

**Hamilton Conservation Commission
Minutes of Meeting of April 8, 2009
Meeting held at Hamilton Town Hall**

Commissioners present as meeting was convened at 7:33 p.m.:

Nancy Baker, Virginia Cookson, Robert Cronin, Sarah Getchell (co-chair), John Hamilton (co-chair)

Staff present:

Jim Hankin, Conservation Commission Coordinator

Others present:

David Carey, selectman
Anna Standley of Linden St.
Dick Flynn of Linden St.
Mark Kuzminskas of 408 Bridge St.

The Commission is scheduled to meet on Wednesday April 29, May 14 and May 28, 2009 at 7:30 pm. at Hamilton Town Hall. Site walk is scheduled for Sat. May 9, 2009.

Sarah Getchell opened the meeting at 7:33 p.m.

Discussion

Massachusetts Technology Collaborative grant

Selectman Dave Carey updated commissioners on the Town's application for a state grant to perform a feasibility study about building a wind farm on Sagamore Hill. He asked the Commission for more funds to secure the grant.

Peter Dana joined the meeting during this presentation, at 7:37 p.m.

Mr. Carey noted that another Town official had explained at a prior meeting that Hamilton must provide \$8,000 in funding in order to secure the \$40,000 grant from the Massachusetts Technology Collaborative. When commissioners discussed this issue at a prior meeting it appeared that only \$5,600 in cash would be needed, because a Hamilton resident had volunteered to do work for the project that could be valued at \$2,400. However, Hamilton officials subsequently learned that work in kind could count toward Hamilton's matching funds only if a Town employee were to perform the work. The volunteer does not work for the Town, so Hamilton must contribute \$8,000 after all.

Mr. Carey said there are two other ways the Town may be able to obtain the \$8,000, but that funds the commission controls might be needed in the short run, with an expectation of reimbursement. He said there is \$11,000 earmarked for Hamilton in the state Renewable Energy Trust, a program of the Clean Energy Program; he explained that the Trust allocates funds to towns based on the number of residents who opt to pay a bit extra

in order to purchase power from renewable sources. He said he has been assured this money could be used as matching funds for the Mass Tech Collaborative grant; however, the funds would not be released for 60 days. In addition, he said, selectmen have made a request in the Town Meeting warrant for voters to appropriate \$8,000 for the Town's matching funds for the grant, in case no other funding comes through. He asked the Commission to release another \$2,400 from the Conservation Fund so the Town could finalize the grant and get the project underway. He said the plan would be for the money to be restored to the Conservation Fund after the Town receives funds from the Renewable Energy Trust later in the spring, but that commissioners should understand there is some risk that both other potential funding sources could fall through.

John Hamilton made a motion for the Commission to authorize transfer of \$2,400 from the Conservation Fund for the Town to apply as matching funds for the Massachusetts Technology Collaborative grant, on top of \$5,600 the Commission previously authorized. Peter Dana seconded the motion. VOTE: Unanimous.

Mr. Carey provided some details about how the Town would benefit from a wind farm, were one built. He said power would not flow directly to Hamilton; rather, the Town's bills would be credited. The power generated by the wind farm would flow directly into the power grid, and virtual net metering would record the amount of power produced. The Air Force would receive free power for its research installation on Sagamore Hill. The developer of the wind farm would receive a certain sum. The Town would benefit financially from the value of whatever power was generated in excess of the Air Force's needs and the developer's set benefit. He said kilowatt-hours are traded at 14 cents per hour at present, but the wholesale price is 3 cents; Hamilton pays 13 cents per kilowatt-hour at present, he reported.

Conservation Coordinator Jim Hankin reminded those present that the Commission's second April meeting will not be on the usual fourth Wednesday. Instead, the Commission will meet on the fifth Wednesday of April, April 29. He noted also that the packet commissioners received prior to the meeting included three documents: an e-mail from a commissioner to the state Department of Environmental Protection, and one from that agency to the commission, and also a draft policy on filing supplemental materials.

Notice of Intent (Public Hearing continued from Nov. 19 and Dec. 10, 2008, and Jan. 14, Jan. 28, Feb. 11, and Feb. 25, 2009)

Linden and Howard Streets

Hamilton Department of Public Works, applicant

Clear streams of debris, re-establish flow

Sarah Getchell reopened the public hearing.

