

**Hamilton Conservation Commission
Minutes of Meeting of May 26, 2010
Meeting held at Hamilton Town Hall**

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

Nancy Baker (co-chair) [until 8:58], Virginia Cookson [arr. 8:02], Robert Cronin,
Peter Dana. Sarah Getchell (co-chair), Richard Luongo

Staff present: Jim Hankin, Conservation Coordinator

Others present:

Chuck Johnson, consultant
Michael MacNeille, consultant
Philip Marcorelle, property owner 438 Asbury Street
Scott Prentiss, forester
Mark and Elisabeth Massey, applicants, 920 Highland Street
Bruce and Beth Howell, applicants, 33 Waldingfield Road

The Commission is scheduled to meet on June 9 and 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 7:35 p.m.

Conservation Coordinator Jim Hankin noted that prior to this meeting, commissioners received a 5-page Forest Cutting Plan for 438 Asbury St., and three documents related to a Notice of Intent for 920 Highland St.: a May 18 amendment to the Notice of Intent, a May 10 letter from Essex County Greenbelt, and a copy of the 1974 documents creating a Conservation Restriction for a portion of that property. Commissioners also received photos of a stream at 375 Bridge St., and copies of Commission regulations about election and terms of officers. Mr. Hankin noted that the June site walks are scheduled for the first Sunday morning of the month, instead of the usual first Saturday, so as not to conflict with Trails Day on Sat. June 5.

Violation Notice

438 Asbury Street

Philip C. Marcorelle, owner

Investigation of tree cutting and vegetation removal within Hamilton Conservation Commission jurisdiction, and outside parameters of a filed Department of Conservation and Recreation Forest Cutting Plan

Nancy Baker asked Philip Marcorelle to relate information about cutting on his property.

Mr. Marcorelle said that in order to earn some money, he arranged in November 2009 for Chris Pirner, a logger from the Fitchburg area, to thin out woods on his property at 438 Asbury St. Mr. Marcorelle said Mr. Pirner expressed interest in large straight sections of veneer trees including red oak and black oak; they agreed he would remove only the large lower trunks of felled trees, and Mr. Marcorelle would hire someone else to "clean up after him." Mr. Pirner filed for the

cutting plan. Mr. Marcorelle said that after Mr. Pirner finished work in late November, about 20 to 30 cords of firewood remained on the ground in the woods. Mr. Marcorelle contracted with Scott Prentiss to haul it out and cut it up.

Mr. Prentiss told commissioners he spent about 24 hours working at Mr. Marcorelle's property, roughly five hours at time on several dates in January and February 2010. Mr. Prentiss said he first spoke with Mr. Pirner and confirmed that he wanted only the large base sections of tree trunks. Mr. Prentiss said that in order to get vehicles to the parts of the property where the wood lay, he had to cut down some small-diameter trees, and three trees at the front of the property; he said Mr. Pirner's skidder already had damaged the three near the front. He said he measured, pulled out, and stacked the wood.

Ms. Baker invited commissioners to ask questions.

Richard Luongo said it appeared some trees were cut within 15' of wetlands. Mr. Prentiss replied that Mr. Pirner cut trees right at the limit of the no-disturb zone, 25' from wetlands, but the only way it was possible to take them down was to fell them toward the swamp, and then drag them out. Mr. Marcorelle said 3 or 4 were removed within 20' of wetlands. Mr. Luongo said according to commissioners' measurements, some were cut as close as 16' from wetlands.

Conservation Coordinator Jim Hankin said that when the state issues a permit for forestry work, different regulations apply regarding disturbance near wetlands. The 50' strip adjacent to wetlands is considered a filter strip, and removal of up to 50% of the basal area trees is permitted in that area. He said this appears to be what Mr. Pirner did.

Mr. Prentiss agreed. He said the look of Mr. Marcorelle's woods is initially shocking, but because more sunlight will now reach the area, vegetation will grow fast. He said he saw the site before and after and does not think the cutting was excessive. He said two-thirds of what was cut was pine, and the rest was hardwoods.

