

October 23, 2012 4:17:10 PM

WATERCOURSES AGENCY ADOPTED MINUTES

I. CALL TO ORDER

Ryan Mihalic, Acting Chairman, called the Regular Meeting of the Conservation Commission to order at 7:30 p.m. in the Main Meeting Room at the Town Offices. Other members and alternates in attendance were Alan Needham, Patrick Kottas, and Donald Rieger. Also present were Howard Beach, Conservation Officer, Janis Prifti, Commission Clerk, and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Mihalic appointed Commissioner Kottas to serve as an alternate for Commissioner Zackeo, and Commissioner Rieger to serve as an alternate for Commissioner Winters.

III. SHOW CAUSE HEARING

a. Cease and Desist Order at 4 Apple Lane

Mr. Beach stated that notice was properly served twice, with a certified return, and Mrs. Bosworth left a voice mail they received the letter and would try to make it to tonight's meeting. He said a cease and desist was issued about a year ago for another project which then slipped through the cracks for follow up. He said there are a number of issues, including: establishing where the original property line is in the stream; whether the dock is across the property line; that the dock is in violation of the zoning setback; and that the dock is built in wetlands without a permit. He will speak to the Town Attorney regarding how to proceed regarding this 80-foot dock. Commissioner Mihalic said it is in violation of Section 14.3 with a cease and restore to show cause having been issued and the homeowner having failed to appear twice. He said the Commission could issue a notice of violation citing jurisdiction, describing necessary actions or steps to

correct the violation, and requiring the offending structure in the water course, wetland and upland area be removed. He read section d. that "any person who commits, takes part in, or assists in a violation or provision of these regulations shall be fined not more than \$1,000.00 a day and/or imprisoned for not more than six months for each offense. Each violation ... is a separate and distinct offense." The Commissioners discussed the date of notice would be the show cause hearing order date; Commissioner Mihalic said the person has to come before the Commission and show cause as to why his conduct is okay and ask the Commission to grant a permit. Mr. Beach said there have been very few fines issued in the past and he will speak with Town Counsel.

Mr. DeCrescenzo, Town Attorney, joined the meeting at 7:40 p.m. and the Commissioners reviewed their discussion with him and it was determined the violation fine would begin on 7/23/2012, the date the show cause was issued.

Commissioner Rieger made a motion that we find there is a violation of the Regulations based on the information brought to us by Town Staff upon careful inspection, and that we have on two occasions issued cease and desist orders and instructions for the offending party to appear. These have not been honored so we find there is a violation and pursuant to Section 14.3.d of the Regulations we assess a fine of \$1,000.00 per day beginning with the date of the first notice, which was July 23, 2012, and each day's continuance will accrue another \$1,000.00.

Commissioner Kottas seconded the motion, and it was passed unanimously.

The Commissioners stated at this point Mr. Bosworth must appear before the Commission, and the \$1000/day fine is invoiced to him providing the opportunity to pay; the next step would be Superior Court. Commissioner Mihalic noted for the record this action is not taken lightly or often, but multiple opportunities over 2 months have been provided to Mr. Bosworth to meet with the Commission and communicate his actions. Mr. Beach added Mr. Bosworth has spoken with an attorney; the next step is to send the order via certified mail, and they can still appear before the meeting ends tonight.

IV. PRESENTATION(S), DISCUSSION AND POSSIBLE VOTE

a. Application #12-20 of Timothy J. Hayes, Owner, to remove from pond the algae growth, silt, mud, and other organic materials currently adversely affecting pond health on property located at 3 Linda Lane (Map D06, Block 303, Lot 015).

Mr. Beach said the Applicant has again asked for this to be tabled and he

has asked him to withdraw and resubmit the Application when they are ready.