Conservation Coordinator Jim Hankin said Hamilton Department of Public Works superintendent John Tomasz was at another Town meeting and could therefore not attend this Commission meeting. He reported that Mr. Tomasz is willing to clear a stream near Linden and Howard Street by hand, and see whether he makes adequate progress.

Commissioners discussed what procedural issues might arise if after beginning the project, Mr. Tomasz were to conclude he needs to use machinery after all. Mr. Hankin said commissioners could issue an Order of Conditions (OOC) allowing both work by hand and use of machinery, but if the OOC specified only work by hand, Mr. Tomasz would have to file officially for an amendment in order to obtain permission to use machines. Peter Dana suggested writing an OOC that permits use of machinery unless there is strenuous objection from abutters, or the Commission. John Hamilton said such objections have been expressed: at least one resident expressed concern, during earlier sessions of the hearing, about heavy equipment traveling across her lawn to reach the work site, and the damage to the lawn that might result. Mr. Hankin noted that when Mr. Tomasz originally proposed the work, he planned the work for winter when the ground was frozen, which would have minimized such damage; he now intends to do the work during the summer during a dry period, probably in August. Nancy Baker suggested Mr. Tomasz should work only by hand, within the stream banks, and provide an interim report to the Commission. She said a compost pile within the flood plain may be contributing to flooding of adjacent properties, and she suggested someone should remove it. Commissioners reached a consensus that the DPW should first use hand tools, but that if it becomes evident that debris cannot be cleared effectively from the stream without machinery, the DPW should be able to request such a change without going through the official process of filing for an amendment.

Ms. Getchell invited public comment. There was none.

Mr. Hankin told several abutters present in the audience that he knows residents of the neighborhood are anxious to see problems addressed. He said if machinery proves necessary, the Commission would consider, at that time, particular residents' concerns about such equipment traveling across their property.

Mr. Hamilton made a motion for the Commission to close the public hearing. Virginia Cookson seconded the motion. VOTE: Unanimous.

Mr. Hamilton made a motion for the Commission to issue an Order of Conditions, with the special condition that the applicant is authorized to utilize hand tools only for the work described in the Notice of Intent, but that if after undertaking the work, the applicant cannot demonstrate that flow has been increased as a result of the hand-tool-only work, the applicant could ask for permission to use machinery, and this request could be considered a modification, not an amendment. Robert Cronin seconded the motion. VOTE: Unanimous.

Notice of Intent (Public Hearing continued from February 11, 2009 and February 25, 2009)

537 Highland Street

Pingree School, applicant; Pingree Business Manager Jock Burns & John Amato of JJA Sports, representatives

Install artificial turf surface

John Hamilton announced that this public hearing would be continued to April 29, 2009, at the applicant's request.

Violation Notice

408 Bridge St.

Mark & Karen Kuzminskas, property owners

Substantial cutting of natural wild vegetation within buffer zone to pond, buffer zone to bordering vegetated wetland, and possibly within riverfront

John Hamilton apologized to property owner Mark Kuzminskas for his and another commissioner's absence from the site walk at 408 Bridge St. on April 4, and asked for permission to view the site at another time. Mr. Hamilton, Mr. Kuzminskas and Conservation Coordinator Jim Hankin agreed to arrange the details at another time.

Mr. Hamilton said commissioners agree the violation on the Kuzminskas's property is "pretty major, in size." He told Mr. Kuzminskas the Commission's goal is not to punish violators, but rather to protect wetlands. He said the Commission enforces the Massachusetts Wetland Protection Act (WPA) and Hamilton's Conservation By Law, which he said is more stringent than the WPA; he said that work done on the Kuzminskas's property appears to violate both laws. He said most violations happen innocently, and the Commission is not saying that the Kuzminskases had ill will or were contemptuous of the law.

Commissioners discussed whether to ask the state Department of Environmental Protection (DEP) to investigate this violation; they decided to handle the case themselves for now. Mr. Hankin said DEP intervenes only in cases involving an Enforcement Order (EO), but that the Commission could change the existing Violation Notice (VN) to an EO at any time over the next three years, if commissioners should decide to refer the case to DEP.

Mr. Hamilton explained to Mr. Kuzminskas some aspects of wetland violations, and what the Commission and property owner do once a Violation Notice is issued. He said the Commission protects the functions of wetlands, including water quality, wildlife habitat, and flood storage capacity. He said the Commission would direct Mr. Kuzminskas to hire an expert to delineate the wetlands. If commissioners were to disagree substantially with that expert's delineation, they have the option of choosing another expert to do the same task, again at the Kuzminskases' expense. Mr. Kuzminskas said he already contacted Hayes Engineering because that firm has done work in the neighborhood before. Mr.

