

Bolton Conservation Commission
September 1, 2016 Minutes
Town Hall, 7 pm

Present: Brian Berube, Chair; Liz Luc Clowes, Jeff Larence; Karen Overfield; Kathy Sferra, Interim Conservation Administrator

The meeting was called to order by Brian at 7:00 pm.

Minutes: On a motion by Brian, seconded by Liz, the Commission approved the minutes of 4/26/16 and 5/31/16 as drafted.

Request from Nashoba: The Commission reviewed a request from Nashoba to use existing trails at Bower Springs for cross country meets. This has been done in the past and the Commission approved doing it again. Jeff offered to post a sign at Bower Springs.

Upcoming Meetings: The Commission's upcoming meetings will be 9/13, 9/29 and 10/13.

Staff Updates:

Butternut Mowing: Based on an update from staff, the Commission was agreeable to hiring Jim Henderson to mow at Butternut. It was noted that there is sufficient funding in the budget.

Conservation Administrator Interviews: The Commission discussed possible dates for interviews. Kathy will get back to Donna with Commission member availability.

Poison Ivy Spraying: The Commission discussed spraying of poison ivy at parking lots and trailheads. Kathy noted that a complaint had been received about this. It was noted that there is an approval that allows this. The consensus of the Commission was that they would like to continue this program.

Public Hearing - 50 Meadow Lane - Childs - Request for Amended Order of Conditions

Present was Brandon Ducharme from Ducharme and Dillis representing Mr. Childs. He noted that he had been out to look at the site. There was one outstanding issue with the lower culvert. Harold Brown had requested a splash plate (e.g. stone) put at the end of the culvert. He explained that the new pipe installed was oversized and there is no sign of erosion. He said they would install rip rap. The additional culvert they would like to install is a one day job. They will patch when done. He said that it is a steep drive and there is no erosion now. The Commission reviewed a draft Order and would like to add conditions to put rip rap on the west side of the road for stabilization and rip rap at the end of the pipe. Brian moved to close the hearing, Liz seconded and it was approved unanimously. Brian moved to issue the Order of Conditions as amended. Liz seconded and the motion was approved unanimously.

Appointment with Maria Shoemaker- DiPietro Enforcement - Teele Road

Maria Shoemaker of Teele Road was present and had requested time on the Commission's agenda to discuss clearing that was occurring on the DiPietro property on the Stow/Bolton line. Sferra noted that an Enforcement Order was issued by the Commission on August 9th and sent by certified mail. It requires the property owner to cease and desist from activities in wetlands and the buffer zone. The Commission has proof of receipt. Work is still occurring. The deadline

for filing a Notice of Intent has not been reached. Town Counsels from both Bolton and Stow are planning to confer with DEP to discuss enforcement.

Shoemaker noted that they have lived there for 14 years and are concerned that the work that is occurring will impact their property. They are concerned about water and a perennial stream on the property. She noted that seasonal flooding occurs. She also noted that she had sent photographs to the Commission of logs and other debris that have been dumped on her side of the stone wall. They have spent money to have the property surveyed and some of the flags were taken down after they were posted. Brian noted that the property owner does not have permission to be working in wetlands. He has been ordered to stop work. He noted that Stow is pursuing legal action and Bolton may also do so. Brian noted that aerial photos make it clear that work is occurring in the Commission's jurisdiction. Shoemaker asked about the impact of the Enforcement Order and Sferra explained that it is a step in the process. She noted that Stow had issued an Enforcement Order in 2014 and has been trying to get compliance since.

Liz asked if she had seen them working and Shoemaker said that she had. She said that he had a backhoe out there recently. It is unclear what work is occurring. Maria asked if the town of Bolton going to court. Brian asked if there is an outside contractor doing the work that could be contacted about the violation. Sferra said to date that they have not seen trucks with a name on them. Maria showed a map of the area where the backhoe was working. Sferra said that she did not think it was possible to put in a septic there that was outside of the buffer zone however there is a lot of upland to the rear of the property. Maria pointed out the location of a stream on the property. Jeff asked where her well is located and it was noted that it is at least 100' from the property line. Sferra said that both Stow and Bolton sent letters to the ZBA. Jeff clarified that the filing is due on the 15th. Maria asked about the next step assuming he doesn't respond. Sferra responded that it is a conference call to look at legal options and determine what is most likely to be successful. Brian said that would keep moving the process forward. Maria said the Commission is welcome to look from her property, please just let her know by email first.

