

Hamilton Conservation Commission
Minutes of Meeting of September 16, 2009
Meeting held at Hamilton Town Hall

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

Virginia Cookson, Robert Cronin, Sarah Getchell (co-chair), Camilla Rich

Staff present:

Jim Hankin, Conservation Coordinator

Others present for all or portions of the meeting: Carol Decker of Ipswich River Wildlife Sanctuary; Maryellen Duffy of Hamilton-Wenham Regional School District; John Dick, consultant; Mary Rimmer, consultant; Mark Kuzminskas, property owner; James Rothwell, attorney; Scott DeWitt, Helene Driesen, Nina Fowger, Ty Ward, and approximately 10 other residents of Echo Cove Road.

The Commission is scheduled to meet on Wednesdays Sept. 30, Oct. 14, and Oct. 28, 2009. Site walk is scheduled for Saturday Oct. 3, 2009.

Sarah Getchell opened the meeting at 7:30 p.m.

Conservation Coordinator Jim Hankin noted that prior to this meeting, commissioners received several documents: an e-mail from Commissioner Nancy Baker about the Notice of Intent filed for 236 Moulton St.; a 1 1/3 page memo from Hayes Engineering about a request to amend the enforcement order for 408 Bridge St.; and a 2-page memo from Rimmer Associates describing work on and around a culvert at Myopia Hunt Club.

Presentation of proposal for 2009-2010 Environmental Education Program
Massachusetts Audubon Society and Hamilton-Wenham Regional School District (HWRSD)

HWRSD curriculum director Maryellen Duffy gave commissioners an outline and budget for the coming school year's environmental education program for grades K-4. She asked the Commission to once again support the program financially, as she noted the Commission has done for the past 18 years. She said the curricular details of the program are unchanged from 2008-2009. In the coming year, students will pay an additional 50 cents to participate in some programs that take place at the Ipswich River Audubon Sanctuary, to offset higher transportation costs. She said the district would also ask the Wenham Conservation Commission to fund the program.

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

Conservation Coordinator Jim Hankin said it is the Commission's practice to take this request under advisement, and consider and vote on the funding request at the next Commission meeting. He explained, speaking to members of the public in the audience, that no tax dollars would be used to fund this program. He said it would be paid from the Conservation Fund, much of which is due to a generous donation years ago by the Clark family; the interest the fund earns is almost enough to pay for the school district environmental education program each year.

Mr. Dana thanked Ms. Duffy and Audubon sanctuary director Carol Decker for their continuing work with the schools.

Violation Notice

358 Chebacco Road

Michael Pallazola, landowner; Michael DeRosa, representative

Compliance with restoration plan

Conservation Coordinator Jim Hankin told commissioners that the wetland consultant representing the landowner was unable to attend this meeting and requested that the Commission continue this matter to the meeting of Sept. 30. Commissioners did so, by general consent.

Enforcement Order

Small uninhabited island in Chebacco Lake

Columbia Pictures / Sony Entertainment; Michael DeRosa, representative

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

Conservation Coordinator Jim Hankin told commissioners that the wetland consultant representing Columbia Pictures was to give a status report at this meeting, but was unable to attend. He asked the Commission to continue this matter to the meeting of Sept. 30. Commissioners did so, by general consent.

Notice of Intent (Public Hearing continued from August 12, 2009)

236 Moulton Street (Map 42 Lot 43)

Estate of Elizabeth Laughlin, owner; John Dick of Hancock Associates, representative

Construction of single family dwelling and septic system

Sarah Getchell reopened the public hearing.

The owner's representative, John Dick of Hancock Associates, distributed a revised site plan dated 9/16/09 and pointed out on an enlarged copy of the original site plan several changes to the proposed development plan for the property that were made in response to commissioners' concerns. Because Conservation Coordinator Jim Hankin conveyed to him commissioners' interest in the house site being closer to the road than originally proposed, he shifted the proposed location. The revised plan would have a slightly smaller house and a much shorter driveway, eliminating 2450 square feet of roof and pavement, which was 40% of the total impervious pavement proposed in the original Notice of Intent (NOI), Mr. Dick said. The septic system would be behind the house. The new location would be within the no build zone, so it would require a waiver, Mr. Dick said.

After discussion, commissioners reached a consensus that the revised proposal is undesirable because the house would be very close to wetlands, with very little usable land that could be cleared around the structure without impacting wetlands. Mr. Dick said he also prefers the original plan. He said if the house were built as indicated on the 9/16/09 site plan, future owners would want to mow and clear more land.

Mr. Dick noted that what is ultimately built on the site may look nothing like either of the designs presented. He said the owner is trying to establish whether a house could be permitted, but intends to market the land undeveloped.

