

**Hamilton Conservation Commission
Minutes of Meeting of August 12, 2009
Meeting held at Hamilton Town Hall**

Commissioners present when meeting convened at 7:43 p.m.:

Nancy Baker (co-chair), Robert Cronin, Peter Dana, Sarah Getchell (co-chair)

Staff present:

Jim Hankin, Conservation Coordinator

Others present: Mary Rimmer (consultant), Nick Menino (consultant), Mike DeRosa (consultant), Sue McLaughlin of Chebacco Lake Association

The Commission is scheduled to meet on Wednesdays Sept. 16 and 30, 2009. Site walks are scheduled for Saturday Sept. 12, 2009, a week later than the usual first Saturday, so as not to fall on Labor Day weekend.

Sarah Getchell opened the meeting at 7:43 p.m.

Conservation Coordinator Jim Hankin informed commissioners about documents they received prior to this meeting. Included in the agenda packet were:

- a 4-page report by Mary Rimmer of Rimmer Associations regarding flooding at Myopia Hunt Club
 - an Enforcement Order Mr. Hankin issued for unauthorized cutting on an island in Chebacco Lake
 - a 2-and-1/3 page memo from the Town's wetland consultant Mike DeRosa requesting an amendment to the Weaver Pond Management Plan to allow hydro-raking to control weed growth
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Enforcement Order

435 Bay Road

Myopia Hunt Club, property owner; Mary Rimmer of Rimmer Associates, representative Remediation of flooding; re-stabilization of bank

Mary Rimmer, the environmental consultant to the Myopia Hunt Club (“the Club”), described flooding that took place during the summer, steps that the Club and the Hamilton Department of Public Works have already taken to alleviate the flooding, and the Club’s proposal for further work to prevent flooding in the future.

Ms. Rimmer said an abandoned 15’ high trolley berm cuts across Club property some distance from Bay Rd. on the Myopia grounds. There are wetlands between Bay Rd. and the berm, and the water level in the wetlands rose substantially in 2008 and 2009 and by summer 2009 threatened to flood Bay Rd. On the Bay Rd. side of the berm, the water

level was approximately 5' above the apparent level of the culvert outlet; on the side of the berm closer to the riding ring, the water was approximately 3' above the apparent level of the culvert pipe. The Hamilton Department of Public Works tried to locate and clear the culvert pipe, and in so doing, DPW staff stuck a metal signpost into the ground that broke a hole in the culvert pipe. The Club had a diver explore the area underwater, but the diver could not find the end of the culvert pipe. Ms. Rimmer said she suspects that beavers may have dammed it.

Ms. Rimmer said Menino Construction was building a septic system elsewhere on Myopia's grounds and had pumping equipment at that site, so in June and July the Club had Menino use a 6" diesel pump to pump water over the top of the berm from the wetland side to the far side where the water level was lower, to alleviate flooding near Bay Rd. Mr. Hankin said the Club notified him, and he inspected the site; he said he allowed the pumping to proceed because it was being monitored, with effective erosion control in place and the pumping sough to substantially re-establish the wetland conditions on both sides of the berm. Ms. Rimmer said pumping took place during the daytime for three weeks, but the weather was very rainy during the time pumping took place, and when it rained overnight, the water level in the wetlands rose again by morning. Nick Menino of Menino Construction told commissioners that if it rained 2", the water level near the berm rose 6". The state Department of Environmental Protection (DEP) became aware of the pumping and ordered the Club to suspend work. Ms. Rimmer said the day pumping stopped was the first time she could see the top of the culvert pipe. She said a foot of gravel and organic material was on top of the pipe; when this was cleared off, water began to flow through the culvert.

Mr. Hankin said that in retrospect, he believes that when the Club contacted him about pumping, he should have issued an Emergency Certification (EC). He explained that he thought at the time that the pumping would, temporarily, resolve the flooding situation in 7-10 days. He said DEP was not upset that the pumping was taking place, but would have preferred for it to take place under an EC. Ms. Rimmer said DEP wanted "a paper trail." Mr. Hankin said Ms. Rimmer submitted written reports to him throughout the process.

Ms. Rimmer said the work to date is a "temporary fix," and if beavers locate the flow through the culvert, the pipe could become clogged again.

Ms. Rimmer requested permission for the Club to excavate a section of the berm to create a pad that would support heavy equipment, and then bring in a mid-sized excavator with a reach of 10' to remove material around the culvert outlet to improve drainage. She said the pad would be 15' by 15' and could be created on existing gravel without trucking in additional material. A 12' by 12' ramp also would be constructed. One oak tree that is about to fall anyway, and two smaller maples that are thriving, would need to be cut down. After excavation, a precast concrete headwall would be installed near the culvert outlet to maintain a stable inlet. Ms. Rimmer said she was uncertain whether it would be necessary to drain a section of the area to complete this work; if so, a coffer dam of lumber or metal sheeting would be created at the inlet, and removed once the work was

completed. The final step of the project would be to rebuild and stabilize the berm. Ms. Rimmer showed a site plan and pointed out details.