Mr. Marcorelle said he arranged for similar cutting 25 to 30 years ago, and that at that time, fewer trees were cut, and the area of cutting was farther from wetlands.

After brief discussion, commissioners told Mr. Marcorelle he could remove and use some of the downed wood that remains in two areas of his woods, but should first file a Request for Determination. They discussed whether bringing in equipment to chip "slash" might cause further damage; Mr. Prentiss said it would be hard to get a chipper to the muckier of the two areas, so it would be better to leave slash in place there.

Sarah Getchell asked what was wrong with this project that resulted in a Violation Notice, if forestry regulations permit cutting 50% of trees within the zone near wetlands. Mr. Hankin said there was confusion about the difference between the regulations regarding a filter strip under a state cutting plan, and the state and local wetland regulations that are otherwise in effect for that same area. He said if he receives notification from the state in the future about issuance of another cutting plan in Hamilton, he will place the matter on the Commission agenda, conduct a site inspection, and speak with the landowner prior to the work about the sensitive nature of the area.

Peter Dana made a motion for the Commission to remove the Violation Notice. Mr. Luongo seconded the motion. VOTE: Unanimous.

Mr. Hankin told Mr. Marcorelle he would e-mail information to him about how to file for permission to remove the remaining wood himself; he told him to leave the woods as they are, in the meantime.

Notice of Intent

920 Highland Street

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

Nancy Baker noted that the Commission closed the public hearing on this Notice of Intent (NOI) at the previous Commission meeting, but that during the public hearing, the Commission requested additional information; the applicant submitted it after the hearing was closed, and the Commission has accepted it. Conservation Coordinator Jim Hankin noted this included recalculation of the project area. He said the revised NOI was submitted to the Commission and to the state Department of Environmental Protection.

The owners' representative Michael MacNeille showed a site plan with wetland delineation that Hancock Survey prepared in 2005 when the property owners Mark and Elisabeth Massey filed a an NOI for a more extensive project that they later decided to downsize. He also displayed the plan for this NOI, revised to show an existing bridle path that the Massey propose to abandon and allow to revegetate, and the proposed rerouting of that path. The revision also lists updated project area measurements. He said recalculations establish that the proposed project would disturb 6,000 square feet of the 155,000 square feet of land within the riverfront on the section of the Masseys' property that includes their house, an old walled garden, and the proposed site for the pool; this area is part of a much larger multi-parcel property.

Ms. Baker said she intended for the applicants to have Hancock inspect the property to find out whether the 2005 delineation remains accurate. Mr. Massey said he thought she simply asked to see the 2005 delineation. Commissioners noted that regulations stipulate that a wetland delineation should be performed no more than 3 years prior to a filing, and they discussed whether to accept this older delineation. They also briefly discussed whether they could visit the site to confirm the measurements themselves; Ms. Baker said they could not. Mr. Massey said the riverbank is very abrupt at this section of his property and has not changed since 2005. Sarah Getchell agreed it is abrupt, and said she would surprised if it changed. Peter Dana said his gut feeling is that there is probably very, very little change. Mr. Hankin said it is within the Commission's discretion to decide whether the wet line is okay. Mr. Massey reminded commissioners that the Commission previously approved NOIs for similar but larger projects, and he and his wife refiled because the original permit expired, and because they decided to downsize the project. Mr. Hankin said the Commission could reopen the public hearing to request new information, based on an administrative error such as misunderstanding whether an updated or original delineation was requested, but reopening it would require republishing legal notice, and renotifying abutters. He noted that state law requires the Commission to rule within 21 days of closing a public hearing, and only 6 days remain since the closing of the hearing on this NOI.

Ms. Baker strongly advocated further revision of the NOI, including returning an area of lawn and rock garden to a natural state, so that an unbroken, 100' wide strip of land along the river would be in a natural state. She said this would be consistent with the existing Conservation Restriction (CR) on an adjoining section of the Masseys' land. She said regulations say up to

5,000 square feet within the inner riparian zone, or 10% in the outer riparian zone, can be disturbed by a given project.

