

**Hamilton Conservation Commission
Minutes of Meeting of Feb. 25, 2009
Meeting held at Hamilton Town Hall**

Commissioners present as meeting was convened at 7:30 p.m.:

Nancy Baker, Virginia Cookson, Robert Cronin, Peter Dana, John Hamilton (co-chair)

Staff present:

Jim Hankin, Conservation Commission Coordinator

Others present:

John Dick of Hancock Associates, wetland scientist

Mary Rimmer, wetland scientist

Ann Getchell

Gretel Clark, Open Space Committee

Peter and Bea Britton of 466 Highland St.

Jennifer and Jeff Scuteri of 171 Essex St.

Anne Minois

Dick Flynn of Linden St.

Russell Caswell of Linden St.

The Commission is scheduled to meet on Wednesdays March 11 and 25, 2009 at 7:30 pm. at Hamilton Town Hall. Site walk is scheduled for Sat., March 7, 2009. The Commission's scheduled participation in the February 28 conference of the Massachusetts Association of Conservation Commissions has been cancelled.

John Hamilton opened the meeting at 7:33 p.m.

Conservation Coordinator Jim Hankin noted that prior to this meeting, commissioners received copies of documents related to Pingree School's proposal to install an artificial turf playing field, the Hamilton Department of Public Works (DPW) proposal to clear a stream of debris, and Martin Zieff's proposal to build a tennis court near wetlands at 1028 Bay Rd. Mr. Hankin announced that the date of the Commission's second meeting in April has been changed from April 22 to April 29. Finally, he noted that commissioners have cancelled plans to attend a conference on February 28, and will instead attend a memorial service for a commissioner's mother. Mr. Hankin and Mr. Hamilton said most of the prepaid conference fees probably would be refunded.

Notice of Intent

537 Highland Street

Pingree School, applicant

Install artificial turf surface

Conservation Coordinator Jim Hankin said the Hamilton Planning Board reviewed Pingree School's proposal to create a new artificial turf field, and decided the project does not require a stormwater permit, because the run-off would not discharge into the Town sewer system. He said Pingree officials agreed to a continuance of the public hearing to the meeting of March 11, so the Commission could inspect the site on March 7 before beginning substantive discussion.

Virginia Cookson made a motion for the Commission to continue the public hearing to March 11. Peter Dana seconded the motion. VOTE: Unanimous.

Notice of Intent (Continued from February 11, 2009)

1028 Bay Road

Martin Zieff, applicant; John Dick of Hancock Engineering, representative

Construct tennis court within no disturb zone

John Hamilton reopened the public hearing on Martin Zieff's proposal to build a tennis court that would lie partially within the no disturb zone (NDZ) and entirely within the associated upland resource area (AURA) beside a stream at the back of his property at 1028 Bay Rd.

Mr. Hamilton noted that a planting plan submitted by Mr. Zieff's consultant John Dick was delivered to the Commission quite recently, and commissioners had little time to read it. Commissioners discussed whether they should create a policy about when such documents should be submitted, prior to a public hearing. They decided to take this issue up at their March 11 meeting. Mr. Hamilton said it would be unfair to apply a new rule to Mr. Zieff's application.

Discussion ceased for several minutes while commissioners read the planting plan.

In response to questions, Mr. Dick described his plan for replacing lawn along the stream with a border of native species, to mitigate for building part of the tennis court in the no disturb and no build zones (NBZ) within 25' and 50' of wetlands. A fabric silt fence would be installed at the top of the stream bank, and another at the limit of the work area; when work is complete, the fences would be cut to ground level, and the bases of the fences would be left in place to biodegrade. Existing lawn would be rototilled. Shrubs that spread to about 6' in diameter would be planted 8' apart, so that when fully grown they would interlace and create a dense border. A wildflower seed mix would be scattered; in the first year most growth would be annuals, and in the second and subsequent years perennials would emerge. The tall shrubs would screen the Zieff's view of the neighbor's property (and vice versa). Mr. Hamilton expressed concern that if rototilled under rather than removed from the site, the existing lawn would regrow and crowd out seeded annuals and perennials, resulting in an excessively monocultural planted strip; Mr. Dick responded that by design, the shrubs would be so dense after six or seven years that the annuals and perennials (including grass) below the shrubs would die, because the sunlight could not reach them.

Mr. Hamilton invited commissioners to comment, and ask questions. Nancy Baker asked for information about potential impact on the AURA; she said the filing only mentions potential impact on the NDZ. Also, she said that because it would be constructed of impervious pavement, and fenced, it would prevent wildlife from moving along the stream, and hence should be discussed as a proposed structure or building in the NDZ.