Nick Menino of Menino Construction told commissioners a precast headwall would be the least disruptive way to stabilize soils near the pipe inlet. He said he would dig 18" below the culvert line, place stone for a foundation, and then set the precast headwall on top of it, with riprap in front. Pouring a headwall onsite would require dewatering, he said. Mr. Menino said the land on either side of the berm is at virtually the same elevation, but that water levels on the two sides differed by about 3.5' at one point. He said the variation had dropped to about 1' at the time of this meeting. He also explained that at present there is a path with 10' clearance, which is enough to get a truck through, but that 12' clearance is necessary to bring in an excavator. After the culvert work was complete, Menino Construction would rebuild the berm, place netting over it, and seed it with a slope mix to restore the area, he said.

Ms. Rimmer recommended that a beaver deceiver be installed eventually.

Peter Dana asked whether the existing concrete culvert pipe is intact inside. Ms. Rimmer and Mr. Menino said it is impossible to tell until it is drained and cleared, and they can see inside. Mr. Menino suggested using video equipment to check whether the joints are secure; if there is damage, it might be necessary to add a slip lining to the existing culvert, he said. Mr. Dana asked whether clearing it with an augur would be constructive. Mr. Menino said he believes one end is plugged tight. If the entire length of the culvert is not packed with material, it should be adequate to auger one side, and use jets and vacuum equipment to clear from the other end. Mr. Menino said the pipe is approximately 15' down, and as long as 70 to 75'.

Nancy Baker asked whether it is possible to estimate how much the proposed project would disturb wetlands. Ms. Rimmer said she and Mr. Menino have not established how far into wetlands the outlet pipe extends. She noted that the sides of the berm slope very steeply, and there has been a lot of erosion from people maintaining the area.

Commissioners and Mr. Hankin discussed how an Enforcement Order should be phrased. Sarah Getchell noted that the Club has not done anything to cause the culvert to fail.

Ms. Rimmer asked the Commission not to require Myopia to file a Notice of Intent (NOI). She said there is an opportunity for a contractor already working on site to correct the situation promptly, so she would prefer for the Commission to authorize immediate work, rather than delaying it with the process of an NOI. She noted that the Club initiated this work at the request of the Town, because Town officials want the drainage problem corrected but cannot continue doing work on private property.

Mr. Hankin suggested the Commission issue an Enforcement Order specifying that "a historical amount of flooding" on Myopia grounds threatened Bay Rd., and neighbors' properties. Mr. Dana said an EO implies the Club has done something wrong. Ms. Rimmer suggested making it "friendly" by specifying in the language of the order that

conditions were caused by natural forces, and that the intent of the EO is to keep those conditions from getting worse.

Commissioners, Ms. Rimmer and Mr. Menino discussed details of the proposed work, including the design and manufacturers of headwalls, and whether

Robert Cronin made a motion for the Commission to issue an Enforcement Order as follows: “Due to Natural erosion of a 15 foot tall bank (old trolley line) combined with the accumulation of organic debris, the substantial failure of a culvert pipe has occurred which runs through the bank. This has caused flooding of the wetland upstream of the culvert and also prevents natural flow to downstream wetland. Beaver activity may also have been a cause of obstruction. Flooding became severe enough to threaten state Route 1A this spring and summer. Work is authorized as follows: to repair and stabilize bank on both sides, construct head wall and remove trees all as described in documents attached hereto, dated August 13, 2009 from Rimmer Environmental Consulting. This work shall be completed, inspected and approved by the Commission no later than 60 days from the date of this Order. In addition to the Rimmer narrative, the land-owner shall file a detail of the headwall, and file a revised site plan of the work area showing a double erosion control barrier on each slope. Minor repairs to small damaged areas of the upstream portion the culvert pipe are permitted but the land-owner, after video inspection of the full pipe, must return to the Commission if repairs are required in the section of the culvert pipe that is within the bank itself.

Peter Dana seconded the motion. VOTE: Unanimous.

Commissioners considered adding a condition authorizing the Club to use video telemetry and auguring equipment, but Mr. Hankin said specifying those in the EO might compel the Club to do so. Ms. Baker said if the Club should find further work is necessary, they could return to the Commission and request an amendment of the EO. Ms. Rimmer said that after three trees are cut down, the stumps should be removed, and for easy future access to the site for maintenance, trees should not be replanted in the same spot; she agreed to have three trees planted nearby.