Hamilton said that following agreement on wetland delineation, it would be necessary to correct the problems that have been created at the site. He said that were progress not made, the Commission and DEP could take a range of steps, including criminal penalties, but that the Commission is not considering criminal penalties at this point. He said DEP can impose fines that local conservation commissions cannot.

Commissioners who visited the site on April 4 described what they observed. Nancy Baker said it is clear that some bordering vegetated wetlands (BVW), some land under water, some buffer zone, and some riverfront have been disturbed. Sarah Getchell said the disturbance was "large scale." Peter Dana said it is unclear what the land looked like prior to the work that prompted the VN; he noted that root stumps and soil are in mounds, and it is unclear what plants are in piles.

Ms. Baker asked Mr. Kuzminskas what occurred, and how. Mr. Kuzminskas said he undertook work on the property both to restore it to what it "historically has been," and also for security, because there are coyotes in the area. He displayed an aerial photo of the area from the 1950s showing the U.S. Equestrian Team racetrack and other facilities. He pointed out on the photo the spot where the house he now owns was later built, in the racetrack infield. He said former resident Bobby Clark told him that decades ago, there was a tributary on the property, which Mr. Clark's father had excavated and turned into the pond; he said the Clarks also have told him they hayed on both sides of the pond for years. Mr. Kuzminskas said he believes the pond, which was in place when he moved to the property about five years ago, was created in the 1950s. He said his home is on a section of the property that is built up with gravel and fill. Mr. Kuzminskas said he cleared vines, thorny brambles, and other brush near the pond and around a culvert that diverts water from a horse trail to another pond. He said he also cut small trees and associated vines along a horse trail. He referred to a large willow he said already had fallen, but did not say how he altered the fallen tree. He said other than the work around the pond, all work was confined to a very narrow pathway, mostly at the end of the pond served by a culvert. He said the middle of the property already was open and mowable. He said he wanted to get rid of brush, and seed the areas it previously occupied. He said he already has discussed with Hayes Engineering types of seed and plants that could be used to revegetate the area.

Mr. Hamilton said that as he understands the law, once an economic use of a particular parcel of land is discontinued, the legal status of the land reverts to its natural state. He said all the "safe harbor periods" for this property have expired. "If you don't like the vegetation, we may let you replace the vegetation, but you have to ask," he said.

Mr. Kuzminskas said he understands wetlands to be swampy, and that a lot of the ground around the pond has been mowed over the years. He asked commissioners to explain wetlands and buffer zones. Virginia Cookson said the Commission is responsible for protecting land under water, pond and stream banks, land within 100' of wetlands, and -- if flooding occurs on a particular parcel -- perhaps additional land within that floodplain. She noted that a stream at the site is evidently a perennial stream, and that state law also protects land adjacent to perennial streams. Ms. Getchell explained that to determine the

wetland line, a wetland scientist evaluates the types of plants growing at the site, the nature of soils, and whether water areas are connected to other water areas, above or below ground. Ms. Baker said delineation of the wetlands at this site will be difficult because soil and plants have been moved and stockpiled by the pond. Ms. Cookson told Mr. Kuzminskas that the Commission usually agrees with the delineation presented, and if commissioners disagree, it tends to be about variations of a few feet at particular points along the wetland line, which as a rule can be resolved by having the original wetland expert and another selected by the Commission visit the site together and agree on a delineation. Mr. Hankin noted that because the buffer zone is divided into carefully measured sections with different regulations, a few feet can be significant.

Mr. Kuzminskas asked why wetland scientists differ about wetland delineations. Mr. Hankin said delineation is “something of an art.” Ms. Cookson said the Commission seldom brings someone in for a second opinion. She explained also that once the wetlands are delineated, the Commission would begin to talk about how to remedy the damage. She said this involves stabilizing the earth, and deciding on what vegetation, and how much, should be planted to restore the wetlands. She told Mr. Kuzminskas that the Violation Notice remains in effect until the new vegetation grows.

Mr. Hankin left the meeting briefly to print an Enforcement Order (EO) form. Official discussion paused until he returned.

