

MINUTES
WEST BOYLSTON CONSERVATION COMMISSION
MARCH 2, 2015 MEETING

MEMBERS PRESENT: William Chase (Chair), David Eckhardt (Associate Member), John Hadley (Vice-Chair) , Charlene Hopkins (Vice-Chair), David Mercurio and Clerk Toby Goldstein.

MEMBERS ABSENT: Mark Meola.

At 7:00 pm, Mr. Eckhardt moved to open the meeting. Mr. Hadley seconded. All in favor.

Discussion With Judith Schmitz, DEP Circuit Rider, Central Region:

(Mark Archambeault of the Nashua River Watershed Association was also present to discuss the proposed wetland bylaws, and participated in this discussion). Ms. Schmitz introduced herself to the board. As Circuit Rider for DEP, Central Region, since August, 2014, she is available for questions regarding the Wetlands Protection Act, regulations, stormwater management, and to give comments to the Conservation Commissions in the region and to the towns. She discussed the main revisions to DEP wetland regulations with the Commission members. First she discussed changes to exemptions, which meant that filing would not be required for these activities. Additions to houses would not be exempt. Perk testing, if not crossing wetlands, would not require an RDA to be filed. Utility work and roadway maintenance and repair would not require filing, if it is done on an existing paved roadway. All utility exemptions, as well as other exemptions, are discussed in Section 10.02. (Ms. Schmitz mentioned that these changes came out online in October, 2014, and copies were emailed to the state's Conservation Commissions).

Next was some discussion of matters regarding DPW and DCR. Ms. Schmitz mentioned the change stating that culvert replacement must be brought up to stream crossing standards, not replaced "in kind," "to the greatest extent practicable." The Conservation Commission is the first party to make judgment on this. Water quality permits could be affected by this. This does not apply to certain culverts. Mr. Chase opined that, when dealing with a stream, an engineer should be consulted. Mr. Eckhardt added that DPW has a GPS system that can track structures in town; also, regarding state-owned land, Concomm consults with DCR regarding replacement and maintenance of streams, crossings and measures the flow of streams and tributaries and monitors water quality. Mr. Mercurio asked, if a structure is not an on-going stream, how is it dealt with? Ms. Schmitz responded that it would be a stormwater issue. Mr. Chase mentioned an example in Town where a golf course's sheet water flows downhill into a tributary and causes changes to culverts, and asked if Concomm has jurisdiction over that? Ms. Schmitz opined that it could probably be replaced "in kind." She then continued with regulations regarding streams. Regarding banks, (2) banks are now on every stream. Concomm has jurisdiction if it is an intermediate or perennial stream. If a culvert is of a certain size, habitat information is not required.

Next, Ms. Schmitz discussed ongoing farm structure. Mr. Mercurio asked, if an intermediate stream runs through a farm, under the exemptions, if an agricultural area runs up to the edge, can it

continue? Ms. Schmitz replied that, under the new regulations, it can't; there must be a 25-foot setback. She also mentioned that one cannot fill in the corners to make it drier. Mr. Mercurio asked about crops, and Ms. Schmitz replied that, if the area is cleared already, it can be done, and added that agriculture has more exemptions than other circumstances.

Also, Ms. Schmitz said that abutter notification has changed in the regulations. The rule is now that, regarding an area of 50 acres or larger, abutters must be notified within a 100-foot limit of the work, not the property line. Mr. Archambeault stated that, in the draft bylaws, the request is for 300 feet of the property line for abutters to the abutters, and Mr. Hadley opined that it should remain at 100 feet of the property line to immediate abutters. Ms. Schmitz suggested that a smaller area could require 100 feet of the property line. Ms. Schmitz continued that, if someone lives on a pond and wishes to work on lakeside property, that is considered to run all around the pond, so now the distance is 100 feet from that person's shore.

