

HAMILTON CONSERVATION COMMISSION

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MINUTES OF MEETING

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Draft 2

July 28, 2021

Zoom ID 84507771300

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Hybrid meeting in the

Memorial Room,

Hamilton Town Hall

Members Present: Virginia Cookson, Chris Currier, Lauren Lynch (Chair), and George Tarr.

Coordinator: Brian Colleran

Others present: Chip Nyland (3 Arabian Way), Kurt Young (3 Arabian Way), Ryan McShera (18 Alan Road), Julian Rosen (35 Miles River Road), Dan Johnson (30 Appaloosa Lane).

This meeting was called to order at 7:10 pm.

Roll call: George Tarr - present, Virginia Cookson – present, Chris Currier – present, and Lauren Lynch - present.

Announcements

Minutes

Motion made by George Tarr to approve the minutes of July 14, 2021.

Seconded by Chris Currier.

Vote: George Tarr - aye, Chris Currier – aye, Virginia Cookson – abstain due to absence, and Lauren Lynch –aye. Unanimous of voting members.

Public Hearings

Abbreviated Notice of Resource Area Delineation DEP #172 – 0623 (continued) – 133 Essex Street – Chebacco Hill Capital Partners, LLC – Confirmation of resource area boundaries at 133 Essex St.

The applicant requested a continuance until September 8, 2021 for all four filings at 133 Essex St.

Motion made George Tarr to continue the items (4) until September 8, 2021.

Seconded by Chris Currier.

Roll Call Vote: Virginia Cookson - aye, George Tarr - aye, Chris Currier - aye, and Lauren Lynch – aye. Unanimous in favor.

Request for Determination of Applicability (Continued) – 133 Essex St. – Chebacco Hill Capital Partners, LLC – To use an existing woods road passing through jurisdictional areas, and install temporary steel plates over an intermittent stream.

Request for Determination of Applicability (continued) 133 Essex St. Chebacco Hill Capital Partners, LLC – To conduct directional drilling underneath jurisdictional wetlands for the purpose of installing a sewer line.

Request for Determination of Applicability (Continued) – 133 Essex St. – Chebacco Hill Capital Partners, LLC – To extend a water main within the paved surface of Chebacco Road along a portion of the frontage of 133 Essex St., Assessors Map 65, Parcel 1

Request for Determination of Applicability – 35 Miles River Road. Anne Rosen – To install a fence around an existing pond and replace existing grass with native plantings.

Julian Rosen was present and noted that he was about to buy the property on the next day. Mr. Rosen hoped to preserve the wetlands while creating a safe environment for his children. The fence was 25' from the wetland and the area would be planted with native plants. The area was currently planted with grass. Mr. Rosen showed a plan (ESRI) and photos of the area. A small gap in the proposed fence would allow creatures to travel through the area. Plantings would be within 5' of the fence and the area between the fence and the pond would be allowed to revert to nature.

Virginia Cookson recalled that a split rail fence had originally been located around the pond. Brian Colleran noted that no mow demarcation posts were located to the east of the proposed location. Native plants would be brought into the site, according to Mr. Rosen and the area would be mowed once a year. Mr. Rosen had an expert to guide the process.

Virginia Cookson recalled that the previously approved split rail fence area around the pond had been 10' from the bank. The Commission was comfortable with the fence being 15' away from the bank. Ms. Cookson requested that a narrative be submitted that explained why a fence was being allowed closer than 25' from the pond. Brian Colleran said the Commission was waiving the usual standards as it was an improvement. The confirmation would include that native plants were being planted at 15' from the water's edge with native plantings around the perimeter of the fence. The proposal was an improvement.

Motion made by Virginia Cookson to issue a new negative determination of applicability with a condition that the fence as presented would be enhanced with hand planted native species within 15' from the edge of the wetland.

Seconded by George Tarr.

Roll call vote: Chris Currier – aye, Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye. Unanimous in favor.

Notice of Intent – 18 Alan Road – Ryan McShera – To construct an addition to a single family home, and conduct a renovation.

Ryan McShera of Red Barn Architecture was present to represent the applicants, Sharon and Aaron Esker. Mr. McShera showed a plan of the land as well as photos for an addition off the rear of the existing home. The existing deck would be re-built. The wetlands were on the far side of the existing fence to the north of the home. The closest point was currently 46' from the wetland.

Work would include excavation for a 4' frost wall and installation of a new sono-tube foundation for the rebuilt deck. No work would be conducted closer to the wetland but there was no way to conduct work without going into the 50' setback. The depth of the water table was unknown. Ryan McShera said the far side yard would be used for equipment work and storage of materials. No additional fill would be needed and any additional fill would be removed off site. As much work as possible would be conducted on the far side of the house, away from the wetland.

