

WAYLAND CONSERVATION COMMISSION

Minutes, Thursday, September 4, 2014 8:37 - 11:18AM

Location: Selectmen's Meeting Room, Town Building, 41 Cochituate Road, Wayland, MA

Present: Commissioners: Roger Backman, Joanne Barnett (8:37–10:50AM), Bob Goldsmith, Barbara Howell, Betty Salzberg, Chairperson: Sherre Greenbaum, Conservation Administrator: Brian Monahan

Not present: John Sullivan

Minutes: Andrea Upham (beginning at 10:00AM)

S.Greenbaum opened the meeting at 8:37AM noting that a quorum was present.

1. **8:37 a.m. – Executive Session** - Discussion of Pending Litigation re: the Matter of the Landfill Access Road, DEP Office of Appeals and Dispute Resolution Docket No. WET 2014-012.

Motion by the Chair, S.Greenbaum, to enter Executive Session:

I move that the Conservation Commission enter into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss pending litigation regarding the Matter of the Landfill Access Road, DEP Office of Appeals and Dispute Resolution Docket No. WET 2014-012.

CHAIR: Is there a second to the motion to enter into executive session? Seconded;

CHAIR: Roll call vote noting R.Backman, J.Barnett, B.Goldsmith, B.Howell, B.Salzberg and S.Greenbaum; 6-0 in favor

The Chair declares that a public discussion with respect to pending litigation regarding the Matter of the Landfill Access Road, DEP Office of Appeals and Dispute Resolution Docket No. WET 2014-012 will have a detrimental effect on the bargaining or litigating position of the Town.

CHAIR: Roll call vote R.Backman, J.Barnett, B.Goldsmith, B.Howell, B.Salzberg and S.Greenbaum.

CHAIR: S.Greenbaum invites attendance by staff member Brian Monahan, Conservation Administrator, and Town Counsel Mark Lanza for the Executive Session. Roll call vote was taken to approve the attendance of B.Monahan and M.Lanza noting the approval of R.Backman, J. Barnett, , B.Goldsmith, B.Howell, B.Salzberg and S.Greenbaum.

S.Greenbaum announced that the Commission is now going into Executive Session and the open meeting will be convened after the Executive Session. S.Greenbaum reiterated that the purpose of the Executive Session is to discuss the aforementioned litigation matter.

2. **10:00 a.m. – Convene in Open Meeting - Citizens Time: This is a time for input to the Commission regarding items that are *not* on the agenda.**

Mike Lowery, Lakeshore Drive, reported on multiple drums located at Castle Hill, which is Zone 2, and suggested that the Commission act quickly before he has to write a report.

3. Land Management

a. Proposed Event at the Lincoln Road Fields Conservation Restriction

S.Greenbaum reported that a letter went out yesterday and B. Monahan will forward it on email after the meeting. The letter was sent to the grantor of the Conservation Restriction, Mr. Falwell, and outlined the event and the untimely nature of information to the Commission, reviewed the allowed activities on CR land, what is prohibited on CR land and noted violations of CR, with the responsibility of the grantor to ensure compliance with the CR conditions. S.Greenbaum noted that since the last meeting, B.Goldsmith raised the issue of the liquor license for the event. S.Greenbaum researched and discovered that the license was issued for 59 Lincoln Road; the consent calendar was approved and this was one of the items on the list. The recorded CR address is Hazelbrook/Lincoln Road but GIS and assessors' records list 59 Lincoln Road, the same address as Farrell's property. R.Backman asked about the timing of the liquor license, which S.Greenbaum thought was back in the June timeframe. S.Greenbaum also mentioned food permits for 59 Lincoln Road and said the question is what the Commission should do now. Boston Globe article in today's news relating to the event was passed out by S.Greenbaum. B.Goldsmith commented that there are things the Commission can do. S.Greenbaum asked M.Lanza about the options. M.Lanza communicated that the Commission has proceeded as expected by gathering information and noting activities within the restricted area and he noted that those issuing the permits may not have been aware of the CR. Permits are a separate matter that don't supersede or pre-empt the Commission for CR compliance. The next step is for the Commission to contact Mr. Falwell about the letter that was sent and get the official response from him, the grantor. He could respond with a proposal for movement of activities or by noting modifications to conform with the CR and then the Commission can determine its next move, if any, but an official response to the letter is needed.