Ms. Getchell said letting vegetation grow back on the existing bridle path would constitute mitigation.

Ms. Baker noted that the recent letter from the Essex County Greenbelt (which holds the easement on the CR on the adjacent section of the Masseys' land) does not mention the bridle path.

Mr. Dana said there already is an expanse of lawn. He suggested that an existing mowed area next to the river probably is used a lot by animals, and that deer probably have been going around an existing wall for a long time; and noted that deer tend to stay to the edge of lawns. He said he does not think the project would have adverse impact. Ms. Baker disagreed, saying the proposed placement of a fenced pool would create a walled effect, and a linear barrier that would prevent wildlife from travelling from the riverbank to pure upland. Virginia Cookson said animals probably already avoid that area; Ms. Baker said this could not be assumed without a wildlife study. Ms. Cookson said small creatures could go through or under the proposed fence, and it is unlikely that larger ones have been traveling across that section of the property anyway.

Ms. Getchell said that if the Commission were to look for every reason to find a problem, it would become impossible. She said the purpose of the existing CR on the much larger adjoining section of the property is to preserve land in a predominantly undeveloped state. She said many CRs do not grant public access, but the Masseys allow public use of trails through the section under a CR, and along the bridle path they have proposed relocating from the riverbank to just inside the wall bordering their property along the road. Mr. Massey said the CR does not require them to allow public access; they do so voluntarily.

Mr. Dana said moving the bridle path would be a huge concession, and would provide wildlife better access to the river. He said commissioners should consider how much the Masseys are "trading." Richard Luongo agreed that naturalizing the bridle path along the river would be a "big plus" because that area would not get trampled by hundreds of horses each season.

Mr. Hankin said that were the Commission to require the Masseys to refile, it could waive the local fee. He said also that were the Commission to reopen the public hearing to request updating of the wetland delineation, it would be the first time this Commission took such action. He noted that the Commission could approve the NOI conditional on acceptance of the delineation. Ms. Cookson asked whether the Commission could request an extension of the decision window; Mr. Hankin said the issue has never come up and he did not know. If the Commission were to fail to rule within 21 days, the applicants could take the case to the state Department of Environmental Protection (DEP), which might refer it back to the Commission, he added.

Mr. Dana asked Ms. Baker to sketch on the plan an area that, were it undisturbed, would make her comfortable with this proposed project. She did not respond.

Robert Cronin suggested the Commission should vote. He said he believed moving the bridle path takes care of the problem.

Ms. Getchell noted that accepting an outdated plan could set a precedent.

Mr. Hankin said the situation is unique in that the Masseys filed for permits three times; the Commission made three site visits; and when the Commission first saw the site the wetland line was accurate, and the Commission approved the project as it was initially proposed.

Ms. Cookson said that regulations are not law, and the Commission has some flexibility.

Mr. Cronin made a motion for the Commission to accept the plan as amended. Ms. Getchell seconded the motion.

Ms. Baker said the purpose of riverfront regulations is to create an uninterrupted 100' wide area along a river, and she feels the proposed project would impact a knoll that has some wildlife in it. Ms. Getchell said the Masseys improved the property a lot, and a mowed area and garden at the riverbank are grandfathered. Ms. Baker responded by asking rhetorically whether it is the Commission's responsibility to advocate for the applicant. She said the Commission does "not like monoculture."

Ms. Cookson called for the Commission to vote on the motion to accept the amended plan.
VOTE: 5 yes, 1 no (Ms. Baker voting no).

Ms. Getchell made a motion for the Commission to issue an Order of Conditions under the Wetland Protection Act and the Hamilton Conservation By Law. Mr. Luongo seconded the motion.

Commissioners and Mr. Hankin suggested various conditions in addition to the standard conditions, and Mr. Hankin read these aloud prior to the vote.

