

**Hamilton Conservation Commission
Minutes of Meeting of Feb. 16, 2011
Meeting held at Hamilton Town Hall**

Commissioners present:

Nancy Baker, Virginia Cookson, Robert Cronin, Richard Luongo (co-chair)

Staff present:

Jim Hankin, Conservation Coordinator

Others present for all or a portion of the meeting:

Jennifer Scuteri, Chair, Hamilton Board of Selectmen

George Tarr, Essex St., prospective candidate for Commission

Keith Glidden, Cutler Rd., prospective candidate for Commission

Cami Beckman, Highland St., prospective candidate for Commission

John Donovan, 484 Bay Rd.

Brad Mitchell, Massachusetts Farm Bureau

The Commission is scheduled to meet at 7:30 p.m. on March 9 and 23, 2011. Site walks are scheduled for Sunday morning March 6.

Richard Luongo opened the meeting at 7:40 p.m.

Enforcement Order

484 Bay Road

John J. Donovan, owner

Placement of fill (asphalt material) on access-way to property in buffer zones and resource areas

Conservation Coordinator Jim Hankin recapped events and correspondence related to this Enforcement Order. In mid-August 2010 a Hamilton resident contacted the Commission office and reported work near wetlands, off Cutler Rd. at the back of the property at 484 Bay Rd. On Aug. 17 Mr. Hankin observed from Cutler Rd. the access way that runs from Cutler onto the property, near the wetland line. He observed that asphalt material had been layered and graded on the access way within Commission jurisdiction. No permit had been requested for this work. He sent an Enforcement Order (EO) to the property owner John Donovan by certified mail, ordering Mr. Donovan to install an erosion control barrier between the work site and wetlands, cease and desist work within Commission jurisdiction, and attend the Commission's Sept. 29 meeting. The post office unsuccessfully tried three times to deliver the certified mailing; it was returned to Town Hall. On Sept. 20, Mr. Hankin visited 484 Bay Rd. and tried to deliver the EO to Mr. Donovan's home, but no one answered the door. He gave it to an employee on the property, who agreed to deliver it to Mr. Donovan. Prof. Donovan sent a letter dated Sept. 21 to the Commission, in which he said it would be better for the Commission to contact him by phone or e-mail, and in which he also stated that the Federal Emergency Management Agency (FEMA) was involved in the project. He appeared at the Sept. 29 meeting, gave commissioners a bookmarked and annotated copy of "Farming in Wetland Resource Areas: A Guide to Agriculture and the Massachusetts Wetlands Protection Act", and claimed an agricultural exemption from wetland regulations. The parties exchanged letters in October restating their positions. The matter was on the agenda for several subsequent Commission meetings, but was continued because of

storm cancellations, and illness. Commissioners directed Mr. Hankin to research Town files regarding this property; he made a report in writing on Jan. 3, and sent a copy to Prof. Donovan.

Brad Mitchell, Director of Government Affairs for the Massachusetts Farm Bureau, attended the meeting at Prof. Donovan's request and addressed the Commission on Prof. Donovan's behalf. He said the Commission acted prematurely when it issued a stop work order without first determining whether Prof. Donovan's property was eligible for an agricultural exemption for this project. He said work for normal maintenance and improvement of land in agricultural use is exempt from state and local wetland regulations, and a landowner is not required to file for a permit or to inform the Commission of such work. He said the Commission has a valid interest in making sure Prof. Donovan is within his rights under an agricultural exemption, but should have inspected the site and examined documentation of the property's agricultural use status before issuing an EO. He said the Farm Bureau recommends to its members that they notify their local Commissions of such work, even if the proposed work is exempt, but that owners are not legally required to do so. He said Prof. Donovan is offended by the order, but if the Commission lifts the order, Prof. Donovan would be willing to provide documentation and contact information for the FEMA people who did the work for him.

Mr. Hankin and Richard Luongo noted that the road resurfacing was completed before the Commission issued the EO, so it did not stop work on the project. Mr. Luongo said that when commissioners viewed the area from Cutler Rd. in early September, they could see that the access way had been resurfaced, and that it was near wetlands. Robert Cronin said it also had been widened; Prof. Donovan disagreed with this statement later in the meeting. Nancy Baker said that from the road it was impossible to tell whether the property is in agricultural use, or if so, whether the access way in question is connected to that agricultural use. She asked whether this is the case. Mr. Mitchell said Prof. Donovan told him hay wagons use the access way because the front entrance is inadequate for such large vehicles. He said that following what he termed a " cursory examination." he concluded that the access way is connected to agricultural activity.

