

**Hamilton Conservation Commission
Minutes of Meeting of May 12, 2010
Meeting held at Hamilton Town Hall**

Commissioners present when meeting convened at 7:30 p.m.:

Nancy Baker (co-chair), Virginia Cookson, Peter Dana, Sarah Getchell (co-chair), Richard Luongo

Staff present: Jim Hankin, Conservation Coordinator

The Commission is scheduled to meet on May 26, June 9, and June 23, 2010 at 7:30 p.m. at Town Hall. Site walks are scheduled for Sunday, June 6, 2010.

Nancy Baker opened the meeting at 7:30 p.m.

Conservation Coordinator Jim Hankin noted that prior to this meeting, commissioners received a 2-page memo from the state Division of Fisheries & Wildlife and a 1-page letter from Essex County Greenbelt (both regarding a filing for 920 Highland St. that was on the agenda of this meeting), and a copy of the Commission's policy about submission of supplemental materials that might be relevant to this correspondence. He explained that site walks would take place on the first Sunday morning in June, rather than on the usual first Saturday, so as not to conflict with National Trails Day events.

Notice of Intent

920 Highland Street

Mark and Elisabeth Massey, applicants; Rob Carpenter of Carpenter & MacNeille, representative Pool installation; spa, pool maintenance equipment structure and landscaping within riverfront area

Nancy Baker opened the public hearing on this Notice of Intent (NOI) and asked how the riverfront area was delineated, and what alternatives were considered. She said the riverfront area long the bank of the Ipswich River, which borders this property, provides habitat for rare and endangered species, so a wildlife habitat study might be called for.

Peter Dana joined the meeting at 7:35 p.m.

The applicants' representative Mr. Carpenter displayed a site plan and pointed out the location of the existing house, two gardens he said have been in place for many years, and the site to one side of the house at which the applicants propose to construct a swimming pool, pergola, stone fireplace, and 12' x 16' equipment shed. He said the boundary line of the riverfront zone, which extends 200' from the river, passes through the house, adjacent garden, and the proposed pool site. He noted that several years ago the applicants proposed a larger project including a 38 x 30' pool house, and the Commission issued a permit, but the Masseys did not move forward with that project. This NOI proposes a similar but downsized proposal. Mr. Gray said proposed work area is now mostly lawn. He said no alternatives analysis had been requested, so none was prepared. He offered comments on why other locations on the parcel would not be good alternatives: there

is a steep grade at the other side of the house; there is insufficient room between the house and the river; beyond the proposed site, the land is under a conservation restriction; and placement of a pool between the house and the road could lower property value, and would require removal of large trees.

Mark Massey noted that he and Mrs. Massey originally proposed a large project, and the Commission approved it; they then shrunk the project, and they approved that; and this proposal is "shrunk more."

Ms. Baker asked again about the delineation. Mr. Carpenter said Hancock Associates delineated the wetland line in 2005; he did not have that document with him. Ms. Baker requested the document, to confirm this NOI's measurements. Virginia Cookson noted that the Commission only accepts wetland lines delineated in the past 3 years. Ms. Baker said riverfront regulations allow alteration of 5,000 square feet or 10% of the land within the riverfront zone.

Ms. Baker said 65 wetland species live near rivers, of which 77% use all of the no disturb zone (the first 100' from the river) as habitat, and 55% range over the entire riverfront area and beyond the border of that area 200' from the river. She said the strip of land along a river is a connective corridor for wildlife. She said her biggest concern about the proposed project is disturbance of naturalized areas. She asked the Masseys to consider shifting the location of the pool a bit, so more of the disturbance would take place where there is currently lawn.

Mr. Massey said that of the 60 acres they own, 50 acres bordering the river are under conservation restriction. Mr. Massey said that is "where the animals really live." Mrs. Massey described that section of the property as undisturbed woodland. They said that when their initial larger development proposal was being considered, they agreed to the Division of Fish & Wildlife's request that they plant 5 shrubs and let an area of lawn naturalize to compensate for work in the riverfront area, and the Commission at that time was satisfied with this level of compensation. Mr. Gray said the Masseys have done a lot to return the property to a natural state since purchasing it, including removing two asphalt driveways and a large asphalt circle in front of the house, and removing a tennis court that was in the riverfront area.

Ms. Cookson noted that the proposal calls for removal of one tree. She asked whether the pool location could be shifted so the tree could remain standing. The Masseys said they strongly prefer to remove the tree. Mr. Massey said there are 100,000 just like it on the property. Mrs. Massey said because the top is dead, she it is a safety hazard for the Massey children, because it could break and fall. Ms. Getchell said it would be "weird" to leave a dead tree standing in a landscaped section of the yard. Robert Cronin said the Masseys should be allowed to have the tree taken down at the time heavy equipment is on site anyway.

Peter Dana suggested the Masseys could replace some existing lawn with shrubs, to provide more shelter for animals. Ms. Baker replied this was a reasonable compromise.