Mr. Hankin reminded commissioners that the original design presented at a prior meeting had the virtue of meeting setback requirements, but would require a lot of cutting, up to the 15' setback from the property line.

Commissioners and Mr. Dick discussed the original proposal to build a house and septic field at the back of the large lot, which Mr. Dick noted is mostly wetlands, with islands. Robert Cronin said building in that area could result in a dispute with neighbors. Mr. Dick said the site at the rear of the parcel would accommodate a house without incursion into the no build zone (NBZ), but the driveway would cross into the NBZ at some spots; also, some of the fill to cover the leaching field of the septic system would be within the NBZ.

Ms. Getchell referred to Commissioner Nancy Baker's memo, written because she knew in advance she could not attend this meeting, in which she expressed questions and concerns about the proposal.

Ms. Getchell noted that Ms. Baker asked in what way the applicant would rebut the presumption that work within the NBZ would have a negative impact on wetlands. Mr. Dick replied that 2' deep stone trenches (recharging diaphragms) could be installed on either side of the driveway, which he said would in essence "erase" the impervious surface of the driveway.

Ms. Getchell noted that Ms. Baker also stated in the absence of a mitigation plan, the Commission could propose that the proponent commit to a deed restriction precluding any further impact on wetland buffer zones. Mr. Dick asked whether this is undertaken regularly in Hamilton, and upon being told this would be the first such restriction, he declined this suggestion on behalf of his client. Mr. Hankin recommended tabling this idea pending legal research; he said it might involve issues of taking of land.

Mr. Hankin mentioned that Ms. Baker's memo requested exact square footage of any proposed clearing of vegetation. Mr. Dick agreed to do provide these figures.

Mr. Dick and commissioners discussed vegetation at the site. Mr. Dick said at the front of the property there are some apple trees and other species, but honeysuckle and buckthorn are all that grow at the back of the property where the house site is proposed. He said removing invasives and replacing them with native species in the associated upland resource area (AURA) would improve the site, but would result in more alteration of wetlands than would otherwise take place.

They discussed several options for marking the NBZ line. Commissioners agreed to Mr. Dick's suggestion of placing monuments along the driveway, perhaps integrated into a fence. They stated this would be a made a condition of an Order of Conditions if one is forthcoming.

Ms. Getchell invited public comment. There was none.

With Mr. Dick's consent, the Commission continued this matter to the meeting of Sept. 30. Mr. Dick said he would update the project proposal to include recharge trenches, and markers along the driveway to make clear the line 50' from wetlands, provide square feet calculation of AURA disturbance, and provide a planting plan to remove invasives and replace with more native and appropriate species.

Request to Amend Enforcement Order

408 Bridge Street

Mark Kuzminskas, owner; Libby Wallis of Hayes Engineering, representative

Request to reduce frequency of currently required monthly monitoring reports during growing seasons

Mark Kuzminskas asked the Commission to reduce to two the number of site monitoring inspections and reports he is required to have consultants carry out under the terms of an Enforcement Order (EO) in response to unauthorized cutting near a pond on his property. He said his consultants told him two a year should be adequate, one in late May or early June and another in August. The May/June inspection would establish what, if any, replanted vegetation did not survive the winter, and should be replaced during the coming growing season; the August inspection would establish whether any vegetation died over the summer and should be replaced in the fall. Conservation Coordinator Jim Hankin said that if this schedule were approved, the 2009 inspections would be over; two such inspections would have to take place in 2010, but then Mr. Kuzminskas' obligation to file monitoring reports would be at an end.

Peter Dana said he considered this adequate.

Sarah Getchell invited public comment. There was none.

Camilla Rich made a motion for the Commission to issue a new EO incorporating the existing EO for 408 Bridge St., except for the monitoring and compliance section, which is to be amended to require two more monitoring reports only. Virginia Cookson seconded the motion. VOTE: Unanimous.

Mr. Kuzminskas asked what would happen when the monitoring period is at a close. Mr. Hankin said Mr. Kuzminskas should speak with him at that time about lifting the EO.

Request for Determination

256 Echo Cove Road

Helene Driesen, applicant and representative for neighbors

Clean by hand a 20' right of way to Lake Chebacco

Helene Driesen expressed the desire of some residents of Echo Cove Rd. to clear and use a 20' strip of land that they believe to be a long-unused right of way across private property between the road and Lake Chebacco, to provide access to the lake. She said neighborhood residents wish to clear the strip of land for lake access; they would plant grass, and maintain it regularly. She said she does not expect it would be used heavily enough to erode the site.

This property was identified later in the discussion as being located on Lots 28 and 29, Map 60, which is adjacent to 256 Echo Cove Rd. Ty Ward later identified himself as the owner, and said he does not want this work to take place. Scott DeWitt said his mother is a co-owner. Mr. Ward questioned whether a group of his neighbors could file a Request for Determination (RFD) with the Commission regarding land they do not own, and on which he does not wish for them to do any work.