Those present agreed all work would take place within 60 days. Commissioners agreed on the following conditions:

Double silt fences are to be added to the project site plan as detailed in Rimmer Associates’ Aug. 10, 2009 memo

The narrative portion of that memo is to be amended to note that trees should be replaced in appropriate locations

An as-built plan is to be submitted to the Commission office when work at the site concludes.

Ms. Baker made a motion for the Commission to issue the EO with amended conditions as described. Mr. Cronin seconded the motion. VOTE: Unanimous.

Commissioners signed the Emergency Order.

Enforcement Order

Small uninhabited island in Chebacco Lake

Enforcement order issued to Columbia Pictures/Sony Entertainment

Removal of poison ivy and other vegetation in 3'-6' strip around 60% of shore line of a 100' diameter (rough approximation) circular island

Conservation Coordinator Jim Hankin told commissioners about the circumstances that led him to issue an Enforcement Order on August 4, 2009. He asked the Commission to ratify the EO.

Mr. Hankin said Columbia Pictures/Sony Entertainment was shooting a movie during summer 2009 in Essex, on and around Chebacco Lake. Columbia/Sony wanted to film scenes on a small island in the Hamilton portion of the lake that is owned by the Town, and paid the Town of Hamilton \$5,000 for use of the island for several weeks. Mr. Hankin said the Hamilton Town Administrator informed him the studio would be using the island, and in answer to his questions, she stated that the film crew's representative told her they would not be building anything on the island, nor altering its vegetation. However, after receiving a report that such work was indeed taking place, Mr. Hankin inspected the site. Visual inspection and conversation with a representative of the film crew established that the crew had built a small temporary structure on the island, and had workers in hazardous materials removal suits cut several small trees and rip poison ivy up in a 6' band around the perimeter of the island. Mr. Hankin said aquatic shrubs appeared virtually undisturbed. Mr. Hankin reported that the workers "made a pretty clean sweep and stripped out portions of bank" of poison ivy.

Mr. Hankin issued an Enforcement Order that ordered the crew to remove no more vegetation or tree limbs, and to remove the temporary structure and restore and/or stabilize the ground below it. The EO allowed filming to continue on the island through Aug. 31, 2009, and directs the film crew to notify the Commission office if filming would continue at the island beyond that date. The EO specifies that all restoration activity must be completed by Oct. 15, 2009. The EO also directs Columbia/Sony to engage a wetland consultant to recommend how to restore the area, and to have a representative attend this Commission meeting. Mr. Hankin said Columbia/Sony contracted with Mike DeRosa.

Mr. DeRosa told commissioners he had talked with the head of the film set crew, but had not yet visited and assessed the site. He said he would do so the week following this meeting. Mr. Rosa said it is possible that if left alone, the vegetation might grow back.

Several people commented. Sue McLaughlin of the Chebacco Lake Association said the film crew removed and disposed of trash that had been on the island, which she said was good. Peter Dana suggested that the vegetation should not be improved, because it might attract "kids" to the island. Robert Cronin, who said it was he who notified Mr. Hankin of apparent wetland violations at the island, asked whether the crew used pesticide; Mr. Hankin replied that the film crew considered it but resorted instead to ripping the poison ivy out, after a botanist said killing it with chemicals would take longer than their filming schedule would permit. Sarah Getchell asked for details about the structure; Mr. Hankin

said it is made to look like a stone tower, or barbecue area with a chimney. He said it may be on rock, but the crew may have dug some soil to keep the structure stable.

Mr. Dana made a motion for the Commission to ratify the Enforcement Order. Mr. Cronin seconded the motion. VOTE: Unanimous.

Mr. Dana asked Ms. McLaughlin whether she was comfortable with the EO; she replied that she was.

Mr. Hankin said that should a similar situation arise in the future, he would visit the site early in the process and speak directly to the person supervising activity at the site.

Nancy Baker suggested that the Commission institute a fee for issuance and resolution of an EO that would be equivalent to the fee assessed for a Notice of Intent. She said Mr. Hankin spent time and effort on this case, but no payment would reimburse the Town for his time. She situations like this one "seems like a back door way of getting an approval without paying."

Discussion

Wetland consultant Mike DeRosa gave an informal status report about restoration planting his client Michael Pallazola agreed to undertake at his property at 356 Chebacco Rd. to resolve an outstanding Enforcement Order. Mr. DeRosa said his objective is to do all the planting this fall. He said he sent Mr. Palazzo a proposal several weeks ago for the planting, along with details of construction of a patio and installation of a dock. He said Mr. Palazzo has not replied.

Conservation Coordinator Jim Hankin said he sent Mr. Palazzo a letter requesting that the work take place soon. He told commissioners that firm deadlines are very important, and suggested they should not be hesitant to issue several Enforcement Orders over one matter if that becomes necessary. He noted that the Commission's initial agreement with Mr. Palazzo had been for planting to occur in Spring 2009, but he noted that because the spring and early summer were very rainy, some delay is understandable. He reminded those present that the Commission would inspect the restored area after planting takes place, and then again later to find out whether what was planting has taken hold.

