

**Hamilton Conservation Commission
Minutes of Meeting of May 13, 2015
Meeting held at Hamilton Town Hall**

Commissioners present:

Richard Luongo, Chair, Virginia Cookson (arrived at 7:37 p.m.), Bob Cronin, George Tarr, Keith Glidden.

Staff present:

Jim Hankin, Conservation Agent
Bill Redford, DPW Director
Shawn Farrell, Selectman

Others present:

John Hamilton, Attorney for abutter
Michele Stecyk
Rich Burke
Andy Padellaro
James Denton

Richard Luongo opened the meeting at 7:30 p.m. The Commission will meet on May 20 and May 27. Site walk is June 6.

Notice of Intent

Bridge Street culvert, at Bridge Street a public way;
Re-construct Bridge Street Culvert, work in Miles River and riverfront area
Town of Hamilton DPW, Applicant, Weston & Sampson rep.

DPW Director Bill Redford spoke to Notice of Intent for Bridge Street culvert. Mr. Hankin noted that DEP File has issued a file number but has not commented. Mr. Redford requested the hearing be continued until May 27, 2015. Asides from that request, no substantive discussion occurred on this matter.

Mr. Luongo then opened the hearing on the Bridge Street culvert and continued it until May 27, 7:00 pm Hamilton Town Hall.

Notice of Intent (Public Hearing Continued from March 11, and April 8, 2015)

470 Essex Street
Construct single family house, septic system and associated activity in No Build and No Disturb Zones
Roger LeBlanc Applicant, Bill Manuell rep.

Mr. Hankin noted that the meeting was being recorded for the minutes secretary. Mr. Luongo asked if anyone present wished to make an audio or video recording that they please disclose that publicly before recording begins.

Keith Glidden indicated that he had listened to the recording for the March 11, 2015 public hearing on 470 Essex Street. He will sign the required certification and file it for the record in this matter.

Bill Manuell, Wetlands and Land Management, began his presentation by stating his opinion that it has been established that 470 Essex Street is a grandfathered lot, that perc testing has been done with suitable sandy soils identified to service a single family home septic system or alternative, Mr. Manuell added that Mr. LeBlanc, the applicant, owns the lot and intends to develop it.

Mr. Manuell discussed more specifics on this project that have been covered: (a) the plan filed with the NOI that shows a single family dwelling with a rather large footprint and septic system sketch to the western side of lot, (b) the Commission made a site walk and reviewed the wetland boundary; which is a distinct line at edge of slope, (c) the waiver for cold weather delineation is no longer required, (d) he reiterated the request for from Conservation Bylaw regulations that establish the 75' No Build Zone (NBZ) 50' No Disturb Zone (NDZ) , (e) these setback zones are established for lots that were developed as of 2007.

Mr. Manuell stated that the lot in question was on record long before 2007 and additional subzones have been imposed on the lot which was created in the 1970s. The lot has remained undeveloped since it was created.

Mr. Manuell spoke to his impression that the Commission was not comfortable giving waivers for NBZ and NDZ. He added that the applicant does not want to spend money to have a septic system plan done until there is confidence about the Commission issuing waivers.

Discussion ensued about some potential alternatives for the property. Mr. Manuell suggested the house footprint could be smaller resulting in less NBZ incursion than the filed plan. Mr. Manuell showed a sketch plan of this idea. He stated that a post and rail fence or other suitable monument that the Commission would require would mark the No Cut Zones in perpetuity and be established in Order of Conditions. In this sketch Mr. Manuell noted that increase in distances from side lot lines. The sketch plan's No Cut Zone eliminates work in NDZ and provides a large buffer to the neighbor to the east. The sketch plan shows 1,430 feet (without deck) of proposed house structure in NBZ. Mr., Manuell reviewed the possibility that some storm-water mitigation could be done in NDZ, improving the existing drainage from the street, plus fill and dumped material could be removed and the areas re-vegetated with native species or left alone if the Commission wished. There are invasive species all through the area at the end of clearing back to wetland (i.e., bittersweet, Norway maple, Japanese barberry) which could be eradicated on portion of lot as part of mitigation.