Mr. Dick displayed a site plan and described measurements and details. The tennis court would be 100' X 54', with an area of 5400 square feet. Most of one 100' side would lie just along or within the NDZ 25' from wetlands. One corner of the court would jut farther into the NDZ. About 575 square feet of the court would be within the NDZ.

John Hamilton said Mr. Zieff is offering to replant eight times as much land with native shrubs and herbaceous cover (4925 square feet) as he is requesting permission to build on within the

NDZ. Mr. Hamilton said commissioners should balance the various interests in this proposal, and weigh the potential benefits.

Virginia Cookson asked whether the design of the court could be changed to make the playing surface more pervious, and “environmentally friendly to animals and wetland vegetation.” Mr. Hamilton noted that turtles and salamanders travel along stream banks. Ms. Baker said a 2001 study states that 75 percent of wetland-connected species require some upland access; she said the report lists 65 such species. Mr. Hamilton said the amount of bordering land they need ranges from 20’ to 1100’. Mr. Dick said courts can be built with perforated surfaces but he understands this changes the action of bouncing balls, and also is very expensive to maintain in New England because ice gets into the perforations and breaks up the surface. He said the proposed design includes a 2’ trench along the side of the court that could accept 1” of rainwater, which he said exceeds the performance standards in regulations. He said the stream in question does not even show as a stream on the U.S. Geological Survey map of the area. He offered to suggest to his client that drywells and downspouts be added to the house to further recharge groundwater, but noted that because of topography he is unsure whether drywells would be possible. Peter Dana said it would be better not to disturb the ground up the slope to install drywells near the house.

Ms. Baker expressed concern that Mr. Dick is requesting a waiver; she said regulations limit waivers to rare and unusual circumstances when there are no alternatives. Mr. Hamilton said the presumption of adverse impact on wetlands can be rebutted by seasonal use, and/or a restoration project, and that in this case, the proposed revegation of the strip of land along the stream is the applicant’s rebuttal.

Mr. Hankin said Commission permits usually expire after two years, but can be issued to expire in three years, which allows the applicant to add to plantings later without formally refiling with the Commission.

Mr. Hamilton invited public comment and questions. None were forthcoming.

Robert Cronin made a motion for the Commission to close the public hearing. Ms. Cookson seconded the motion. VOTE: Unanimous.

Ms. Cookson made a motion for the Commission to issue an Order of Conditions under the Wetland Protection Act and the Hamilton Conservation By Law. Mr. Dana seconded the motion. After brief discussion, commissioners agreed on these conditions:

1. The mitigation planting area is to remain in place perpetually, and the OOC is to be recorded before work commences.
2. The local permit will expire at the end of three years.
3. The Commission will reinspect the site after one year.

VOTE: 4 yes, 1 no (Ms. Baker)

Notice of Intent (Continued from February 11, 2009)

435 Bay Road

Myopia Hunt Club, applicant; Mary Rimmer, representative

Install force main to serve Title V compliant septic system

John Hamilton reopened the public hearing on Myopia Hunt Club’s proposal to build a new leaching field to serve 11 existing septic systems, and a new force main to connect those systems to the new leaching field, portions of the main to lie within the Commission’s jurisdiction.

Myopia's wetland consultant Mary Rimmer said state Department of Environmental Protection (DEP) officials received the proposal more than three weeks ago but have not yet commented. She said Myopia officials want to get the project out to bid, and request that the Commission close the public hearing at this meeting without waiting for DEP's comment. If future DEP comments were to have a bearing on the Commission's decision, Myopia would ask the Commission to reopen the hearing, Ms. Rimmer said.

Virginia Cookson made a motion for the Commission to issue an Order of Conditions (OOC) under the state Wetland Protection Act and the Hamilton Conservation By Law. Nancy Baker seconded the motion.

Mr. Hamilton said Myopia's proposal (for details, see minutes of Feb. 11, 2009) is very thorough.

Ms. Baker proposed this condition, and commissioners agreed: No work permitted by this Order within jurisdiction of the Conservation Commission may begin unless and until the applicant receives a subsurface sewage disposal permit from the Hamilton Board of Health which complies with both the requirements of Title 5 and any more stringent local standards.

Ms. Cookson made a motion for the Commission to close the public hearing. Robert Cronin seconded the motion. VOTE: Unanimous.

VOTE on motion to issue an OOC with the condition noted above: Unanimous.

Commissioners signed the permit.