Commissioners returned to the topic of whether to issue an EO. Mr. Hankin said EOs are called for, pursuant to the Commission’s enforcement policy, when a resource area, under the Wetlands Protection Act, has been altered. “Arguably, that has happened here,” he said. Ms. Baker said until it is determined where the 50 percent vegetation line is, commissioners cannot know whether the bordering vegetated wetland (BVW) was involved. Mr. Hankin and Ms. Baker agreed, however, that the riverfront area was disturbed. Mr. Hamilton asked whether land under water appears to have been altered. Mr. Hankin said some soil has been pushed and relocated. He noted that the Violation Notice (VN) process was created to expedite small and moderate violations without notifying DEP. Commissioners decided to leave the VN in place, at least until the Commission receives and review the wetland delineation.

Robert Cronin pointed out that the spring deadline for burning brush is April 30. Commissioners discussed how to time and sequence their inspection, and the wetland delineation, to allow the Kuzminskases time to burn stockpiled brush by the end of April. They directed Mr. Kuzminskas not to change anything in the area of the violation until so authorized by Mr. Hankin, so Mr. Hamilton, Mr. Dana, and the wetland expert(s) performing delineation(s) would be able to see the site in its current state. Ms. Baker noted that some piles of brush are located where the Commission would not authorize burning, such as at the edge of the pond. Commissioners noted that some piles might need to be shifted prior to burning. They decided to leave the specifics to Mr. Hankin’s discretion.

Ms. Cookson noted that spring is the best time of year for stabilization and planting; she suggested the Commission move quickly, and schedule a substantive discussion for its April 29 meeting.

Ms. Baker asked how the Commission's authority differs in EOs, as opposed to VNs. Mr. Hamilton answered that there is no difference when the violator is cooperative. He said an EO gives the Commission "sticks" to deal with uncooperative violators.

Commissioners put this matter on the agenda of the meeting of April 29, and told Mr. Kuzminskas their expectations for that meeting. Mr. Hankin said even if delineation is incomplete, Mr. Kuzminskas should have an expert at that meeting who has seen the site, has work underway, and is ready to discuss specific issues with the Commission. Mr. Hamilton said failure to complete the delineation would not be grounds for a continuance. At Mr. Hamilton's suggestion, the Commission also requested a description of the damage, to include a computation of the square footage of the impacted area, as well as a cartographic inventory of large woody plants that were cut, soil disruption, and hydrology and elevations. Commissioners decided not to make April 29 an absolute deadline for the wetland delineation, but the asked that it be completed by that date if at all possible.

Mr. Dana asked whether pond banks should be stabilized immediately. Mr. Hankin replied that the site is "past that." He said the violation is "a major event" and erosion control would serve no purpose now. He added that equipment that moved soils in the pond caused collateral damage. Ms. Baker said some upland plants are now underwater. Mr. Hamilton asked how many feet the bank is from where it used to be; Ms. Getchell replied that commissioners could not tell.

Mr. Hamilton told Mr. Kuzminskas that his cooperation, and the speed with which the delineation is performed, would minimize his expense.

Ms. Cookson said the Town's infrared aerial photos of the entire town may show the prior state of the site; she suggested these might be helpful to the expert Mr. Kuzminskas hires.

Ms. Baker encouraged Mr. Kuzminskas to call other firms on the Commission's list of wetland experts, if he learns that Hayes Engineering cannot complete a delineation and cartographic inventory in three weeks.

Noting that formal votes are not required when considering a VN, the Commission concluded discussion of this matter. Mr. Hankin said he would fax the updated Violation Notice to Mr. Kuzminskas, and would fax information to the Kuzminskases' consultant once ther Kuzminskases let him know what firm they decide to hire.

Certificate of Compliance
292 Bridge St.

Peter Whitman, applicant; DeRosa Environmental, representative
Restoration of existing pond; DEP File number 172-0405

Conservation Coordinator Jim Hankin recapped the details of this matter. The landowner asked for permission to remove loosestrife to restore an existing pond. The Commission, the Army Corps of Engineers, and the state Department of Environmental Protection issued permits for the work. Commissioners visited the site on Sat. April 4 to view the area. Mr. Hankin reported there is open water and the project appears to have been a success.

John Hamilton made a motion for the Commission to issue a Certificate of Compliance (COC). Peter Dana seconded the motion.