Ryan McShera said he would be happy to add erosion control. Excavation would take a day or two and equipment would not be kept on site, if possible but would not be parked in the 50' buffer zone in any event. Virginia Cookson wanted to ensure the requirement would be on the plan, which would be given to the contractor. The erosion control and staging areas would be part of the conditions. Members discussed the need for downspouts and it was decided they were not necessary as underground stone and the gradual slope would allow water to be slowly infiltrated into the ground.

Kalil Bohgdan (12 School St.) spoke in favor of the proposal. Brian Colleran suggested the discussion be paused to allow Ryan McShera to amend the plan and resubmit the revisions later in the evening. Members agreed to pause the hearing.

Request for Determination. 30 Appaloosa Lane. Arlene and Mark Sargent. Failed septic plan.
Dan Johnson was present to represent the applicants. Mr. Johnson said the entire area was within the 100' wetland buffer. Soil testing had occurred. The application was for two 1500 gallon leaching trenches. Mr. Johnson showed a Plan of Land, which featured the leaching field in the same location as the existing leaching field. Both fields and the distribution box were 75' from the wetland. All access and excavation would be through the existing driveway. No changes of grade would occur. Erosion control and the vent were on the plan.

Motion made by Chris Currier to issue a negative determination in respect to the replacement of the failing leaching area at 30 Appaloosa Lane.

Seconded by Virginia Cookson.

Roll Call Vote: George Tarr - aye, Virginia Cookson - aye, Chris Currier – aye, and Lauren Lynch – aye. Unanimous in favor.

Notice of Intent (continued) DEP #TBD – 3 Arabian Way – George Benoit Jr. – Mr. Benoit seeks to construct a house and driveway previously denied by the Hamilton Conservation Commission under DEP #172-0615. The denial was appealed to the DEP, which issued a superseding Order of Conditions on March 19, 2021. The denial of project #172 – 0615 under the Hamilton Conservation Bylaw still stands.

Kurt Young (environmental engineer) and Chip Nyland (attorney representing the applicant) were present to discuss the superseding order and appeal to the Superior Court under the local By-law. The revised plan was shown. The common driveway could not be altered due to the easement and the existing bank. The Commission had previously asked for a revision to the lower driveway to pull it out of the buffer zone. The applicant had redesigned the driveway and brought it out in front of the house, which resolved the issue.

Brian Colleran reviewed the perpetual conditions of the previous approval. Vernal pool discussion ensued. The house footprint had been reduced and moved out of the no build zone. Mr. Colleran noted that the vernal pool had a no disturb zone. A caution warning needed to be included in the approval for potential buyers of the lot. The previous approval recognized the vernal pool and conditioned it. Members looked at the previous order of conditions - special condition 31.

Redesigning the proposal was difficult because the retaining wall had already been constructed but Chip Nyland said the previous concerns had been met by the currently proposed design. The driveway would be permeable and shrubs would offset the impact of the house and septic installation. Signage would be installed to indicate the set limit. Chip Nyland said concerns had been met by the redesign of the proposal. If the Commission approved the design, the appeal of the denial would be withdrawn. The DEP had been copied on the new plan and the new approval would not be under the superseding order but under a regular approval through the Wetlands Protection Act and the By-law.

Along with boilerplate conditions, a special condition regarding monument demarcation (50' – no planting), and a perpetual condition regarding the vernal pool would be added. A condition to give authority to the administrator regarding elements of the plan would be included. Another condition that the buyer return to the Commission with a landscape plan was included. The applicant could return to the Commission for any other activities.

Members discussed that an approval with conditions could be approved. Perpetual conditions would continue from the previous approval including the no cut or no disturb zones. If homeowners wanted to remove trees, etc. they would come back to the Commission. Piles of rock and fill would be removed from the 50' buffer zone.

Motion made by George Tarr to approve the plan seen before us with the order of conditions including the special conditions such as the 50' demarcation and removing materials existing within the 75' buffer zone.

Chris Currier seconded

Roll Call Vote: Virginia Cookson recused herself. George Tarr – aye, Chris Currier – aye, and Lauren Lynch – aye. Unanimous in favor among voting members.

670 Bay Road. Beaver Issues. Emergency Permit.

Brian Colleran said the Board of Health had issued an emergency certification. The beaver had been trapped but the Board of Health did not have purview over the dam removal or beaver deceiver installation. Mr. Colleran described beaver behavior and how the deceiver worked. Town Hall did not want the flooding situation to happen again, offered an emergency certification to pull down the dam, and wanted to accept a plan to stop the situation from happening again. The Town did not have the jurisdiction to control the water level. Virginia Cookson suggested giving the landowner a permit and have him come to the first Commission meeting in September. Mr. Colleran suggested to use a water level control device, such as a beaver deceiver or similar apparatus, to keep the beaver out and keep the water level predictable. Discussion regarding the apparatus would resume at the September meeting.

