

HAMILTON CONSERVATION COMMISSION

MINUTES OF MEETING

October 27, 2021

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Members Present: Virginia Cookson, Lauren Lynch (Chairman), and George Tarr.
Coordinator: Brian Colleran
Others present: As noted in the minutes.

This meeting was called to order at 7:00 pm.

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

Minutes

Motion made by Virginia Cookson to accept the minutes of September 22, 2021 as corrected.

Seconded by George Tarr.

Roll Call Vote: Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye.

Unanimous in favor.

The minutes of October 13, 2021 would be approved at a future meeting.

Announcements

The November meeting schedule was discussed. Meetings would be held on Tuesday, November 9, and Monday September 22, 2021.

Seconded by George Tarr.

Roll Call Vote: Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye.

Unanimous in favor.

Public Hearings

Request for Determination of Applicability (RDA) – 59 Ortins Road. Eric and Carolyn Sabo. To install an addition on their current residence..

Brian Stein was present to explain the plan he shared on his screen. The existing home would have a first floor bedroom addition in the current garage space. A new garage would be constructed in front of the new bedroom. A new mudroom would be between the garage and the main part of the house. Mr. Stein said he had met with Brian Colleran to walk the site. Mike DeRosa had reportedly placed a flag at the closest point of the resource and a flag at the corresponding 50' mark. The 100' buffer line dissected the new garage. A silk sock would be placed leaving enough room for a small machine to excavate 4' down for the frost wall and slab.

Members discussed the straight line of the wetland and the 50' buffer zone but Brian Stein explained that the wetland line actually curved off away from the structure on both sides of the flag. Brian Colleran added that there was a steep drop from the grassed yard into the floodplain style wetland stream in the back. The addition would be flush with the back of the house and have a shallow excavation. An RDA was accepted as there was minimal risk to the wetland.

Virginia Cookson wanted to see the wetland line, 50' buffer zone line, and 100' buffer zone line on the submitted plan as well as dimensional notes to the closest point to the building. Brian Stein responded that the backside of the addition would be 68.5' from the wetland. Soil would be used as backfill but excess would be taken off site if absolutely necessary. A note was added to the plan that the 50' flag was the closest point and the straight line was based on its placement. The 100' buffer was also added as well as the location of the silt sock.

Motion made by Virginia Cookson to issue a negative determination of applicability for work being proposed at 59 Ortins Road for an addition to the current residence with the amended plan to be received on the Conservation office with added information requested at the meeting, including the description with the property line.

George Tarr seconded.

Roll Call Vote: Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye.

Unanimous in favor.

Request for Determination of Applicability 127 Echo Cove Road. Nelson Chaderdon. To install an addition on their current residence.

Catherine Streamer (Slate Blue Design) was present to share a PowerPoint presentation on her screen. The slide show featured views from the road and the existing vegetation. Ms. Streamer said 50' wetland stakes had been installed. The house was angled for solar benefits and to avoid disturbing vegetation in the front of the house. Erosion control would be placed between the 25' and 50' buffer lines. Brian Colleran had walked the site with the designer and had no comments. The closest point was outside the 50' line and no trees would be cut down. The 24' x 24' two story addition (890sf) would be constructed on a slab. The slope was flat and materials would be used on site. A small excavator would be used.

Motion made by Virginia Cookson to issue a negative Determination of Applicability for work to be done at 127 Echo Cove Road to install an addition on the residence.

George Tarr seconded.

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

Notice of Intent (NOI). 139 Cutler and 145 Cutler Rd. Flaminio Lanzillo. Both filings would remove an existing building and construct a new dwelling.

John Paulsen was present. The DEP number had not yet been issued. Mr. Paulsen requested a continuance.

Motion made by Virginia Cookson to accept the request to continue the meeting for the NOI for 139 and 145 Cutler Road to our next meeting on November 9, 2021 when they have DEP file numbers.

Seconded by George Tarr.

Roll Call Vote: Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye.

Unanimous in favor.

Notice of Intent. Essex County Habitat for Humanity. 434 and 436 Asbury St. To build a community of several units on a lot, which currently has a single family home. DEP # TBD.
Brian Colleran said the address was not even listed by DEP even though DEP had received the application.

Motion made by Virginia Cookson to continue the NOI for 434/4356 Asbury St of several 40B units until November 9, 2021.

Seconded by George Tarr.

Roll Call Vote: Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye.

Unanimous in favor.

Notice of Intent. 133 Essex St - Chebacco Hill Capital Partners, LLC. To combine the road usage, directional drilling, and water main extension work previously filed as separate Request for Determinations in a single filing. 172 0629

Brian Colleran said Town Counsel said it was appropriate for the applicant to withdraw their request for an ANRAD so it was not on the agenda. Information from the ANRAD would be rolled into the NOI process. The applicant asked for a continuance to put the information together into a package.