B.Goldsmith offered that the Commission could make a conditional decision on what M.Lanza should do and expressed concern about this precedent that violates the CR. B.Goldsmith noted this is not the only one. He informed the Commission he heard gunshots from the Lincoln Road area a few weeks ago and was told by the Police Department that skeet shooting was going on by someone on the property. In addition, B. Goldsmith said on a separate day after reporting firing coming from the same area to the Police Department, a farmer on Lincoln Road told Wayland Police he was allowed to shoot coyotes. B.Goldsmith said the Town spent \$2.4M on the CR and it is not being adhered to and it should be protected. He further commented on the annual budget and reserve funds for the Lovelane organization, which the Commission noted was not relevant to the discussion.

S.Greenbaum asked M.Lanza what the Commission would do hypothetically speaking if no changes were suggested by Mr. Falwell. M.Lanza responded that a civil lawsuit could be pursued and they could ask a judge for a court order. S.Greenbaum asked if that next step were authorizing injunctive relief, how that would occur and whether permission to hire M.Lanza would need to be pursued through the Board of Selectmen. M.Lanza confirmed that the Board of Selectmen would have to approve; the Commission would request Town Counsel or other counsel to seek injunctive relief and there would likely be a Board of Selectmen executive session. B.Monahan inquired about the wording "other equitable relief" and what that might be. M.Lanza responded that it is something other than money, such as an order to do something, a declaration from a judge determining that certain activities do or do not comply. S.Greenbaum summarized that the Commission could request a declaration, an injunction or both and M.Lanza

Approved: October 9, 2014

Page 3

confirmed her summary and noted that the matter could be expedited through a temporary restraining order if needed prior to injunction. M.Lanza clarified that a declaration is for a judge to say that certain activities are not allowed and declarations are not expedited; a temporary restraining order or injunction would stop the event. M.Lanza confirmed he will call Mr. Falwell today.

S.Greenbaum asked what would occur if other boards revoked their licenses. M.Lanza responded that the permitted activities then can't occur but that is not likely. S.Greenbaum asked M.Antes if she recalled the Selectmen's process in June to address this matter and M.Antes recalled the item on the consent calendar but no specifics. S.Greenbaum replied asking if the Board of Selectmen might revoke and M.Antes said she had no idea but could inquire at Monday's meeting if needed. Discussion ensued of liquor license and M.Lanza confirmed that a private party would not require one but a public party or an event charging the public would require a license. B.Goldsmith asked if a license to amplify is required and M.Lanza said that the Board of Selectmen grants entertainment licenses. M.Antes didn't recall one for this event. B.Goldsmith said he would like hold harmless insurance for the Town with regard to injury or property damage and M.Lanza explained that when the Town approves an event, that doesn't create an insurable interest for the Town. If the Town has an event that takes place on trails, that's different. If no fee, there is absolute immunity; the simple granting of permits doesn't create insurable interest and lack of enforcement is not grounds for a lawsuit. M.Lanza noted that perhaps some activities may be relocated. B.Salzberg asked if this prevents future events from happening. M.Lanza noted that lack of enforcement does not waive future rights of enforcement. S.Greenbaum noted that Town Boards need more connection with each other so boards are brought into discussions earlier on in situations like this.

B.Monahan communicated to the Commission to focus on how to avoid a precedent, noting that this particular event got way down the road and he personally thinks there is no precedent here. It is very clear the Commission notes a violation of the Conservation Restriction but stopping the event will not be the most popular thing to do, and there may be other remedies.

R.Backman commented on a lack of communication among parties. S.Greenbaum noted that M.Lanza can get definitive information and then the Commission can make a decision on what action to take. Discuss can be held at next meeting or special meeting in advance. B.Goldsmith asked M.Lanza to include the gunshots at or near the site in his discussion with Mr. Falwell. B.Monahan discouraged mixing messages. Discussion ensued on skeet shooting and M.Lanza was not sure if it was noted as prohibited but it was not included as allowed. B.Salzberg suggested keeping the issues separate as did J.Barnett with B.Goldsmith and B.Howell suggesting discussion now. B.Monahan cautioned the Commission to really think about how they proceed, whether the goal is to stop it now vs. noting violations. The Commission can note violations and publicly note their enforcement of this and other Conservation Restrictions and turn this around to be proactive. S.Greenbaum raised the issue of remedies after the fact and noted that if the event should go forward, B.Monahan will document the site before and after and if needed a Judge's order would be pursued to restore the site to its prior condition. B.Monahan suggested the Commission ask the Board of Selectmen to seek other legal remedies outside of stopping the event. S.Greenbaum discussed the possibility of a declaration based on Mr. Falwell's response, not to stop the event but to note violations. M.Lanza noted that if there are any damages, then restoration could be sought which could be stated in the alternative or later. Possible dates for the next meeting will be shared by B.Monahan.