Motion made by Virginia Cookson to issue an emergency permit under the condition that they remove all of the beaver dams within ten days. They will come up with a plan and come to the commission with a Request for Determination for removal in ten days for the following meeting September 8. If they do something else, after the emergency permit, they need to do a Request for Determination.

Seconded by Chris Currier.

Roll Call Vote: George Tarr - aye, Chris Currier - aye, Virginia Cookson - aye, and Lauren Lynch - aye. Unanimous in favor.

18 Alan Road – Return to Discussion.

Ryan McShera e-mailed the revised plan to Brian Colleran and showed it on the screen. The fence line was highlighted as well as the staging area for construction materials, access for construction materials at the drive, and limit of work within the 50' as much as possible. The proposal would use the south side of the house area and limit the time on the site. No overnight storage of construction equipment within the 50' no build zone would be allowed. Mr. McShera said excavation would need to use the area a little bit, and heavy equipment would need to access the area in the beginning to remove the material from the site, but once the foundation was excavated and backfilled, then work would be conducted from the far side of the house. The septic location was shown to the right of the addition but heavy equipment would not be used in the area. Lumber could be dropped in the area and then hand carried to the construction site.

Motion made by George Tarr that the Commission approve this Notice of Intent for 18 Alan Road based on the plan presented, including Order of Condition as annotated in the updated plan. The new plan would be sent to Brian Colleran to be signed.

Seconded by Virginia Cookson.

Roll Call Vote: Chris Currier - aye, Virginia Cookson - aye, George Tarr - aye, and Lauren Lynch – aye. Unanimous in favor.

Discussions

1) 480 Asbury St. (DEP #17-0470) for a Certificate of Compliance.

Brian Colleran said he visited the site for a new septic system.

Motion by Virginia Cookson to issue a partial Certificate of Compliance for work completed.

Seconded by George Tarr.

Roll Call Vote: Chris Currier – aye, George Tarr – aye, Virginia Cookson – aye, and Lauren Lynch – aye. Unanimous in favor.

2) 41 Ortins Lane – (DEP #172-0614) for the Extension to Local Order of Conditions.

Brian Colleran noted that the applicant did not perform the work to date. The Local Order expired.

Motion made by Virginia Cookson to extend the Order of Conditions for one year for 41 Ortins Road.

Seconded by George Tarr.

Roll Call Vote: Chris Currier – aye, Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye. Unanimous in favor.

3) Patton Ridge Memorandum of Agreement Update.

Brian Colleran would be creating maps for the Memorandum of Agreement (MOA), which would be completed by September. Details had not been completed for the reforestation or wetland garden to date. The MOA would be completed through the Town rather than the Commission but items to be agreed upon would start with the Commission. Mr. Colleran said the agreement would be between the Patton Ridge Association and the Selectmen with the Commission being appointed as agent. The loop trail crossing should be incorporated in the MOA. By using the public access and then turning down the Patton Ridge Road into the emergency access behind the houses at the end of the cul de sac should be considered. The right of way could be moved to the location of the loop trail. Concerns were raised by the Association regarding trespassing, which would allow for trading a non-existing right of way for different land to create a lollipop shaped walking trail. George Tarr wanted Town Counsel's statement of interpretation of the deed to solve a conflict between Patton Ridge and the Commission as to whether it was a blanket public access or only access to the canoe launch. Mr. Colleran responded that there were two right of ways granted to the Town: one was at the base of the road to allow vehicles to turn into the parking area and a right of way access into the deeded public cross over and emergency access. The difference was in the description in the deed versus the pictorial view of the access. The deed indicated that there were two rights of access, whereas the image only displayed one. Another issue with the right of public access to the access road was if it encompassed the entire width of the road including the adjacent grass land to the edge of the property or if it was restricted to the edge of the surface of the road. George Tarr interpreted it to be the entire

width. Town Counsel would be contacted. Mr. Colleran's interpretation was that it only included the roadway.

4) Other Business.

Lauren Lynch said she spoke with two potential candidates to join the Commission.

Next meeting August 11, 2021 at 7:00 pm.

Adjournment

Motion made by George Tarr to adjourn at 9:35 pm.

Seconded by Virginia Cookson

Roll Call Vote: Chris Currier – aye, Virginia Cookson - aye, George Tarr - aye, and Lauren Lynch - aye. Unanimous in favor.

List of documents reviewed

Minutes of July 14, 2021.

Plan of Land 35 Miles River Road.

Plan of Land 18 Alan Road.

Plan of Land 30 Appaloosa Lane.

Revised Plan of Land 3 Arabian way.

Amended Plan of Land. 18 Alan Road.

Prepared by:

Marcie Ricker

Attest

Date

Respectfully submitted as approved
at the 8/8/21 meeting.

Brian Colleran

Brian Colleran