V. DISCUSSION AND POSSIBLE ACTION

a. Meadowood Conservation Easement

Mr. Beach said at the last meeting the easement was provided to the Commissioners for review and comment. He contacted Barbara Newman at the Army Corps of Engineers, who confirmed they drafted it; and regarding document revisions, she indicated as long as the 2 parties agree, changing some wording is agreeable and will not affect the permit. Subsequently, Ms. Newman sent it to their counsel for review and an answer has not yet been received. He said in the current document, removal of invasives appears not to be allowed by either party and Ms. Newman said that was not their intention; her concern was to not substantially increase the burden on the grantor and they are amenable to the parties working that out. He said there is a question as to who is responsible for active stewardship of the parcel. Commissioner Rieger said in his reading of the document it doesn't require anyone to do that and there is no obligation of stewardship; the Commission wants that obligation in the document. He said invasives will have to be dealt with over the centuries and the stewardship issues must be clear. Mr. Beach said in 32 years he has never before seen an open space dedication taken as an easement. Mr. DeCrescenzo said there are conservation easements for open space in small subdivisions where the Town doesn't really want to own .88 acres of land. He said the Conservation Easement form was approved by both the Zoning and Planning Commissions last week and if the Conservation Commission makes any changes, it is his opinion it need not go back to Zoning and Planning for further approval, unless the area of the easement is changed. He said this discussion is to define the role of the parties; the last step is approval by the Board of Selectmen. Attorney Tim Hollister asked if a proposed easement revision has been sent to the Army Corps of Engineers for review; Mr. Beach said that Commissioner Rieger's suggestions were provided to them in a marked-up copy.

Mr. Hollister reviewed that in 2007 there was an overall Meadowood development settlement with Zoning, Planning, Conservation, DEEP, and other agencies based on a 132-page plan dividing open space into 3 categories, including: 1) a 77-acre triangle on both sides of Barndoor Hills Road sold to the Town 5/2008; and public open space comprised of: 2) 87 acres of land owned by the applicant and then the homeowners association, subject to public access trail easements; and 3) 20+ acres of detention basins, ponds, tree belts, and landscape buffers not subject to public access and owned by the homeowners association. He said another important part of the settlement was Wetland 10 in the center, which contained a high amount of residual pesticides and high groundwater that did not lend itself to the

mixing of soils in place and the environmental consultant said had to be removed and disposed of offsite; this triggered the involvement of Army Corps of Engineers and DEEP. He said once they became involved, they looked at the entire property and 3 residential lots were eliminated, some detention basins were moved slightly, and at the end of the process, Army Corps of Engineers issued the Section 4-4 permit. He said a condition of the permit on page 4, was to record a Corps of Engineers-approved conservation easement using their easement model and making it consistent with the settlement plan, soil remediation plan, and other components, which made for a complicated process. He said the last 2 pages show key emails from Ms. Newman, including appointing the Conservation Commission as the enforcement agent along with the Town, and his response requesting changes to make the document clearer. He stated his belief that Commissioner's Rieger's comments are substantively included in the document structure; Section 2 is a series of use limitations with the underlying obligation to preserve the property in its natural state; the exceptions are in paragraph 3, which he understands to include removal of invasive species, dead trees or brush, pruning and thinning trees and brush, planting trees shrubs, vegetation, etc. He believes the Army Corps of Engineers wants the property left in its natural state and cleaned up for safety or compelling reasons, the public access trails laid out and maintained; and they do not want pesticides, vehicles, and other things listed. He said Griffin Land is willing to work expeditiously with the Commission and plan to complete remediation in the next 60 days; they would like to close out the process and not add another 6 months to working with the Army Corps of Engineers; they are also closing out all the other permits.

Commissioner Mihalic asked, under 3 the exceptions, about the written approval from the grantees and if that is where more specificity could be raised. Mr. DeCrescenzo suggested a management plan could be developed independent of this document but recorded with it that would flesh out the details of who is responsible for stewardship that the Commission is looking for. He did not believe the Army Corps of Engineers would object to a document where the parties agree on the details of the relationship, whereas, a redrafted conservation easement to Army Corps of Engineers would take a longer time. He said the Conservation Commission approval could be conditioned on its review and approval of a management plan in perpetuity. Commissioner Rieger stated the issues raised are essential components of a management plan for stewardship. Mr. Beach said as long as the Corps of Engineers' requirements are met, Ms. Newman does not care about the details agreed to. He said stewardship is currently held by Riverbend until a certain percent of ownership is reached, and then the homeowners association takes over responsibility; but Area F lots along Firetown Road are separate from the homeowners association, although the open space is owned by the homeowners association. Mr. Hollister said they have to go to

the Selectmen for approval on 9/24/2012. Mr. DeCrescenzo said the BOS will not approve it unless all 3 Commissions have signed off.