Discussion ensued about how the septic system and leaching field could not be located in the front of the house because of 10' lot line setback and 20' setback to foundation. The house location is proposed at 26' back from stonewall in front of lot back from street. Discussion addressed where invasive species could be eradicated on a portion of the site.

Mr. Hankin noted that process for the hearing was presentation, questions from the Commissioners and discussion with public. In response to Mr. Luongo about whether or not this was a buildable lot, Mr. Hankin said according to the Planning Director the project on this lot was properly before the Commission. Discussion addressed how the NBZ affects the lot because it is undeveloped. Mr. Manuell said the project has to be designed to protect interests such as groundwater, surface water, prevention of pollution, wildlife habitat, etc. Mr. Manuell said with proper construction and erosion controls and diligence during work, it is routine for project such

as this to be undertaken, across Essex County, within 50' of wetlands without any alteration to resource area.

Keith Glidden stated that one of the main reasons for NBZ and NDZ is that wildlife using adjacent wetlands find disturbance in these zones to be undesirable (i.e., turtles and birds) and their existing habitat is adversely impacted. Mr. Manuell replied that the general neighborhood area is suburbanized; developed lots are all around the wetland with pasture land that is cleared into the wetland and homes with lawns abutting the wetland. He added that this habitat has been impacted for years. Mr. Glidden stated that the bylaw regulations require Mr. Manuell to prove these statements. Oral testimony may not necessarily be sufficient. Mr. Manuell noted that he and the applicant know they are in this approval process, and they could provide more documentation, and they are evaluating alternatives for the property. Mr. Glidden revisited concept of septic system in front of structure and more space on the side dedicated to a No Cut Zone and a plan for eradication of non-native species. Mr. Glidden added that more needs to be shown in this case, that this is a unique set of circumstances relative to the lot and that the waiver requirement and that the bylaws regulation should ordinarily be maintained, requiring more proof to change that view. Mr. Luongo concurred that he would need more indications that if a waiver were granted that the result be positive for wetlands.

Attorney John Hamilton representing abutter Michele Stecyk was recognized and he stated that there is no special consideration for this lot because it is an ANR lot. He added that there is no grandfathering with respect to environmental regulations such as wetlands rules. Mr. Hamilton repeated the bylaw regulation language that waivers are granted only in rare and unusual circumstances which these are not. He questioned whether or not a deck could be built over the septic system; he stated that 86% of the reduced footprint sketch plan shown by Mr. Manuell tonight would still be in NBZ. The infiltration system remains in the NDZ. He referred to the establishment of a No Cut Zone as described by Mr. Manuell and suggested that this would not last long. In addition, he mentioned abutter Ms. Stecyk's relocating her horse paddocks so they would not be in the wetlands.

Discussion ensued with Ms. Stecyk and Rich Burke, 494 Essex Street, about the active nature of the wetland with wildlife and birds, the 15' drainage easement that Town maintains for run-off from Essex Street. Andy Padellaro, Whipple Rd., was recognized and concurred with prior comments about dissatisfaction with the threat of a Chapter 40B filing being considered for property from applicant and his representative. James Denton, 1 Whipple Road, agreed about wildlife being forced out by development and that a building on the lot would cause more water problems on the already wet site.

Mr. Manuell maintained that a proposed development could be minimized to retain character of neighborhood. He added that alternatives remain for Mr. Leblanc to consider. Mr. Manuell described water flowing off of the low point of Essex Street which goes through the dedicated easement on the lot. This easement is the Town's obligation to maintain and improve drainage off of Essex Street and not his client's. However, at the site walk discussion addressed how drainage on the site could be improved. Mr. Manuell explained that engineering on the lot can be done so there would be no increase in volume during peak flow because soils on site are excellent so all runoff from roof and driveway can be put into infiltration pits. He noted that flooding and erosion across the lot into wetlands is a Town problem but it could be addressed in an Order of Conditions if the development is allowed.