Virginia Cookson noted that at this time year, vegetation is not yet visible above the water's surface. She suggested the Commission reinspect the site later in the season before issuing a COC. She also asked about a tree that was felled, which she said she believes was cut to provide access to the pond site. Mr. Hankin noted also that Mike de Rosa, the owner's wetland consultant, has not yet scattered seed in a separate area on the parcel, and that once the Commission issues a Certificate of Compliance, it cannot insist that this seeding take place.

Mr. Hamilton withdrew his motion. Commissioners decided to reinspect the site on June 6. They continued this matter to the meeting of June 10.

Violation Notice

276 Forest St.

Foreclosed property; Bank of New York, Houston TX, landowner; Harmon Law Offices, Newton Highlands MA and New England Group, Foxboro MA, representatives
Excavation of leaching field area

Commissioners and Conservation Coordinator Jim Hankin reported on a site visit to 276 Forest St., where an installed septic system near wetlands was removed from the ground and trucked away, with no permits granted in advance for said work. Sarah Getchell described the resulting land condition as a "sand pit."

Mr. Hankin said he issued a Violation Notice, and sent it to the bank that holds title on the foreclosed property, as well as to the bank's representatives in Massachusetts. He said the bank returned the card confirming it received the certified mailing, and has dispatched a septic engineer to meet with Hamilton's Health Agent and work out how to get the property back in compliance.

Virginia Cookson asked who is responsible for safety at the site; she suggested a fence should be erected around the excavated area. Mr. Hankin answered that the landowner would be liable for any injury on the property; he said it would be "very negligent" to leave the hole in its present state.

Mr. Hankin said there is no imminent threat to the resource area.

Commissioners continued this matter to the meeting of May 27, but said they might revisit it at the meeting of May 13 if more information develops by that time.

Discussion

Conservation Coordinator Jim Hankin said the roster of Open Space Committee (OSC) members consists of only two names: Susannah Colloredo-Mansfeld and Mark Carleo. He said Jackie Hodge is the coordinator, but not a member of the committee, and that although Gretel Clark has been active on the committee for some time the Commission never officially appointed her. He urged the Commission to appoint OSC members at a meeting, to specific terms. Sarah Getchell suggested Ms. Colloredo-Mansfeld, the chair of the committee, would be best positioned to assemble a list of nominees. Mr. Hankin noted that the OSC can have a maximum of 7 members.

Commissioners discussed a draft policy on supplemental materials that Mr. Hankin prepared at their request. As drafted, it states that unless the members of the Commission have had material before them for 7 full calendar days prior to a Commission meeting at which a particular matter will be discussed, commissioners would not be obliged to, and probably would not, close the hearing and take a vote at that meeting. He said such material could be printed submissions, or e-mails. After brief discussion, commissioners asked Mr. Hankin to revise the draft to allow waivers.

Peter Dana made a motion for the Commission to accept the minutes of the meetings of Jan. 13, Feb. 11, Feb. 25, and March 11, 2009 as presented. Robert Cronin seconded the motion. VOTE: Unanimous. Commissioners signed the minutes sheets.

Conservation Coordinator Jim Hankin told Commissioners of a wetland violation near Beck's Pond. He said three trees have been cut within 25' of wetlands on the Minogue property off Veranda Circle. He said the trees lie intact across a trail, and appear to have been cut to eliminate or restrict access to the trail. He said he viewed the site from another trail, and it is visible with binoculars from Chebacco Road or from a boat on Beck's Pond. John Hamilton informed Nancy Baker that before she joined the Commission, the Commission cited Michael Minogue for other violations, which have not been resolved. He gave Ms. Baker copies of a 2004 e-mail to the Department of Environmental Protection (DEP) about the prior violations, and a letter that Hamilton's Town Counsel wrote to Mr. Minogue's attorneys later that year in response to their communication with the Commission and the Hamilton Board of Selectmen about the case; he distributed copies to other commissioners as well. Commissioners briefly discussed how to address the violation with the landowner, and whether to refer this matter to DEP. They placed this matter on the agenda of the May 13 meeting, asked Mr. Hankin to ask Mr. Minogue to attend at the meeting, and also asked Mr. Hankin to

inform Mr. Minogue that that the Commission would discuss the case whether or not Mr. Minogue appears at the meeting as requested. Mr. Hamilton suggested the Commission should should ask for the Town Counsel and a police officer to be present at the May 13 meeting.

The Commission adjourned the meeting at 9:53 p.m. by acclamation.

Minutes submitted on April 13, 2009 by Ann Sierks Smith