Mr. Cronin said agricultural exemptions appear to give landowners carte blanche to fill wetlands. He suggested that Prof. Donovan enter into an agreement like those the Commission has with Pingree School and Myopia Hunt Club, under which the landowners notify the Commission in advance of planned work near wetlands, and the Commission reviews and advises on a friendly basis.

Virginia Cookson said the Commission acted wisely, because they were aware of an apparent violation, and immediate action was needed to protect wetlands. She said the Commission has been informed in the past that 484 Bay Rd. qualifies for agricultural exemptions from wetland regulations, but the Commission has never seen proof of the parcel's agricultural use. She said for any non-farm parcel, standard procedure would be to issue an EO in such a situation, so the Commission did so.

Mr. Mitchell clarified several points. He said state law provides exemptions for particular projects on farms, not a blanket exemption from all regulations. To qualify for exemptions, a property must meet particular criteria of agricultural use; for instance, keeping horses does not qualify a property for agricultural exemptions, but growing hay for sale or for feeding one's own animals does qualify. He said whether the project in question qualifies for an exemption would depend in part on whether the improvements conformed to normal agricultural practice. He noted that if an unpaved road were once used for horse-drawn wagons, and then normal farm practice shifted to the use of larger motorized vehicles, widening that road might be considered a necessary improvement. He reiterated a number of times his statement that the Commission had a

responsibility and duty to find out whether the project would qualify for an agricultural exemption, before issuing an EO. He said standing on the road and looking onto the property is not an adequate inspection. Mr. Hankin said the Commission sought but failed to obtain Prof. Donovan's consent to enter the property; the EO mailed in August stated that the Commission wished to inspect the property on Sept. 11, but the mailing was returned unopened.

Prof. Donovan said he has provided documentation for 20 years that qualifies him for the state "61A" designation that entitles him to an agricultural tax rate, and the Hamilton Assessors accept that designation. He said he farms 600 acres, keeps 50 cows, and grows \$30,000 worth of hay a year. He later stated that at various times, the number of cattle on his property range from 3 to 40. Mr. Mitchell said Massachusetts 61A tax status constitutes 95% assurance that a property is a farm. Hamilton Selectman Jennifer Scuteri said 61A tax status alone does not entitle a property to farm exemptions, and it is based on a very loose interpretation of agricultural activity, benchmarked by documentation of 5 contiguous acres in agricultural use, plus \$500 in annual farm receipts.

Prof. Donovan called it "incredible" that Mr. Hankin, accompanied by an armed police officer, served the EO to a young girl in his barn. Ms. Scuteri asked him why he did not sign for the certified letter when postal delivery was attempted earlier. Prof. Donovan said he neither received nor knew about the certified letter. He said the Commission should have phoned or e-mailed him. Mr. Hankin said the Commission has a statutory mandate about how to deliver an EO. Ms. Scuteri told Prof. Donovan that certified mail is considered legal notice. She said if he had accepted it and opened it, he could have informed the Commission at that time that he believed he was entitled to an agricultural exemption.

Ms. Scuteri encouraged the parties to determine the steps needed to establish whether the access way resurfacing work is exempt from wetland regulations. Mr. Hankin said the Commission could accept as established that 484 Bay Rd. is a farm, since the Town Assessors accept it as such. He said commissioners still need to walk the access way, and determine where hay is located and the connection between the access way and the hay production and hay use. Prof. Donovan said commissioners should ask farm employees at another of his properties, at 600 Sagamore St., about the volume of hay they grow, cut, and deliver to the Bay Rd. parcel, and how they bring it in. He said he grows 700 bales at his Bay Rd. property and brings in 3,000 bales from 600 Sagamore, and that trees and utility wires make the front entryway to 484 Bay Rd. impassable by a truck packed with 15' high hay. Ms. Scuteri asked whether he was open to Commission site visits, and conversation with Mr. Hankin; Prof. Donovan nodded in agreement.

Mr. Mitchell said two agricultural activities take place at 484 Bay Rd.: raising beef cows, and growing hay to feed them and to sell. He said the fact that some hay is brought to the property from Mr. Donovan's land elsewhere in town is typical of farming.

Ms. Baker questioned whether using paving material to resurface and widen the access way qualifies as normal maintenance or improvement. Mr. Mitchell said hot top paving, "hands down," would not qualify for an exemption but he was uncertain about resurfacing with ground bituminous material. Prof. Donovan said the road was not widened. He said FEMA people were at the site every day while the work was underway and were very concerned not to allow materials to enter nearby wetlands. He said FEMA paid for the work, and when he asked FEMA representatives if it was necessary to notify the Commission, they indicated it is not their practice to do so.