Notice of Intent (Continued from January 28 and February 11, 2009)

37 Greenbrook Road

Mary Hamilton, applicant; Merrimack Engineering, representative

Install Title V compliant septic system, pump chamber at 30' from edge of wetlands

Conservation Coordinator Jim Hankin reiterated details of this proposed project. Like other lots on Greenbrook Road, #37 abuts a stream at the back. The owner wants to fill and collapse the existing septic system, and replace it with a new one. The new leaching field would be at the side of the house. A subsurface pump in the backyard would pump effluent to the field. The septic tank would be 30' from wetlands, and the pumping chamber would be 35' from wetlands. Setback requirements make it impossible to locate the system in the front yard.

Nancy Baker noted that the entire system would lie within 100' of wetlands, so it would be entirely within the Commission's jurisdiction. She asked Mr. Hankin to confirm setback measurements prior to construction. He said he could ask the system's designer to stake the planned locations of all the parts of the system, so he could measure from them to the wetland line.

John Hamilton reopened the public hearing on this matter.

Virginia Cookson made a motion for the Commission to issue an Order of Conditions, with the special condition that work cannot begin until the Coordinator inspects the siltation barrier and

confirms the location of all subsurface components of the new septic system match the setbacks shown on the plan. Peter Dana seconded the motion. VOTE: Unanimous.

Notice of Intent (Continued from November 19 and December 10, 2008 and January 14, January 28, and February 11, 2009)

Linden and Howard Streets

Hamilton Department of Public Works, applicant

Clear streams of debris, re-establish flow

John Hamilton reopened the public hearing on the Hamilton Department of Public Works' request for permission to clear a stream near the intersection of Howard and Linden Streets, to reestablish flow and curtail flooding of roads, yards and homes in the area.

Conservation Coordinator Jim Hankin said DPW superintendent John Tomasz, who was unable to attend this meeting, has filed an amended Notice of Intent (NOI) with the state Department of Environmental Protection (DEP) in which he characterizes the proposed work as a limited project. Mr. Hankin explained that if DEP grants limited project status, DPW could clear the stream without meeting strict performance standards that would otherwise apply. Mr. Hankin said DPW is making the case that in DEP's list of types of work that qualify as limited projects, the proposed stream clearing meets the terms of 310 CMR 10.53(3)(k), which he read aloud:

The routine maintenance and repair of road drainage structures including culverts and catch basins, drainage easements, ditches, watercourses and artificial water conveyances to insure flow capacities which existed on the effective date of 310 CMR ;10.51 through 10.60 (April 1, 1983).

Mr. Hankin said the only issue the Commission would address at this session of the public hearing is whether this language applies to the proposed project. Mr. Hankin also said Mr. Tomasz informed Mr. Hankin that he is open both to the Commission coming to a decision on this NOI at this meeting, or to the Commission continuing the public hearing to a future meeting.

Commissioners discussed statutory definitions of road drainage structures and watercourses, and whether the stream in the Linden and Howard neighborhood meets one of these definitions. Discussion touched also on culverts that carry the stream below roads (for details, see minutes of Feb. 11, 2009). Virginia Cookson said the stream meets the technical definition of a stream; however, she said, it is not a woodland stream, but a system of culverts and ditches that exists because of the need to drain water from roads and property. She said the term "watercourse" refers to drainage features that are not natural, and that because some of the proposed clearing would take place in culverts and catch basins of a drainage system that is not working, she believes DPW's proposal qualifies for limited project status. Mr. Hamilton agreed that it fits the definition of a watercourse. Ms. Baker said the term "road drainage structure" usually refers to a structure within the road itself, so this proposed project probably does not meet the requirements for limited project status.

Two abutters commented and asked questions.

Russell Caswell of Linden St. said there used to be fish and frogs in the stream, but 25 years of road run-off has deposited so much sand, salt, and leaves in the stream that it no longer supports animal life. He said culvert pipes go the wrong way, and when it rains heavily a pond forms in his yard. He noted that the DPW originally proposed using a backhoe to clear the stream but now proposes work by hand with shovels and rakes; he expressed skepticism that this would be adequate. He said the stream must be cleared thoroughly enough for it to drain all the way to

Pleasant Pond, or “otherwise, you’re just dumping the pond in someone else’s yard” further along the stream. Mr. Hamilton told Mr. Caswell that at this session of the hearing, the Commission would not be discussing practical details of the proposed clearing, but only whether it qualifies as a road drainage project and limited project. Ms. Cookson told Mr. Caswell the DPW originally planned to use heavy equipment when the ground was frozen, but changed the proposed method of work after it became clear work would not start until after the spring thaw, when yards abutting the stream would be too wet to support such equipment. Mr. Caswell suggested DPW could wait until August or September when the ground would be dry, and use a tracked vehicle.