4. Discussion of 5-year Capital Budget

B.Monahan reminded commissioners that they discussed an amount of money to renovate the fields at the last meeting. He suggested an amount of \$40K and that they not seek the funds before FY'17 as the only new capital budget item. B.Howell asked about the tractor, which B.Monahan said is already included as is the money for the dam. B.Monahan noted \$30K had been set for Heard Farm parking and Loker, so \$40K for the fields for FY2017 will be a start. R.Backman suggested a discussion about how these amounts are decided. B.Monahan offered that plowing the fields and having native grass laid is very expensive; there are areas that are failing or marginal and need attention. B.Goldsmith said he prefers to not have an estimate that is too low. B.Monahan will speak with Jim Henderson to seek his opinion on the dollar amount.

Motion to accept this new item as part of the 5-year capital budget conditioned upon B.Monahan getting confirmation of the amount being budgeted; Seconded 4-0

B.Goldsmith asked if this should be addressed with FinCom. B.Monahan said they may move the dam out one year, and that CPA money needs to be addressed with J.Sullivan. S.Greenbaum asked if the Commission can send a representative to the CPC meetings if J.Sullivan cannot attend. The matter will be researched.

5. Historic Society Presentation at Heard Farm

B.Monahan reported that originally the Historic Society was going to do a presentation about farming in Wayland at Lincoln Road. B.Monahan suggested other areas and they selected Heard Farm and the Commission should vote the group activity on September 21. B.Howell asked about parking and M.Antes noted parking will be off site with a shuttle bus provided, and refreshments later will be at Montague's residence.

Motion to allow the event at Heard Farm; Seconded 5-0

6. Issuance of Order of Conditions [310 CMR 10.05 (6)]/Chapter 194 Permits (Pending closing of hearings)

a. 7 Lincoln Road; DEP File 322-826 – WPA OOC Only

B.Monahan reported to the Commission that the hearing was closed on August 28 and within 21 days the OOC must be issued. B.Goldsmith raised the issue of denial as filing requirements do not appear to have been met. B.Monahan noted they can ask for more information and noted that wildlife analysis seemed to not be required by regulations. B.Monahan suggested the Commission could vote today and ask for a draft OOC. B.Howell discussed denial as the Commission never received an alternative for repair of a 3-bedroom system. B.Goldsmith commented that a less impactful, less expensive alternative should be considered. B.Goldsmith noted the application was deficient with the drawing missing six trees and one multi-stem tree scheduled to be removed had a diameter miscalculated as 28" vs. a correct diameter of 57." B.Goldsmith also stated that a wildlife habitat study may be required by the Commission since the disturbed area stated in the NOI exceeds the threshold for a study of 5,000 square feet, and the Commission can request one. B.Monahan responded that that is presuming an undisturbed riverfront area. B.Goldsmith further noted the applicant denied a disturbed area greater than 5000 square feet and 5250 square feet was stated by

the Applicant's engineer in the NOI, and he noted his belief that an arborist may be needed to assess the effect of excavating for the septic system on the health of large, mature trees surrounding the proposed system. R.Backman noted agreement with B.Goldsmith for the denial as did B.Salzberg and S.Greenbaum. S.Greenbaum asked the Commission if they would like to see a draft OOC for approval, and B.Goldsmith said yes based on a likely appeal. A possible meeting on September 10 was discussed; B.Monahan will check calendars.

Linda Segal asked if the Commission is actively doing something for the evening FinCom meeting, and S.Greenbaum said yes; B.Monahan said someone should be there.

7. Adjournment

Motion to adjourn at 11:18am; Seconded 5-0

The next regular Conservation Commission Meeting is scheduled for Thursday, **September 18, 2014** in the Wayland Town Building.

NOTE: Per changes to the Open Meeting Law, notice of any meeting of a public body shall include "A listing of topics that the chair reasonably anticipates will be discussed at the meeting". AG's Office guidelines state that the list of topics shall have sufficient specificity to reasonably advise the public of the issue to be discussed.