Request for Amendment to the 2007 Weaver Pond Management Plan

Weaver Pond, Bay Road (Patton Park)

Hamilton Department of Public Works and Parks Department, applicants; Mike DeRosa of DeRosa Environmental, representative

Proposal to contract for hydro-raking Weaver Pond in Patton Park in spring 2010, to deal with nuisance vegetation problem

Mike DeRosa, the environmental consultant to the Hamilton Department of Public Works (DPW), told commissioners that chemical treatment of Weaver Pond in Patton Park

succeeded in killing vegetation that was clogging the pond, and that the DPW seeks permission to contract for use of a hydro rake in spring 2010 to harvest weed roots and tubers to keep the pond clear. He displayed a photo of the equipment, which he described as like a backhoe on a pontoon, with paddle wheels on both sides. He said a toothed digging arm scoops vegetation from the bottom of the pond, allows water to flow off the material, and deposits the material on an attached barge. The barge is then brought to shore, and the material is offloaded onto trucks for disposal of elsewhere. He said he hopes to arrange for it to be "cooked" and composted at Brick Ends Farm. Mr. DeRosa requested an amendment to the previously approved management plan for the pond, to allow this work. He referred commissioners to his memo to the Commission dated Aug. 10, 2009 for further details.

Conservation Coordinator Jim Hankin said hiring a contractor to hydro rake the pond bottom should keep the pond free of weeds for five years, and perhaps longer. He said the application of the herbicide Sonar earlier in the year took a few weeks to work, because of rainy weather, but that the pond is now clear of weeds, and free of odor. He said children continue to catch frogs there, so apparently the Sonar did not damage wildlife in the pond.

Nancy Baker said she has observed more geese near the pond since the weeds were eliminated. Mr. DeRosa said they are attracted to open water. Commissioners discussed various ways to discourage geese, including planting shrubs and using dogs. Mr. DeRosa said the Massachusetts Association of Conservation Commissions says a barrier around a pond is the most effective.

Peter Dana made a motion for the Commission to amend the Weaver Pond Management Plan as specified in Mr. DeRosa's memo dated Aug. 10, 2009. Ms. Baker seconded the motion. VOTE: Unanimous.

Notice of Intent

236 Moulton Street (Map 42, Lot 43)

Estate of Elizabeth Laughlin, applicant; John Dick of Hancock Associates, representative
Construction of single family dwelling, and septic system

Conservation Coordinator Jim Hankin informed commissioners that the applicant requests continuation of this matter to the meeting of Sept. 16. He explained that the state Department of Environmental Protection has yet to issue comments on this proposed project; also, the applicant and the applicant's representative have not yet spoken about whether to shift the proposed location of the proposed dwelling. By general consent, the Commission continued this matter to Sept. 16.

Request for 1-Year Extension of Permits under the Massachusetts Wetland Protection

Act and Hamilton Conservation By Law

240 County Road (Route 1A)

New England Biolabs, applicant; Winslow Mulry, representative

Final extension for project completion in Fall 2009. DEP #172-0487, Recorded Book 27273, page 21

Conservation Coordinator Jim Hankin updated commissioners about a project at New England Biolabs. Biolabs is building a bridge across the Miles River, which constitutes the town border separating Ipswich and Hamilton, so the Ipswich and Hamilton Conservation Commissions issued permits. The permits will expire in September 2009. The project is nearly done, and all the work that would have impact on the resource area and associated buffer zone has already been completed. Mr. Hankin said Winslow Mulry of Biolabs told him that the only remaining tasks are the last 15% of the masonry work, and a small amount of work to complete the footpath, and that these should be finished by October 2009. Biolabs needs an extension to complete the project, and Mr. Mulry requests a one-year extension of the permits issued by the Hamilton commission.

Nancy Baker made a motion for the Commission to extend the permits for this work under the Wetland Protection Act and the Hamilton Conservation By Law. Peter Dana seconded the motion. VOTE: Unanimous.

Nancy Baker said she would be unable to attend the site walks on Sat. Sept. 12 and the regular meeting of Sept. 16, and from the site walks on Sept. 12. She arranged to comment in writing on the Notice of Intent for work at 236 Moulton St. that is to be considered at the Sept. 16 meeting.

Peter Dana made a motion for the Commission to accept the minutes of June 27 and July 15, 2009 as presented. Robert Cronin seconded the motion. VOTE: Unanimous.

Mr. Cronin made a motion for the Commission to adjourn at 9:02 p.m. Sarah Getchell seconded the motion. VOTE: Unanimous.

Minutes submitted August 20, 2009 by Ann Sierks Smith