Motion made by Virginia Cookson to continue this meeting until November 9, 2021 for the 133 Essex St. NOI for three items: directive drilling, access to the site for the septic, and water main access to lot.

Seconded George Tarr.

Roll Call Vote: Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye.

Unanimous in favor.

Discussions

453 Essex St. / 27 Appaloosa Wetland Filling

John Serafini was present to represent the homeowner, Paul Johnson. Mr. Serafini noted the foundation for the new home had been allowed but the utility connections in the driveway going out to Appaloosa needed to be resolved. Mr. Serafini noted the old Orders of Conditions regarding the farm road, which was accessed via Essex St. The Certificate of Compliance for the work had been signed in August. Mr. Serafini met with Brian Colleran to discuss the filled area along Appaloosa Lane and requested a continuance to allow him to access and digest the history of the Town's records regarding the project.

John Serafini said he was working with Mr. Rogerson (Hayes Engineering) to file an NOI and hoped the resolution for the filing could be rolled into the application. Mr. Serafini said there was a potential that the filled area might have been related to farm uses, which would impact the Wetlands Protection Act. Mr. Serafini noted the involvement of the Northeast Mosquito Control District Guidelines. Mr. Serafini said that the applicant would come into compliance if they were out of compliance and hoped that the application for the house would be able to move forward.

Mr. Rogerson said he had been doing preliminary calculations for the estimated fill that was done on the DEP website. Mr. Rogerson also used the Oliver maps. The NOI would show the water main, electric lines, and gas lines that would come off of Appaloosa and go to the house via the easterly edge (furthest away from the wetland line), which would not run through the wooded area.

Brian Colleran said the Commission needed to decide what to do about the unpermitted fill before considering the utilities to the house. Lauren Lynch agreed and wondered why the requested documentation had not been submitted. John Serafini responded that it would be submitted with the NOI. A site walk had been conducted a few months prior to the meeting.

Mr. Rogerson said he had plotted the information from the DEP website onto a plan, adding that before the construction of Appaloosa Lane, there was not a wetland on the site. Mr. Rogerson said that before Appaloosa was constructed, the drainage continued all the way down to Chebacco Lake. The drainage system was interrupted and caused the isolated area to develop as a wetland. Mr. Rogerson said he would bring the plans to a future site walk to show what was there prior to and after road construction, the orthographic, the wetland line, and the replication proposal line. Virginia Cookson recalled that when Appaloosa Lane was constructed, the developer had claimed bankruptcy without having dedicated funds for finishing the stormwater management. Ms. Cookson said there was a lot that was currently wet that had not been wet before construction.

Brian Colleran suggested that the Commission tell the homeowner what to do via an Enforcement Order rather than waiting for a NOI submission. Mr. Colleran requested hiring a wetland scientist to conduct forensic wetland work to determine the boundaries of where the wetland had been. Mr. Colleran did not think using Oliver maps was helpful as it would not address wetlands on both sides of the road. Mr. Serafini said the applicant was willing to have an expert determine the historic wetland lines were based on vegetation but wanted to settle the access and utilities sooner due to the winter approaching. Mr. Rogerson said determining where the historic wetland line had been would be difficult with four to five feet of fill as an auger would likely be halted by debris such as a rock but using a larger piece of equipment would create a larger disturbance.

George Tarr said he did not see how filing an NOI would resolve the unpermitted fill issue. Virginia Cookson noted the immediacy of having an Enforcement Order and thought the NOI should be filed separately. Ms. Cookson said determining where the fill had been placed could be done with an auger. While a friendly Enforcement Order requesting information had been sent on September 22, 2021, a response had not been received. Brian Colleran explained that a formal Enforcement Order (Wetlands Protection Act form) would be filed with the State, which would set up a separate process from receiving a NOI. Mr. Colleran said the applicant was in charge of the NOI, while the Commission was in charge of an Enforcement Order.

John Serafini explained that the original request for more information had been issued on September 8, 2021 but Mr. Serafini had requested more time to retrieve information from the Town's records. Mr. Serafini said he had enough information to make a good filing and hoped to proceed in that direction. Lauren Lynch and Virginia Cookson agreed that it seemed like two

issues. Brian Colleran had drafted an Enforcement Order specifying that the Commission wanted a forensic delineation done by a certain date. The coordinator was allowed to issue an Enforcement Order with the Commission signing it at the next meeting. Mr. Serafini requested that the Commission hold off on the Order until information had been submitted. .