Conservation Coordinator Jim Hankin distributed copies of a site plan submitted by the group of Echo Cove Rd. residents who filed the Request for Determination (RFD). He noted that some of the strip of land residents wish to clear and use may be outside the Commission's jurisdiction. He said the steep part of the site comes up about to the house at 256 Echo Cove.

Ms. Dreisen and other present said the issue is in court but the parties are in mediation and seem to be approaching an agreement.

James Rothwell, who identified himself as an attorney representing Sandra and Gail Barton, said the neighbors who favor clearing the right of way to the lake want to know whether the Commission would permit such work to take place, so this could be taken into consideration as the parties discuss the issue. In particular, the applicants want to know whether the Commission would require them to file a Notice of Intent (NOI), which would involve costs the applicants would need to divide among themselves. Without know this, it is hard to negotiate a settlement, he said. Mr. Rothwell said the residents of eight lots on Echo Cove believe they are entitled to use a 20' pedestrian access easement for lake access, so they could carry a canoe or kayak to or from the lake. He said vegetation, glass, and debris would be cleared, but no excavation is proposed.

Ms. Driesen provided details. She said she and others want to cut vines from the portion of the strip of land near the road, and trim back a large bush near the lake, which she said encroaches on a ski jump in the lake. She noted that the large bush provides a privacy curtain for the adjacent Strout property; she said the bush would be trimmed just "a bit." She said neighbors understand that only the portion of the land within 100' of the water is within Commission jurisdiction.

Ms. Driesen asked for information about the location of the leaching field for 256 Echo Cove Rd. Mr. Hankin explained the septic field could be an issue because of the need to avoid damaging it by excavation, or channeling water toward it and overloading it.

Mr. Ward said that residents petitioned in court for the right to pass and re-pass across the land, but said nothing about cutting down vegetation. He also noted several times during the discussion that he is an owner, does not want his neighbors to clear the strip of land, does not want to know whether such work would be allowed under wetland regulations, and does not think the Commission should consider a request for such a ruling about land he owns unless he makes such a request.

Peter Dana said there appear to be no canopy issues, as the work is proposed. However, he said, the applicants should tell the Commission more specifically what they propose to do.

Mr. Hankin said the Commission could determine whether wetland regulations would permit the proposed work; however, he said, the issue of whether the residents who filed the RFD have a legal right to be on the property is not within the Commission's purview. He said that granting a negative determination would allow, but not order, work to take place. He said the Commission must officially act on the RFD, either by granting a negative determination that would allow work to proceed without further filing, or by granting a positive determination, which would require the applicants to file a Notice of Intent (NOI) to seek permission for the proposed project. He said when an NOI is filed, the owner of the parcel in question must sign the document, but there is no such requirement for an RFD. He said also this is so an RFD can provide a vehicle for people to get before a conservation commission the types of issues the state Wetland Protection Act (WPA) is supposed to cover. He said also that if the Commission does not act on an RFD within 21 days of its filing, the issue passes to the state Department of Environmental Protection (DEP). Virginia

Cookson said she understood Commission inaction would result in automatic approval, but Mr. Hankin said he was confident it would go to DEP.

Mr. DeWitt, saying he was speaking on behalf of the several owners of the parcel, asked the Commission to make any findings contingent on the legal process, to make it clear no work is to be done until the legal process is complete.

Camilla Rich said she favored telling the neighborhood residents whether the work is permissible; she noted that the landowner could do what he wants. Peter Dana said it would be fine to remove glass and debris, but the Commission might want to rule on the proposed trimming of the bush near the water. Sarah Getchell characterized the proposed work as “minor,” and said an NOI seems excessive to her. Mr. Hankin said if not for the fact that the parties are in court over this issue, the proposal seems to be a typical RFD, with minimal work, and all of it to be done by hand.

Following further discussion about proper legal phrasing and the expected time table for resolution of the court case, Camilla Rich made a motion for the Commission to issue a negative determination under the Wetland Protection Act and the Hamilton Conservation By Law with the special condition that its terms are subject to the resolution of the dispute. Virginia Cookson seconded the motion. VOTE: Unanimous.

Request for Determination

45 Fox Run Road

Maureen Tucker, applicant; James Scanlon, representative
Install Title V compliant septic system

James Scanlon displayed a site plan of 45 Fox Run Rd. and described the proposal to replace a failed cesspool with a new septic system. The property abuts wetlands associated with the Miles River. The existing cesspool is between the road and one end of the house. Mr. Scanlon proposed positioning the new septic system next to the other side of the house and extending toward the road, positioned at the corner of the lot farthest from wetlands. He said all work would be within 100-200 feet of the Miles River.