Commissioner Needham asked under "Reserve Rights" it says "the public has no rights of ownership, entry or use of the property", but they are allowing use of the trails. Mr. Hollister said the trails are overlayed on the conservation easement and public access is just to the trails. Commissioner Rieger noted that Chairman Miller is on record that access only to the trails is insufficient. Mr. Hollister said it is in the terms of the settlement and signage will be provided; therefore, people cannot camp off the trail. Mr. Beach said that Town open space normally allows public use and the Commissioners noted it is characteristic of easements. Commissioner Rieger said a question to consider is what the Commission is saying to the BOS; whether the BOS is okay with taking the easement conceptually, and we can make the document work, or we think they should take an easement. Mr. DeCrescenzo said the easement was judged acceptable by the Planning Commission, which trumps everyone else regarding the form of conveyance under the Charter. He said the Conservation Commission as a party has a lot of input as to the form of ongoing enforcement. Mr. DeCrescenzo said the Town is better off with the grantor providing the management function with everything the Town looks to protect being protected, including the public trails. He said the Army Corps of Engineers is clear they prefer the conservation easement, not the BOS having the stewardship obligation. Mr. Beach said in the HOD Regulations there is a 10% open space dedication required in fee; Mr. DeCrescenzo said it says "acquire" and the open space satisfies that. Mr. Beach noted Mr. Sawitzke said the Town would like to have control of the open space on Firetown Road and the piece on Barndoor Hills connecting McLean with Great Pond; it was agreed to look at the map to see what could be done.

Mr. Hollister said they have contractors lined up to complete remediation in 60 days; Mr. Beach noted less than a 30-day window to get seeding done by October 15th.

Commissioner Rieger made a motion acknowledging that the Planning Commission has accepted the use of the Conservation Easement to satisfy the requirements of the Settlement Agreement and that the Conservation Commission has reviewed the Easement document and is willing to accept as Grantee such a Conservation Easement and authorizes the Chairman to execute the document we have reviewed on the Commission's behalf and we recommend this transaction to the Board of Selectmen, subject to our understanding that we will agree with the Grantor on a Property Management Plan that will assure appropriate stewardship of the land and generally resolve issues that might arise under the Conservation Easement document, which Management Plan would itself be an executed Agreement and recorded on the Land Records, and that acceptance of the Conservation Easement and authority of

the Chairman to execute it is conditioned upon our agreeing to such Property Management Plan.

Commissioner Kottas seconded the motion, and it was approved unanimously.

Commissioner Rieger requested as the management plan is developed that they stay in contact with Mr. Beach. Mr. Beach noted that the Army Corps of Engineers is extremely impressed with the Town's interest in this document and extreme thoroughness.

b. Discussion and possible recommendation of Town acceptance of a gift of approx 5.1 acres of property (Map Block Lot 38A and Lot 39) on Riverside Road

Mr. Beach said Mr. Sawitzke, who is in charge of all capital projects, reviewed this potential gift and recommends approval. Mr. Beach showed the map location of this property near Warner Nursery on Riverside to the Commissioners and the connection to Land Trust parcels. Commissioner Mihalic noted the storage of oil tanks in the wetland is a regulatory violation. Mr. Beach said in a 1975 court order they were prohibited from storing or using bulldozers, excavators, power equipment; nonetheless, Warco Construction consolidated on the site. He said Mr. Sawitzke has spoken to Mr. Warner, who stated he would buy the encumbered part of the land in order to release the Town from any liability issues. Mr. Beach said when he learned about this there were not 10 days to issue a show cause hearing for this meeting. The Commissioners noted it is a wetland area with flooding in the rainy season; the land would need to be cleaned up immediately, even if Mr. Warner buys the land. Hydrocarbons are known to be in the area and the Commissioners would like Mr. Warner to come in for a permit and remediation discussions. Mr. Beach noted DEEP will likely need to do soil testing and sign off. Commissioner Mihalic summarized there are 3 issues: 1) either the estate needs to fix the problem; 2) or Mr. Warner says it is his problem and he will fix it; and 3) the Commission needs to craft the permit and requirements; however, it may be above the Commission's pay grade if a lot of remediation is required. Mr. Beach cautioned that after 2-3 floods, tank residue likely has spread some distance. Commissioner Rieger pointed out there is no connectivity with the Land Trust parcel, but there is a clear right of way to Tanager Hill with acquisition of certain land.