Appointment with Fred Coon - Bond Release - Century Mill Estates

Fred Coon was present and reviewed the bond amounts for the subdivision that the town is holding. He highlighted the major work that might need to be done in the buffer zone including site stabilization/hydroseeding of 1.3-1.5 acres, and cleaning out the sediment basin. There is additional bond being held by the Planning Board. Fred reported that hydroseeding costs 7 cents/square foot. Doing it twice over the full area would be \$9147.60. Jeff asked to look at tree marking with Fred; the budgeted cost of this is \$1000 which Fred is agreeable to. After discussion of the estimated cost of the work, and the possible need to pay prevailing wage, the board agreed to reduce the bond by 50% on a motion by Brian, seconded by Liz and approved unanimously. The Commission will still be holding \$17,250 for the work.

Appointment with Robin Piccarello - Lot 1 Vaughn Hill Road

Robin and Joe Piccarello were present for the discussion. They are purchasing this 6 acre lot which has land area within the buffer zone and rare species habitat. They would like to maintain as meadow some additional area at the rear of the lot so that her kids have areas to play and they are able to make use of an existing barn at the rear of the lot. They would also like to move a split rail fence that was required. The access to the barn would just be for pedestrians, not vehicles. They are not planning to make any significant improvements to the barn. Natural Heritage has approved the additional meadow area, which is in the buffer zone. The location of wetlands both on site and off site was noted. There would be a gate in the fence to allow access to the barn. NHESP suggested putting up posts to delineate the mowed area. Liz expressed concern about wildlife passage. Sferra wondered if there is a logical spot to narrow the mowed

area to encourage wildlife passage. Brian expressed interest in doing a site visit and this was scheduled for September 6th. The Commission will put this on the next agenda.

Public Hearing - 466 South Bolton Rd. - GAPCO - Notice of Intent

Brian reopened the public hearing. Peter Bemis was present on behalf of the applicant. He noted that he had revised the proposal in response to the last Commission meeting and had significantly modified the plan to have the house face onto Lively Road and eliminate the need for wetland alteration and replication. He provided a copy of the plan. He removed the direct connection to the storm drain on South Bolton Road, and will install a headwall with a 12" ABS pipe leading to a rip rapped swale. He noted that the Nashoba Board of Health will need to approve the revised plan. They are still planning to remove the dead ash. There will be three trees planted by the swale, and 10 trees near the wetland. He is proposing a split rail fence around the wetland area. They will save the large sugar maple. The construction sequence provides for the environmental improvements to be completed first. He will address the knotweed and take it off site. Sferra noted that they will be filling over the knotweed contaminated soil. Bemis suggested an impermeable membrane over the knotweed and suggested condition language stating that it would be sequestered by a mutually agreeable method. Sferra offered to send Bemis some resources on controlling knotweed on construction sites. Jeff noted that the house footprint is tight and wondered if there would be a deck. Bemis said that he would like to add a 16x12 deck and sketched it on the plan with a stairway, all outside the 25' buffer. He would prefer not to have to file for it. It was suggested that signage be added at both ends of the split rail fencing noting that this is an environmentally sensitive area. Sferra also suggested a note on the plan indicating this for the benefit of prospective homebuyers. The Commission asked that stockpile locations be sketched on the plan. Bemis identified these areas on the plan. He dated the revised plan 9/1/16. Sferra noted that portion of the house are within the Commission's 25' buffer, but that the Commission could find that it is an improvement from the existing condition. Bemis photographed the copy of the plan and said he would submit a clean copy to the Commission by email and hand delivery. Brian moved to close the public hearing, Liz seconded and the motion was approved unanimously. The Commission reviewed a draft Order and revised it to include reference to the signs. Brian moved to approve the amended Order, Liz seconded and it was approved unanimously.

Appointment with Ken Nicewicz - Expansion of Farm Pond – Sawyer Road

Ken Nicewicz was present for the discussion. He noted that his family has been farming the land since 1929 and it is an APR farm. He has four irrigation ponds, some of which are so low that they can't use the water to spray the trees due to high bacterial count. They have an irrigation well, but are concerned about drawdown and are using it judiciously. He has been working with NRCS to design an expanded farm pond and submitted information from NRCS on water needs, and pond design, as well as a copy of the Conservation Plan for the farm. He would like to expand an existing unlined pond located in a low spot on his property near a culvert. This area was formerly used as a pond by dairy cows. He noted that the Fire Dept. would also like to install a dry hydrant there. He described that there could also be a potential benefit in terms of beaver trapping and diversity of wildlife habitat. It was noted that Brian and Kathy had done a site visit. Brian noted that Ken did a test hole and found water at three feet. Sferra included a copy of the regulations regarding "normal improvement of land in agriculture" in the Commission's packet and referenced them. She noted that there is an agricultural emergency provision in the regulations which would allow a water supply project like this, but not in rare species habitat. She talked to Natural Heritage and they did not indicate any flexibility in this regard. She then shared the "normal improvement" regulations with Ken and urged him to talk with NRCS. She reviewed the conditions in the regulations with the Commission. Brian

noted that there is an economic hardship as well. Sferra noted that the dry hydrant shouldn't be installed without an RDA filing, as it is not an agricultural project. Jeff tried to clarify how much of the demand is due to the extent of the crop and how much is due to weather. After discussion, Brian moved to issue a finding to permit the expansion of the pond not to exceed 10,000 sq. ft under 10.04(2), finding that it meets the definitions in the regulations. Liz seconded the motion and it was approved unanimously. Sferra said that she would send a letter to Nicewicz summarizing the findings and conditions of the approval.