Conservation Coordinator Jim Hankin said he walked the property the day prior to this meeting. He said the site plan is accurate. He reported that where the house and driveway are located and the proposed septic system would be placed, the land is flat; the slope to wetlands starts in the front yard. He noted that the site plan includes erosion control, and said there is very little chance of any material reaching wetlands. He said the proposed Title V compliant system would be an improvement over the existing cesspool.

Camilla Rich made a motion for the Commission to grant a negative determination under the Wetland Protection Act and the Hamilton Conservation By Law. Virginia Cookson seconded the motion. VOTE: Unanimous.

Enforcement Order

435 Bay Road

Myopia Hunt Club, owner; Mary Rimmer of Rimmer Associates, representative
Status report and report on changed conditions at Myopia Club culvert project

Wetland consultant Mary Rimmer told commissioners that contractors for Myopia Hunt Club began to repair and upgrade a culvert pipe under the terms specified in an Enforcement Order issued in August, but discovered in the process that the existing drainage structure could not be repaired, but should instead be replaced. Because rain was forecast and she wanted to forestall flooding at the site, which was what had brought the culvert failure to Myopia officials' attention earlier in the year, she contacted Conservation Coordinator Jim Hankin, described the situation to him, and asked for permission to amend the project, which was granted by Mr. Hankin to the exigencies of the situation as explained by Ms. Rimmer. Contractors dewatered the area, excavated the berm through which the culvert pipe ran, crushed the old pipe, and on the same day installed 12" PVC pipe 2 1/2' higher than the original pipe's elevation. A new headwall was installed. By hand, workers removed sand from a channel downstream, which the sand had entered because of pumping across the berm over the summer to relieve flooding. The area was backfilled and stabilized with straw mat. Ms. Rimmer said two more trees were cut down than the Commission had authorized in August, because it was necessary to excavate more deeply than anticipated at that time; she said none of the cut trees have not yet been replanted but Myopia intends to do so by early October, within the time frame specified in the Commission's August Enforcement Order authorizing repairs to the culvert. She said the work took a total of three days. She showed commissioners photos of the stabilized site after work was complete.

Mr. Hankin said he was very impressed with the work.

Virginia Cookson said she was glad Ms. Rimmer consulted with Mr. Hankin prior to the work.

Ms. Cookson made a motion for the Commission to issue a new Enforcement Order incorporating the Enforcement Order of Aug. 13, 2009 and appending to it Ms. Rimmer's letter of Sept. 14, 2009, and the photographs she presented. Camilla Rich seconded the motion. VOTE: Unanimous.

Certificate of Compliance

292 Bridge St.

Peter Whitman, owner and applicant

DEP File number 172-0405

Conservation Coordinator Jim Hankin said an area near a pond at 292 Bridge St., where during a previous inspection he observed that some restoration planting had not taken hold well, was reseeded. He said re-inspected the site recently and found the vegetation is now well established.

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

By Law Permit Extension (One Year)

Winthrop Street Bridge

Hamilton Department of Public Works, applicant

DEP File number 172-0505, Order of Conditions issued Nov. 2007

Conservation Coordinator Jim Hankin said because federal funding has not come through for a previously approved bridge repair project, the work has yet to take place. The By Law permit for the work has expired. A state permit will remain in effect through late 2010. He suggested the Commission extend the By Law permit until the date the state permit will expire, to provide time

for the Hamilton and Ipswich departments of public works to receive funding and complete this joint project.

Camilla Rich made a motion for the Commission to extend the permit for repairs to the Winthrop Street bridge until Nov. 19, 2010. Peter Dana seconded the motion. VOTE: Unanimous.

By Law Permit Extension (Two Years)

122 Woodbury Street (beaver deceiver)

Hamilton Department of Public Works, applicant

DEP file number 172-0518, Order of Conditions issued Aug. 2008

Conservation Coordinator Jim Hankin recommended that the Commission extend for two years a permit previously issued to the Hamilton Department of Public Works for installation and maintenance of a beaver deceiver in wetlands at 122 Woodbury St., so continuing maintenance work would be authorized.

Camilla Rich made a motion for the Commission to extend the permit by two years, through Aug. 14, 2011. Virginia Cookson seconded the motion. VOTE: Unanimous.

Commissioners signed vouchers.

Mr. Hankin introduced to commissioners Hamilton resident Richard Luongo, who has expressed interest in filling the vacancy on the Commission.

Commissioners deferred action on the minutes of the meetings of July 29 and Aug. 12, 2009.

Robert Cronin made a motion for the Commission to adjourn at 9:32 p.m. Virginia Cookson seconded the motion. VOTE: Unanimous.

Minutes submitted Sept. 24, 2009 by Ann Sierks Smith