Mrs. Massey said as part of the same project, she and Mr. Massey want to reroute an equestrian trail from its existing route along the river, about 8' from the bank. At their expense, they would have a trail cut up the side of their parcel, and along the inside of a stone wall along the road. She said the existing trail is very muddy during the warm months, and erodes when horses travel on it. Sarah Getchell confirmed this.

Commissioners expressed a variety of points, and opinions about how to proceed. Ms. Baker said that riverfront regulations state that work within the riverfront zone must have no significant

adverse impact. Conservation Coordinator Jim Hankin said his understanding is that a Conservation Commission may choose to allow alteration of up to 5,000 square feet, or 10%, of land in the riverfront area. Ms. Getchell said she did not think that the proposed work would impair the function of the resource area; she noted also that the gardens and some of the lawn have been in place for many years, and are grandfathered. Ms. Baker said if the Commission permits this work, it might set a precedent that would require similar leniency in proposals for work on much smaller lots. Robert Cronin said he did not see why the Commission was "making a big issue out of this," and encouraged his fellow commissioners to "use a little common sense." He noted that horses damage the river by using the existing bridle path, and the Masseys have offered to eliminate that path and replant that area. Ms. Baker said riverfront area performance standards are very complicated, and an applicant must rebut the presumption that work in the riverfront area would have a negative impact; she said the Commission has less discretion than some members believe. She suggested that the existing lawn and rock garden near the river could be replaced with native vegetation, so there would be 100' of undisturbed vegetation all along the river on this property. Richard Luongo said the restoration of the trail, and planting of a mitigation area as already approved by the Division of Fish and Wildlife, is sufficient, and the Commission should apply the riverfront regulations only to the area directly between the worksite and the river, not to the entire river frontage of the property as Ms. Baker suggested. Ms. Getchell said lawn and rock gardens can be wildlife-friendly.

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

Ms. Baker noted the Commission has 21 days after the close of a public hearing to vote on a filing. She asked whether commissioners wanted to vote at this meeting, or a future one. She said she wants to see the original wetland delineation to see whether it is still accurate and in effect. Mr. Hankin noted that having closed the hearing, the Commission is not in a position to consider additional information; he also noted that if examination of the delineation should establish that measurements in the NOI are substantially wrong, the applicants would need to amend it, which must take place at a public hearing. He said the Commission could reopen the public hearing by a unanimous vote. After discussion, commissioners concluded that because the plan for this NOI is an adaptation of the original site plan that was based on the official delineation at that time, the current proposal's site plan would show the same measurements. They decided to continue discussion to the meeting of May 26, and noted that they would need to vote on this application at that meeting. Mr. Hankin suggested the Commission could make a finding that there would be no prejudice to any party if corrections to the measurements or other data in the proposal need to be made within two weeks of this meeting. Ms. Cookson made a motion to that effect. There was no second to this motion, and no vote followed.

Mr. Hankin asked the applicants to revise the NOI to include notes about the bridle path relocation, and a calculation of the square footage that would be allowed to re-vegetate naturally after the existing bridle path is abandoned across the front of this 10-acre lot, all of which was discussed and agreed to during the public hearing. Ms. Getchell said this calculation should include any section of the bridle path that will be allowed to re-vegetate on the Masseys' adjacent 50-acre parcel under conservation restriction. Mr. Dana advised informing the Essex County Greenbelt of this, because the Greenbelt has an easement on that parcel.

Certificate of Compliance

265 Woodbury Street

Order of Conditions and Local Permit issued July 12, 2007

DEP file #172-0501; Order of Conditions recorded July 30, 2007, Book 27062 Page 328

Conservation Coordinator Jim Hankin said the final work has been completed to bring 265 Woodbury St. into compliance with the Order of Conditions (OOC) the Commission issued for the demolition of an existing house and construction of a new one at this property at the corner of Bridge St. and Woodbury. He said natural debris has been removed from the no-disturb zone along a brook through the parcel, and small areas of riprap has been placed around two outfalls that carry water from perimeter drains around the structure to the NDZ. He recommended the Commission approve a Certificate of Compliance (COC).

Virginia Cookson made a motion for the Commission to grant a Certificate of Compliance under the Wetland Protection Act and the Hamilton Conservation By Law. Sarah Getchell seconded the motion. VOTE: Unanimous.

Certificate of Compliance

258 Moulton Street

Install culvert under driveway

DEP file #172-0482; Order of Conditions recorded Book 25511 Page 284

Conservation Coordinator Jim Hankin said he recently inspected a culvert under a driveway off Moulton St., for which the Commission issued a permit in 2006. The new box culvert replaced decaying pipes. He said the stream is flowing nicely.

Peter Dana made a motion for the Commission to issue a Certificate of Compliance under the Wetland Protection Act and the Hamilton Conservation By Law. Richard Luongo seconded the motion. VOTE: Unanimous.