Dick Flynn of Linden Street asked whether the Commission would set special conditions for the proposed project at this meeting; commissioners said they would not.

Mr. Hamilton polled commissioners for their opinions about whether the proposed work qualifies as a limited project. Mr. Hankin read the regulation aloud again before commissioners expressed their opinions. Mr. Hamilton, Ms. Cookson, Peter Dana, and Robert Cronin said they believe it does. Ms. Baker disagreed.

Ms. Cookson made a motion for the Commission to continue this matter to the meeting of March 11, and inspect the site on March 7. Mr. Dana seconded the motion. VOTE: Unanimous.

Discussion

Open Space Committee

Commissioners postponed discussion of the Open Space Committee.

Wetlands brochure

Mr. Hankin suggested that the Commission mail copies of a new brochure about wetland regulations to Hamilton residents, and to those real estate brokers and landscapers with mailing addresses in Hamilton. Commissioners agreed by general consent.

Open space and development issues

John Hamilton introduced Essex Street resident Jennifer Scuteri, of 171 Essex St. He said that she requested time to speak with commissioners about open space and development issues.; he noted that he sent each commissioner copies of e-mails he exchanged with Ms. Scuteri prior to this meeting.

Ms. Scuteri’s husband Jeff Scuteri said the issue that inspired the Scuteris to request time to speak with commissioners is that they believe Hamilton cannot continue to raise property taxes, so it will have to increase its commercial tax base, which involves legitimate concerns about open space.

Ms. Scuteri said Hamilton has missed opportunities to increase its commercial tax base. She and Mr. Hamilton briefly discussed the example of New England Biolabs, which is located just north of Hamilton’s border with Ipswich. Ms. Scuteri said she understands New England Biolabs at one time considered locating in Hamilton; if it had, she said, it would increase Hamilton’s annual tax revenue by \$540,000. Mr. Hamilton said New England Biolabs considered a site in Manchester near Hamilton, but to his knowledge never considered a site within Hamilton’s town limits. He noted that that town’s Great Estates By Law makes Biolabs’ operation in Ipswich possible; he

said Hamilton has several properties like those to which Ipswich's by law applies, but Hamilton has no comparable by law.

Ms. Scuteri said a lot of open space already is protected in Hamilton. She said Hamilton's Open Space Plan (OSP) specifies that the Commission should take a variety of criteria in account that would "keep the town vibrant," when deciding whether to recommend preservation of further parcels. She said the Commission is not supposed to govern or dictate land use. She said the Commission consistently encourages downtown development, which she said she considers dictating land use. She asked whether the Commission ever has recommended against accepting a proposed conservation restriction (CR), and asked what message the Commission sends if it recommends approval of every proposed CR.

Conservation Coordinator said the Commission issues permits within wetland jurisdiction, and asked Ms. Scuteri in what way that dictates land use. Ms. Scuteri said Mr. Hamilton's statements encouraging downtown development express the official position of the Commission. Mr. Hamilton and Mr. Hankin disagreed, and characterized these as statements of personal opinion. Mr. Hamilton said nearly all proposed CRs would be deeding of land to the Essex County Greenbelt land trust, and Greenbelt rejects some offers before they reach the Commission. He said landowners who arrange CRs get a larger estate tax credit now than they did in the past; landowners get a real estate appraisal, evaluate the potential tax advantage of the CR, and take this into account in deciding how to structure the proposal. He said that by the time the Greenbelt brings a CR proposal to the Commission, the terms are firmly set; the Commission has no authority to influence the details, and can only vote yes or no on whether to recommend the Hamilton Board of Selectmen accept the CR. He said he often has voted no, if there would be no public access to the section of the property under a CR.

Ms. Scuteri said Hamilton grants many CRs. She said the OSC prompts the Commission to remember that a lot of open space already is protected in Hamilton. She asked whether the Commission recommends against CR proposals only when there are public access issues.

Mr. Hamilton said that of 101 towns in this part of the state, Hamilton ranks 5th in protection of open space. Three are seaside towns; the only inland town that has more open space is Stowe, and it is ahead of Hamilton because when Fort Devins was decommissioned it was designated as open space, he said. He said the Greenbelt is very professional. He noted that the Commission's rule in CR proposals is to make a recommendation, but the decision is the selectmen's. He said the amount of land involved in each CR proposal is usually "a pittance." He said it is important to establish a large contiguous area of open space, for wildlife protection. He said Hamilton lies on the periphery of such a contiguous area, consisting of 1400 acres in Willowdale State Forest, 890 acres at the Ipswich River Audubon Sanctuary, and nearby private parcels, such as land owned by Peter and Bea Britton. He said when a CR is proposed, he considers whether it would connect with this group of properties. "If a property is in that sector, we're probably going to favor open space," he said.