Members discussed that there was no question that the area had unpermitted fill. John Serafini noted the area had been in agricultural use, which would have a full exemption under the Wetlands Protection Act and amplified in detailed regulations in support of agriculture. Lauren Lynch said the Commission had clear proof of a violation and did not think there would be legal issues over the issuance of an Enforcement Order.

Mr. Roberson asked if he would be considered qualified to be the third party reviewer as he was a certified wetland scientist and soil evaluator. Brian Colleran said yes but if restoration was ordered, a restoration professional would need to be retained. Members questioned if a wetlands professional, who was hired by the applicant should serve as a reviewer as well as it might be a conflict of interest.

Virginia Cookson said solving the unpermitted wetland filling problem should be resolved before a decision could be rendered on an NOI for utilities going through the same area. Lauren Lynch and George Tarr agreed. Robin Reader (applicant's daughter) asked the Commission to wait before issuing an Enforcement Order. John Serafini added that an Enforcement Order implicated that penalties and a legal process would cause an adversarial posture that did not have to happen. Brian Colleran responded that legal fines would be discussed when appropriate and were permitted every day of the violation. The Enforcement Order was the Commission stating they wanted things done by a certain date. An NOI could take a long time to decide. The Enforcement Order was not intended to lead toward legal battles or judgment of the applicant, but more a tool to ensure the achievement of results needed to relieve the violation that had occurred. Ms. Cookson added that the Commission had never fined anyone; but chose to work with people. Ms. Lynch agreed that the Commission would not issue fines or penalties.

A list of qualified wetlands scientists that could be used as a third party, were listed on the Commission's website. Mr. Roberson asked if the Commission would accept the wetland line as presented by the third party or would the applicant need to file an ANRAD or RDA. Brian Colleran responded that it would depend on the line, the restoration of the wetlands, and the trenching for the utilities, which would be confirmed in an NOI.

John Serafini said the applicant would go along with determining the historic wetland line location but wondered why it could not be done within the NOI filing. Lauren Lynch reiterated that she wanted to resolve the details of the violation before the filing.

The Enforcement Order would include: that the recipient acknowledges the letter, intends on complying, and will establish a forensic wetland fill area finding the boundaries of the wetland on either side of the wetland by December 1, 2021. The document may be amended in the future to reflect new information. John Serafini said the applicant should be involved in future amendments. Brian Colleran said the process was not punitive but was to create a functional ecology of the resource area.

Virginia Cookson suggested asking the applicant to do the forensic determination by December 1, 2021. Brian Colleran said he had spoken with DEP who said they would not be able to assist the Town in a restoration, replication, revegetation process, if a formal Enforcement Order was not issued. In response to Robin Reader's question as to whether her father had done something wrong, Ms. Cookson said someone had filled the wetland and as the owner of the property, her father was responsible. John Serafini suggested that the applicant return to the Commission and present information regarding the wetland line at their December meeting.

Brian Colleran suggested that he prepare the Enforcement Order and the Commission could vote on it at the next meeting. John Serafini would provide information to the Commission by noon on November 4, 2021. If information was not received, the Enforcement Order would be issued and discussion would be held.

Motion made by Virginia Cookson to postpone a consideration for voting for an Enforcement Order for 27 Appaloosa Lane until the next meeting on November 9, 2021.

George Tarr seconded.

Roll Call Vote: Virginia Cookson – aye, George Tarr – aye, and Lauren Lynch – aye.

Unanimous in favor.

The applicant's letter would include the history of the farm, the process for restoring the wetlands and boundaries, and other scientific information. Brian Colleran wanted to see technical progress for solving problems. A schedule for expert review for a subsequent look was acceptable as retaining a professional within one week would be unrealistic.

Pingree School Enforcement Order.

Pingree school had notified Brian Colleran that they had inadvertently mowed invasive species between the playing fields, which was unpermitted work in the resource area. Mr. Colleran had written an Enforcement Order telling them to put together an invasive species control plan for midwinter. Members would sign the document.

Patton Homestead Management Agreement with the Selectboard – Land Management Plan.

George Tarr said he had spoken with the Select Board, who needed a land management plan before they could sign the Memorandum of Agreement. Chebacco Woods Land Management Plan would be used as a template. Virginia Cookson and Mr. Tarr would work together and the Commission would vote to approve it. Ms. Cookson noted that the Chebacco Woods Land Management Committee had not received notice of work being done on Chebacco Road.

Other business

The next Conservation Commission meeting was scheduled for Tuesday November 9, 2021 at 7:00 pm.

Adjournment

Motion made by Virginia Cookson to adjourn at 10:01 pm.

Seconded by George Tarr.

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

List of documents reviewed

Plan of land 59 Ortins Road

Slide show of 127 Echo Coe Road.

Enforcement Order for Pingree School

Respectfully submitted as approved at the December 8th, 2021 meeting.

Brian Colleran