- Pool chemicals are to be stored more than 200' from the river
- Prior to issuance of a Certificate of Compliance, members of the Commission will inspect the site.
- The applicant is to arrange for a new delineation, and staking of the line 100' from the resource area; Mr. Hankin will measure the distance between that line and silt fencing.
- The Commission desires a letter from the Essex County Greenbelt stating that it is amenable to removal of the existing bridle path.

Ms. Cookson questioned setting a condition requiring the storage of chemicals more than 200' from the resource area, if the pool storage shed would be within 200'.

VOTE: 5 yes, 1 no (Ms. Baker voting no).

Ms. Getchell made a motion for the Commission to find that it neither approved nor disapproved the delineation which the Commission had accepted previously, and that the Commission ruled on this NOI given the nature of the site; she said this acknowledges that this filing is not typical. Mr. Hankin added the special condition that the Commission finds as a fact the need for more current delineation. Ms. Cookson seconded the motion. VOTE: Unanimous.

Notice of Intent
33 Waldingfield Road

Bruce Howell, applicant; Chuck Johnson, representative
Construction of dwelling partially on existing footprint, plus construct new addition, and remove detached garage

Nancy Baker recused herself from this matter because she is an abutter. She left the meeting and did not return.

Chuck Johnson displayed site plans and described the construction project his clients Bruce and Beth Howell propose for 33 Waldingfield Rd. The Howells want to demolish an existing 3-bedroom house and garage near the road. They want to build a 5-bedroom house on and beyond the existing foundation. There are wetlands farther back on the parcel; the limit of Commission jurisdiction, 100' from wetlands, runs through the existing house. He pointed out details of topology, and the lines 25', 50', and 100' from wetlands, on the site plan. Significant grading is proposed. The site plan shows the proposed locations of silt fencing, both around the dwelling, and around a cellar hole farther back on the property where another structure once stood. Mr. Johnson said sections of the house would come within between 48' and 33.5' of the limit of the no-disturb zone, 25' from wetlands. He said some prominent trees would have to be removed for construction.

Mr. Johnson and commissioners discussed the property's apparent exemption from tighter setback requirements for new development. He said the occupants of the house were caretakers, and one of them lived there until early January 2008; had the house been unoccupied as of Dec. 31, 2007, more stringent wetland setbacks would apply.

An existing porch would be eliminated. A deck would extend the same distance from the house as the existing deck, but would run across the entire back of the house. A 24' x 24' 2-car garage would be joined to the house by an 8' x 8' connector. A walkout basement would provide access to the back yard. Retaining walls are proposed at either side; Mr. Johnson said that without the walls, it would be necessary to grade nearly to the 25' line.

Commissioners and Mr. Johnson agreed to address other specific questions during the site walk scheduled for June 6.

By general consent, commissioners continued this matter to the meeting of June 9.

Upon realizing that a public hearing had not been officially opened on this NOI, Sarah Getchell made a motion for the Commission to open the public hearing, and to accept all the information and discussion that took place at this meeting, as if it were during a public hearing. Mr. Dana seconded the motion. VOTE: Unanimous.

Certificate of Compliance

375 Bridge Street

John Gardner, applicant; Mary Rimmer, representative

Stream cleaning and enhancement

DEP file #172-0495; recorded Book 26549 Page 84

Conservation Coordinator Jim Hankin reported he inspected 375 Bridge St. on the day of this meeting and found no negative impact from the permitted restoration of a stream on the property. He referred commissioners to photos of the stream, taken by the owner's wetland consultant in

April 2010. He said the stream has a good flow, and the project improved the area. He recommended the Commission issue a Certificate of Compliance.

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

Richard Luongo made a motion for the Commission to accept the minutes of May 12, 2010 as presented. Robert Cronin seconded the motion. VOTE: Unanimous.

By general consent, Commissioners continued the election of officers to a future meeting.

Mr. Cronin made a motion for the Commission to adjourn at 9:20 p.m. Virginia Cookson seconded the motion. VOTE: Unanimous.

Minutes submitted June 4, 2010 by Ann Sierks Smith