Prof. Donovan asked the Commission to rescind the EO, and invited them to visit his Sagamore St. property with him and view hay in the barns. Mr. Luongo suggested the Commission leave the EO in place until spring, and obtain FEMA documentation and information about the materials used on the road before deciding whether to rescind the order. Prof. Donovan said if the Commission kept the EO in place he would take the matter to Town Meeting, or court. Ms. Scuteri characterized the EO as "dormant," but Prof. Donovan said it is an active order. Commissioners discussed whether they could adequately inspect the property when it is covered with snow, and decided they could; they proposed a site visit on March 6. Prof. Donovan said this was unacceptable to him, and that he would take other action if the Commission would not act sooner.

Ms. Scuteri pointed out that if the Commission rescinded the EO, but later found that the access way resurfacing does not qualify for an agricultural exemption, the Commission could reissue the EO. Mr. Hankin said Prof. Donovan complied with the existing EO by attending the Sept. 29 meeting as requested and, as far as the Commission knows, by doing no further work within Commission jurisdiction. Ms. Baker said that given that the activity already occurred, and that lifting the EO would enable the Commission to obtain more information about the activities on the property than Prof. Donovan has been willing to provide while the EO remained in effect, she was willing to rescind the order, with the provision that Prof. Donovan do the Commission the courtesy in the future of informing the Commission in advance of planned work on his property within Commission jurisdiction, so the Commission would have the opportunity to evaluate the proposed project before work commenced.

Ms. Baker made a motion for the Commission to terminate the Enforcement Order on the conditions that the applicant provide information pursuant to the MassDEP Agricultural Guidance demonstrating that the wetlands agricultural exemption is applicable to the work which is subject to the Enforcement Order, and that as a courtesy, the applicant will provide notice to the conservation commission of future work within a wetlands resource or buffer zone to a wetlands resource. Ms. Cookson seconded the motion. VOTE: Unanimous.

Commissioners decided to leave open for now the timing of a site inspection, and schedule it when weather permits.

Prof. Donovan stated that it is his dream to give 1,000 acres to the Town. He said he now is in the process of giving 65 acres to the Town, including athletic fields and woodland trails. Mr. Lounge responded that Mr. Donovan's other dealings do not mean that the Commission should overlook the apparent wetland violation

Prof. Donovan, Mr. Mitchell, and Ms. Scuteri departed.

Extension of Local Permit

Linden and Howard Streets

Hamilton Department of Public Works, applicant

Stream cleaning; State Order of Conditions to expire April 2012, local permit requested to expire same time

Conservation Coordinator Jim Hankin noted that this request for an extension is related to, but distinct from, an ongoing matter regarding replacement of a culvert near the intersection of Linden and Howard St. Both are part of a multi-step effort to improve drainage in the area.

The matter on this meeting's agenda is the Hamilton Department of Public Works' request for the extension through April 2012 of a stream-clearing project the Commission approved in April 2009. At that time the Commission issued a state Order of Conditions that will expire in April 2012, and a local permit that expired in April 2010. The DPW has not yet done the work, because neighborhood residents objected to the DPW's plan to save money by hiring prison inmates to do the work; the DPW did not have the funds to hire more expensive commercial contractors. Mr. Hankin said he understands the current plan is for Hamilton DPW employees to do the work in 2011. Nancy Baker said that when the Commission approved the stream clearing, it was not notified that a prison crew would do the work; she said it is better for it to be performed by workers who have a vested interest in the outcome.

Virginia Cookson made a motion for the Commission to extend the local permit to run the same term as the Order of Conditions. Robert Cronin seconded the motion. VOTE: Unanimous.

Discussion

Mr. Hankin introduced Cami Beckman, who has expressed interest in the open seat on the Commission. She said she majored in environmental science in college, and worked in marketing. She is an equestrian, and came before the Commission to obtain a permit for a paddock, which she said opened her eyes to how the Commission works. She expressed a commitment to recycling and other environmental goals.

Mr. Cronin made a motion for the Commission to approve the minutes of Feb. 3, 2011 as presented. Ms. Baker seconded the motion. VOTE: Unanimous.

Commissioners decided to discuss possible By Law changes during the meeting of March 9, and scheduled a public hearing for the meeting of March 23.

Mr. Cronin made a motion for the Commission to adjourn at 9:06 p.m. Ms. Cookson seconded the motion. VOTE: Unanimous.

Minutes submitted Feb. 21, 2011 by Ann Sierks Smith