Mr. Hamilton said if a Chapter 61, 61A, or 61B parcel comes up for sale, the Town has the right of first refusal, and the Commission recommends to the selectmen whether to purchase the land for open space. He said this has happened four times in the past 10 years, and in none of those cases did the Commission recommend that the selectmen make the land open space. Ms. Scuteri asked whether the minutes of discussions of such cases would indicate the Commission considers pressures on the Town, and the vibrancy of the Town. Mr. Hamilton answered that the selectmen, not the Commission, consider such issues. He further stated that commissioners Sarah Getchell discussed with Carl Swanson of the Economic Development Committee an equestrian parcel in

Wenham, and Ms. Getchell suggested that “smart growth” principles indicate that property should be developed, not protected as open space. Mr. Hamilton said he could think of two properties in Hamilton he would “say no to,” but that he would not identify them.

Ms. Scuteri stated that the OSP refers to “unrelenting development,” but that she has not observed this in her eight years in Hamilton. She said conservation commissions wield power about development, and as an example spoke about a proposed housing development in Wenham that she said has been held up for four years because of an appeal by a Wenham conservation commissioner. She asked commissioners to name development proposals that have come before the Hamilton Conservation Commissions. Mr. Hamilton reiterated that the Commission’s function is wetland protection. He said the Commission rarely turns down a project outright, but instead usually reaches an agreement with the applicant to reduce its impact on wetlands. The only outright denial of a permit he could recall was the Commission’s denial of a permit to Myopia Hunt Club when it wanted to enlarge a pond. He said the Hamilton Commission has never been involved in a case that resulted in the withdrawal of a proposal for a multi-unit development. He said in the past 12 years, only two applicants have appealed decisions made by the Hamilton commission. Nancy Baker noted that the Hamilton commission has nothing to do with what happens in another town.

Ms. Scuteri again asked about “unrelenting development.” She said Hamilton residents seem afraid that any development would make the town look like North Beverly. She asked how much development pressure is really being felt at this time. Gretel Clark of the Open Space Committee said that at the time the OSP was written eight years ago, there was “enormous pressure,” but she agreed with Ms. Scuteri that there is little development pressure now. Ms. Scuteri suggested that when the OSP is next revised, that language be removed.

Peter Dana said it is not the Commission’s intent to acquire every bit of land it can. He said Hamilton needs development for revenue, for affordable housing, and for housing for senior citizens. He said he would “welcome with open arms” a project or two. Ms. Scuteri asked whether Mr. Dana would welcome development beyond the downtown area; Mr. Dana answered that he would.

Ms. Cookson said in the 1990s, a number of developers bought several contiguous parcels that were too small to develop individually, and combined them to create parcels of about 2.5 acres. She said some consisted mostly of wetlands, with perhaps half an acre of upland, and the developers built very large houses on the upland sections. She said this type of development has slowed because few such parcels remain. She noted that many lots abut wetlands, because 40% of Hamilton is wetlands. She said the Commission is not involved in the permitting process for projects on properties not within 100’ of wetlands. She noted also that the lack of a municipal septic system means it takes more land to build a house. She said given the need to watch out for the amount of water a new building would use, and the amount of waste it would produce, Hamilton has been under a lot of pressure.

Peter Britton of 466 Highland St. offered his perspective as the owner of a large parcel. He noted he served for 25 years on the Planning Board. He said in 1965, 95% of Hamilton voters approved a master plan that stated that open space was the most important criteria for town land use decisions. He said there has been no change since 1975 in the uses permitted for large parcels; they can be used for agriculture, or the construction of single-family houses. He said each single-family house costs Hamilton more in services provided than the property owner contributes in property tax revenue. He said unless Hamilton enables the owners of large parcels to use them for another type of development, like Biolabs, owners will hold on to their land rather than develop

it. He said he put 100 acres of his land under a CR to save part of the contiguous open space area. He said he is frustrated that Town Meeting defeats most proposals for what he termed “creative zoning.” He noted that of nine community-supported agriculture businesses in the area, three are in Hamilton (Appleton Farms, Greenmeadow Farm, and the Brittons’).

Bea Britton said she understands that because of the high cost of acreage in Hamilton, developers build “McMansions” because they cannot make money if they build a house that would sell for \$400,000.

Ms. Baker made a motion for the Commission to adjourn at 9:38 p.m. Ms. Cookson seconded the motion. VOTE: Unanimous.

Minutes submitted March 3, 2009 by Ann Sierks Smith