Public Hearing - Lot 1 Century Mill Road - Slade - Notice of Intent

Sferra reported that Scott Goddard had sent an email requesting a continuation to the next available meeting. She also noted the staff report in the packet which was prepared after the site visit. Brian said that it was helpful. The Commission agreed to send this to Goddard. Jeff asked about hiring a third party consultant and if staff could arrange that. On a motion by Brian, seconded by Liz the public hearing was continued to the next Commission meeting, anticipated to be 9/13/16. We will discuss hiring a consultant at the meeting.

Resident Comment: Ada Woolston of 651 Main Street was present and wanted to discuss water conservation. She asked if the Commission could urge people to conserve water. She noted that she has a shallow well that is in trouble. It was noted that there will be an article on the drought in the next Bolton Independent and the Commission would determine if anything more was needed. Possibilities include a letter to the editor, use of the variable message signs, or perhaps a conversation with the Selectmen. Woolston also expressed concern about the mowing of ball fields and feels that mowed areas are being expanded and cut too low to the detriment of habitat. She mentioned the community gardens in particular. She suggested that the Commission discuss this with Harold Brown.

Update - Taylor Road Enforcement Order - Meeting with Leo Garneau

Leo Garneau was present on behalf of Rob Taylor. He said he is reluctant to file a Notice of Intent to respond to the violation. He noted that it has taken a long time and may take longer now that Natural Heritage is involved. He wants to know if a survey will be required for the wetland line. He would like to be able to submit a sketch. He said everything west of the brook to the property line is definitely within the Commission's jurisdiction. He is also researching the agricultural exemption. He said that he knows that he is trying the Commission's patience, but he wants to do things right. Sferra said that she had spoken with Garneau last week and made it clear that the Notice of Intent was late and that she had said that she didn't want to be sitting in front of the Commission tonight and still have it not filed. She said that three months ago, he said he would file in a month. She explained the difference between working under an enforcement order with a restoration plan and working under an Order of Conditions. She said that her understanding is that this applicant would like to establish a farm field and plant alfalfa, not restore the site to a natural condition.

Leo said that at this point as far as he is concerned, the Natural Heritage issues take precedence. Sferra explained that this is a separate issue. She said the Commission will coordinate with them. She said that they can file a sketch of the wetland line. Then they need to talk about restoration and what future work will be allowed. Leo said he will only file something that will be defensible. Brian asked how many months that will take. Leo said there could be a significant fine on a taking issue. Brian asked if they should deal directly with the client, noting it has been several months now. Leo said he is trying to educate the client. Brian asked if the Commission is being ignored while they deal with Natural Heritage and Leo responded "yes." Sferra said that Heritage wouldn't know about the issue if the Commission hadn't started the process. Leo said he was trying to sort out the ag exemption. Sferra said the work is not

exempt. Leo said he agrees that there is no exemption west of the brook. Leo said he is still trying to find out the facts. He said he has an ownership problem. A portion of the property is in the Taylor Estate as of January 1 of this year. He won't file until he can sort this out. Sferra said Rob Taylor did the work, has control of the property and can be the applicant. Sferra asked for a date certain for the filing. Brian said it had been two months. Sferra clarified that the Commission met with Garneau on May 31st and at that time he said he would file within two weeks unless an extension was approved. Garneau said he has had other issues including the fact that he selling his house and cleaning out his barn. Brian asked if a Notice of Intent would be submitted in two weeks and Leo said "no." He knows that he won't have it done for the next meeting. Sferra suggested that Taylor be notified that if there is no NOI in two weeks the Commission can fine him. Jeff asked that staff confirm that Taylor has authorized Garneau to represent him. He wanted to Taylor to understand the Commission's frustration. Jeff said that maybe it is time to request a change of consultant. Garneau said that he emails Taylor and he responds, but that he wants to meet him on site. It was agreed that staff will talk to Rob Taylor and explain the level of frustration. Jeff said the Commission wants to move forward and bring this to resolution. Garneau said he is trying to put out the biggest fire first, which is Natural Heritage. Brian said he doesn't want to come down on Garneau but three months is enough for anyone to file an NOI.

Adjournment: On a motion by Brian, seconded by Liz, the meeting was adjourned at 10:05 pm.

Respectfully submitted,

Kathy Sferra
Interim Conservation Administrator