near the Methodist Church, and across the Miles River. Between the river and the Myopia clubhouse, the lines were laid underground. He said he inspected the work site when the trenches were dug, and when backfilling took place. He re-inspected it on the day of this meeting and found the silt fence still in place and functioning, and all work areas within the resource area well stabilized. He recommended the Commission grant a COC.

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

Commissioners signed the COC.

Certificate of Compliance

435 Bay Road
Myopia Hunt Club, applicant
Vegetation Management Plan I (original golf course maintenance plan, since superseded by the current Management Plan which has permit valid through July 2013—current plan DEP file #172-0468)
DEP file #172-0406, Order of Conditions recorded Book 18614 page 107.

Conservation Coordinator Jim Hankin explained that in 2002, Myopia Hunt Club filed and the Commission approved a Vegetation Management Plan for the Myopia grounds; this plan grew out of an enforcement action. This Plan expired before the Club filed to extend it. In order to continue the Vegetation Management Plan, procedural regulations required that the Club file a new Notice of Intent to create a new Vegetation Management Plan, and the Club's wetland Consultant Mary Rimmer did so. The Commission approved it and has since extended it once; the current Plan is in place until 2013.

Mr. Hankin recommended that the Commission grant a Certificate of Compliance for the expired original Plan, to close out the file.

Virginia Cookson made a motion for the Commission to grant a Certificate of Compliance for the expired Vegetation Management Plan. Camilla Rich seconded the motion. VOTE: Unanimous.

Commissioners signed the COC.

Discussion

Set Public Hearing date to correct clerical error in regulations

Conservation Coordinator Jim Hankin reported that he made a clerical error when preparing text for a regulatory change the Commission approved earlier in 2010. The regulatory change concerned applicants' payment for consultants hired by the Commission to review the applicants'

documentation. Mr. Hankin said he inadvertently deleted from the text a sentence in another paragraph of the regulations, regarding the No Disturb Zone around vernal pools. The Commission approved the text of the new regulation without realizing this had been omitted, and Commissioners did not intend to leave it out, Mr. Hankin said. Because restoring the sentence would technically be a regulatory change, it is necessary to hold a public hearing on the proposed change prior to voting. He recommended the Commission schedule a public hearing for its next scheduled meeting on Dec. 15.

Camilla Rich made a motion for the Commission to schedule a Public Hearing for Dec. 15, 2010. Peter Dana seconded the motion. VOTE: Unanimous.

Approval of minutes

Robert Cronin made a motion for the Commission to accept the minutes of the meeting of Oct. 6, 2010 as presented. Camilla Rich seconded the motion. VOTE: 4 yes, 2 abstentions (Ms. Rich and Mr. Dana, because they were not present for that meeting).

Mr. Cronin made a motion for the Commission to accept the minutes of the meeting of Oct. 6, 2010 as presented. Ms. Rich seconded the motion. VOTE: 4 yes, 2 abstentions (Ms. Rich and Virginia Cookson, because they were not present for that meeting).

Discussion

Mr. Hankin reported that Hamilton Town Manager Michael Lombardo has let him know that John Donovan has been in touch with Mr. Lombardo regarding the Commission's Enforcement Order regarding Mr. Donovan's property. Mr. Hankin said Mr. Donovan made the same points to Mr. Lombardo that he did to commissioners. Mr. Hankin said he would research filings to date for Mr. Donovan's property at 484 Bay Rd. Commissioners briefly recapped details and the history of this matter.

Peter Dana asked whether Patrick Seekamp would continue as a consultant to the Commission, as the permitting process continues regarding proposed redevelopment of Canter Brook Equestrian Center. Mr. Hankin said the Commission's contract for Mr. Seekamp's peer review of the applicants' wetland delineation is now complete, and that if the Commission wishes to engage a consultant at later stages of the process, a separate Request for Bids would be issued. Nancy Baker asked to see the list of consultants to which Mr. Hankin sends RFPs; he said he would e-mail it to her. She recommended that future RFPs allow more time for consultants to submit bids than was the case when the Commission accepted Mr. Seekamp's bid.

Robert Cronin made a motion for the Commission to adjourn at 8:44 p.m. Camilla Rich seconded the motion. VOTE: Unanimous.

Minutes submitted Nov. 19, 2010 by Ann Sierks Smith