Certificate of Compliance

56 Ortins Road

Construct addition and deck

DEP file #172-0596; Order of Conditions recorded Book 26325 Page 380

Conservation Coordinator Jim Hankin recapped the details of this project. The Commission issued a permit for the construction of an addition, and a new section of decking to connect to an existing deck. The new section of deck just touched the edge of the no build zone 50' from wetlands. Work was completed in late 2008. The disturbed area already was lawn. Mr. Hankin said he recently inspected the property and found that the no disturb zone that extends 25' from the wetland line is about half lawn, as it was prior to this project. Mr. Hankin recommended the Commission issue a Certificate of Compliance.

Richard Luongo made a motion for the Commission to issue a Certificate of Compliance. Sarah Getchell seconded the motion. VOTE: Unanimous.

Certificate of Compliance

978 Bay Road

Replace culvert

DEP file #172-0489; Order of Conditions recorded Book 26325 Page 380

Conservation Coordinator Jim Hankin recapped the details of a 2006 permit for replacement of a decayed stone pipe culvert under a driveway off Bay Rd. near Appleton Farms. The old culvert was replaced with a 20' long, 36" diameter poly pipe, and a riprap headwall. He said he recently inspected the culvert and found no variation from the Order of Conditions for the project. Nancy Baker noted that since 2006, regulations regarding culverts have changed, and now require that the structure provide a bank for wildlife to travel along. Mr. Hankin recommended issuance of a Certificate of Compliance.

Sarah Getchell made a motion for the Commission to issue a Certificate of Compliance. Robert Cronin seconded the motion. VOTE: Unanimous.

Approval of Minutes

Richard Luongo made a motion for the Commission to accept the minutes of March 24, 2010 as presented. Peter Dana seconded the motion. VOTE: 4 yes, 1 abstention (Virginia Cookson, who was absent from the meeting of 3/24).

Mr. Luongo made a motion for the Commission to accept the minutes of April 14 as presented. Ms. Cookson seconded the motion. VOTE: Unanimous.

Discussion

Nancy Baker reported that when driving past Pingree School recently, she observed an apparent wetland violation taking place: unpermitted driveway repaving was underway within 25' of wetlands. She later photographed the area and sent the photos to Conservation Coordinator Jim Hankin. Mr. Hankin said the work clearly was within Commission jurisdiction. He said in recent years, Pingree School has complied extensively with wetland regulation and filed for many projects, which he noted does not excuse their failure to do so in this case. He said he contacted the Pingree **property manager?** Jock Burns, and visited the site. Mr. Hankin said the paving work caused only minimal damage to the resource area. He said Mr. Burns told him the work took two or three days. Mr. Hankin said some towns would require after-the-fact filings in such cases. Peter Dana suggested it would be sufficient to send a letter to Pingree School diplomatically presenting the facts of this situation and requesting that the school file with the Commission prior to any such projects in the future. Nancy Baker said the letter should let them know that in this case, the Commission would have required erosion control. She expressed concern that the

Commission is not prepared to handle such situations; when she noticed the work in progress, she did not know whether she to walk up to the school and speak with someone about it, or whether an official procedure was called for. Mr. Hankin said in the future when he is on vacation he will leave a packet in his office that Commissioners could use to issue a Cease and Desist Order in his absence.

Ms. Baker mentioned also that while Mr. Hankin was recently out of the office on vacation, a Town official contacted the Commission to request money be released from the Conservation Fund. She said she spoke with Mr. Hankin about this and he recommended the Commission formulate official criteria and procedures for such requests. Following brief discussion of past payouts from that fund for various Town purposes, Commissioners decided Mr. Hankin and Peter Dana would draft criteria and procedures for the Commission to review at a future meeting.

Commissioners discussed how state forestry regulations relate to the Commission's jurisdiction. Mr. Hankin said that in general, like agricultural exemptions, forestry permits issued by the Department of Conservation and Recreation (DCR) remove all activity with a permit from conservation commissions' jurisdiction. He said DCR sends a copy to the Commission office of any permit it issues for forestry work in Hamilton, but he receives no information about when the work will actually occur.

Commissioners reviewed particulars of an outstanding Violation Notice (VN) for cutting near wetlands at 438 Asbury St., which had been discussed at a prior meeting. Commissioners agreed informally that in light of the new information that a DCR permit overrides Commission jurisdiction, they were inclined to lift the VN. They agreed to ask the property owner and one of the foresters involved in this project to come to a future meeting, to explain what work was done on the property, and by whom. Mr. Hankin noted that both the landowner and the forester have been cooperative. He said that only about three forestry permits have been issued for work in Hamilton in the last 10 years. He said should he receive a copy of one on the future, he would notify the commission, investigate details of the planned work, and explain to the landowner what a forestry permit does and does not authorize.

Robert Cronin made a motion for the Commission to adjourn at 9:23 p.m. Sarah Getchell seconded the motion. VOTE: Unanimous.

Minutes submitted 5/21/2010 by Ann Sierks Smith