Mr. Beach noted this year there have been many after-the-fact permits and the Town is looking at tripling the permit fee for them, or to impose violation penalties, if applicable. Mr. Beach said there is no penalty for building code violations and the Town has 3 years for Superior Court action. He said a subsequent owner may come in for a permit and learn the previous owner made changes to the home not to code that need to be

remedied; a subjective standard for fines would likely be required.

Commissioner Rieger made a motion to table discussion of this gift property pending resolution of some related issues and instruct staff to issue a written order by Certified Mail to both the property owner and abutting property owner citing violation present there and to issue an order that the offending activity be ceased and instructing the abutting property owner to appear before the Conservation Commission at the next meeting to give that person an opportunity to be heard and show cause why the order should not remain in effect.

Commissioner Kottas seconded the motion, and it was approved unanimously.

VI. INFORMAL DISCUSSION

a. Proposed brook crossings at Dorset Crossing

Mr. Beach was surprised they were not in attendance. He provided a handout to the Commissioners and said they have an old historic dirt road crossing at Saxton Brook and showed the Commissioners a map layout. He said the owner wants a crossing connecting the 2 parts, or a 3rd permanent crossing, which crossings include a street and driveway right next to it and 3rd crossing further down. He said Hesketh indicated the land purchaser wants to do this, but with extreme diversity of habitat in this area it may prevent the Commission allowing a 3rd crossing. Mr. Beach said they have not yet come in for a permit for the back half of the project.

Regarding the Commission's advisory opinion, Commissioner Mihalic referred them to Section 10.3 of the Regulations which state, "In the case of an Application which received a public hearing, a permit shall not be issued if the Commission finds on the basis of the record that a feasible and prudent alternative does not exist." He said they would likely need to show that 2 bridges next to each other are necessary. He noted a public hearing occurs if there is a petition, or it is a public policy issue, or involves a significant activity because it involves a bridge over a water course. The Commissioners noted they are not predisposed on the question, but the Applicant needs to understand the statutory burden to be considered. Mr. Beach added Dorset Crossing's Environmental Scientist has indicated this is a valuable wetlands corridor; Commissioner Mihalic noted that in every discussion with them, they have talked about how they will preserve that. Mr. Beach said Dorset Crossing has talked about a conservation easement through that area; Commissioner Rieger stated because Saxton Brook is a tributary of the Farmington River, the National Park Service might have to review this proposal under Section 7.

b. Election of Officers

Mr. Beach said the Bylaws require the election of officers every September and suggested the Commissioners consider whether anyone wants to step up or down; the 3 officers are Chairman, Vice Chairman, and Secretary.

Following up on the tributary, Commissioner Rieger clarified a review might be required under the Wild and Scenic Act by the National Park Service. Commissioner Mihalic said this needs to be known by Applicants in the beginning. Commissioner Rieger said it is very informal and can be done quickly. Commissioner Kottas asked if it should be on our checklist. Commissioner Rieger will look for existing information on this federal requirement. Mr. Beach said 5 streams in Town are regulated under FEMA and are in the Aquifer Protection Area, which leads them to Zoning. He said an out-of-town person coming in to develop property might not know about federal requirements.

Regarding Big Y's pervious pavement, Mr. Beach said the State is okay with it, but to his knowledge it is not allowed in that area. He noted Drake Hill's permeable pavement is looking worn, as opposed to permeable concrete which wears well. He said porous concrete is not common in this area because of frost issues.

VII. CORRESPONDENCE/ANNOUNCEMENTS

Mr. Beach said in the last section being built at Powder Forest they are connecting roof leaders on a house within the upland review area, about 70 feet from the wetland, and they are running a pipe to a level area because of the steep 10% drop in grade. The Commission authorized Mr. Beach to deal with this administratively.

VIII. APPROVAL OF MINUTES of September 4, 2012

Tabled until the next meeting.

IX. ADJOURNMENT

Commissioner Kottas made a motion to adjourn the meeting at 9:15 p.m. Commissioner Rieger seconded the motion, and it was passed unanimously.

Ryan Mihalic, Secretary