Mr. Luongo said his concern was the NBZ and that there is not enough mitigation to put a 2,000 square foot structure in the NBZ. Mr. Manuell reiterated that he is presenting option for a single

family home on the lot, and that additional mitigation could be investigated as well as ways to mitigate Essex Street runoff to improve water quality. He noted that there was not a lot of support for the original proposal but tonight's new sketch plan dramatically improves the project in his view.

Mr. Luongo replied that in his tenure on the Commission mitigation for activity NBZ & NDZ was only allowed when there was already a structure or environment in the zone that was replaced with others of like kind resulting in no greater incursion into the zone. He stated that he did not see enough in this proposal to change this approach.

Ms. Cookson said the by-law and its regulations clearly were designed to prevent construction that would negatively impact the wetland. She remains unconvinced that this project can meet that requirement.

Mr. Glidden said oral arguments being made at the hearings do not have supporting documentation which is essential for granting a waiver under rare and unusual circumstances standard.

Mr. Padellaro said it seems hard to see how this development would not impact environmental aspects of the area.

Mr. Glidden did not see assertions of "hardship" as relevant or part of a standard for a waiver from bylaw regulations. He referred to the clear intent of the regulations to protect NBZ and NDZ.

Mr. Manuell replied that "hardship" is on the property due to geometry and environmental conditions for the lot and at the time it was created it was a buildable lot despite wetlands at the rear of the property. The "hardship" is on the applicant who cannot comply with NBZ and NDZ regulations due to configuration of wetlands on lot. That is why there are waiver provisions.

Mr. Luongo replied that the burden of proof for the granting of waiver is on the applicant and at this point there is nothing so extraordinary that the Commission should grant a waiver, in his view.

Ms. Cookson said the Commission does not have anything in writing about hardship.

Discussion ensued about whether or not the Commission would need to see a septic plan for the continued meeting date of June 24, 2015. The hearing would be continued to gather information relative to mitigating circumstances for the Commission to continue its consideration of the waiver request.

Mr. Manuell asked for a continuance of the public hearing to June 24, 2015 for the opportunity to provide additional information.

Mr. Glidden moved to continue the hearing until 7 p.m. on June 24, 2015 at Town Hall. Bob Cronin seconded the motion. The Commission voted unanimously in favor of the motion.

Discussion Items

Draft Community Preservation Committee Plan, distributed by email

George Tarr suggested that someone should try to block spending CPA money on Patton Park pool, a lawsuit based on CPA regulations that speak of land but do not mention water, that exclude structures such as gymnasium and pool as a similar structure, and there has to be general benefit for community. Mr. Glidden speaking as a CPC member said the pool was vetted as a qualifying project under the Act, which was amended a couple of years ago, so the project was allowed. Mr. Tarr said the way the Act is written there is confusion between open space and recreation which is sometimes dealt with separately and sometimes conflated and is almost always about recreation not open space. Mr. Glidden reiterated that the Act as written supports the pool project. He noted that applications before CPC for land purchases and affordable housing are woefully lacking. Primarily CPC receives applications for historic projects (marginally so sometimes) and recreation, rarely for land conservation. He noted that it was a tough vote for the pool and that CPC warrant articles go to Town Meeting for a vote. Mr. Glidden described how the Town has problems with open space (i.e., Pirie property), and mentioned what occurred with Conservation Restriction on Donovan field. Discussion ensued about required statutory processes and the many municipal land use board meetings and hearings that occur before warrant articles are brought to Town Meeting.

Discussion next was on the Commission's meeting next week (May 20) on a proposed expanded parking area at Patton Park. The Town received state grant money for this project from the Legislature and the funds have to be expended before the end of the fiscal year on June 30, 2015. Also addressed was the need to find candidates for two Commission member positions that would be publicized in HW Chronicle and announced at Selectmen's meetings.

Election of HCC Chair

Ms. Cookson moves to nominate Richard Luongo as HCC Chair for term 7/1/15-6/30/16. Mr. Tarr seconded the motion. The Commission voted unanimously in favor of the motion, Mr. Luongo abstaining.

Mr. Cronin moved to adjourn. Ms. Cookson seconded the motion. The Commission voted unanimously in favor of the motion. Commission adjourned at 8:39 p.m.

Minutes submitted May 16, 2015 by Jane Dooley