Regarding ecological restoration, Ms. Schmitz said that permitting for these projects has changed. For large projects, a separate Notice of Intent (form 3A) is required for these. Mr. Eckhardt suggested that DCR could contact Concomm regarding these projects and suggest how to proceed. Ms. Schmitz continued that, if the applicant meets all of the qualifications to submit this form, then the project must be approved by Concomm and DEP if everything is checked off. Concomm would check off on a Form 5A what kind of project it is and approve (or disapprove if not everything is checked off by the applicant). When completed, a Certificate of Compliance will be required. There would be a set Order of Conditions. All would take place in the same general time frame. Ms. Schmitz told the Commission members that, if they pass the bylaws, they can pass their own bylaw conditions. She said that, in summary, this new filing guarantees that, if the applicant files properly, in a thorough manner, the project will get approved.

Ms. Schmitz then discussed the last major change, for stormwater management structures, basically detention basins. She mentioned that, after 1996, any stormwater structure has no buffer zone. Mr. Eckhardt mentioned one problem for the Commission, that the detention basins frequently require maintenance and that is written into the Orders of Conditions, but often years later, they are not able to locate the parties responsible for them. Ms. Schmitz replied that the only way to guarantee that is for the Town to have an easement. The Commission members mentioned that, with the bylaws, they could fine people that are in violation of their conditions, but opined that they would ignore that. Ms. Schmitz asked if it could be turned over to DEP? Mr. Chase replied that DCR had said that DEP could not take care of that. Ms. Schmitz mentioned that sometimes drainage is jurisdictional. Mr. Eckhardt added that, without wetland bylaws, the Town Administrator needs to consult with Town Counsel, at the Town's expense. Mr. Chase continued that the sole purpose of the bylaw is for enforcement.

The Commission members next discussed the need for specified fees in the bylaws for the enforcement process, large enough to cause the violations to stop.

Mr. Archambeault then discussed with Ms. Schmitz that the draft bylaws for West Boylston was developed from several sources, such as the bylaws of other towns, and from DEP regulations.

Mr. Mercurio then asked those present questions regarding certain restrictions within the buffer zone, and Mr. Archambeault replied as to which parts of the bylaws discuss the buffer zone and setbacks. He also mentioned the Conservation Commission's ability to waive conditions in the bylaws.

Mr. Chase discussed how the Commission tried to incorporate existing issues in the Town into the bylaws, and that the bylaws should clarify situations for the residents so that they can know that they do not always have to appear before them for certain issues.

Next, those present discussed repaving of existing driveways and grading and filling restrictions, Mr. Eckhardt adding that the restrictions may be project specific; if the applicant wants something

different than what is specified in the bylaws, he must talk with the Commission, explain why there is no alternative to what they want, and probably file a Request for Determination or Notice of Intent. In response to a question from Mr. Mercurio regarding being able to decrease a distance from the buffer zone, Ms. Schmitz mentioned the waiver section of the bylaws. Other Commission members responded that not all pieces of property can be developed, but the waiver section is there if the Commission has to make an exception.

Next, Ms. Schmitz discussed section E, regarding jurisdiction, and opined that certain parts of that section should be removed.

Next, the Commission members all introduced themselves and discussed their backgrounds with Ms. Schmitz.

Mr. Mercurio then had other questions regarding the need to file within certain distances of the wetlands. The Commission discussed the need for a balance between developers and the Commission, where a developer can develop property but still notify the Commission as to what he is doing. Mr. Mercurio opined that the Town should have a tool for enforcement, but does not want it to make the work more difficult for the person or those doing the work after him. Ms. Schmitz then suggested that a 25-foot setback would be reasonable to provide a buffer and help with enforcement and Mr. Archambeault agreed with that.

Ms. Schmitz then discussed exemptions, and suggested that the Commission might want to add more or refer to the Wetlands Protection Act, which contains more. She suggested the wording, "In addition to the exemptions of the State Wetlands Protection Act, the following are also exempt in any resource area..."

Next, the Commission members discussed retention pond maintenance with Ms. Schmitz, and that the easements mentioned earlier would be written into the Orders of Conditions. They also discussed the requirement of bond from a developer, and that, for the Commission to require bond, they must have jurisdiction.

Mr. Mercurio suggested that the Commission obtain a new draft of the bylaws and go over it, and perhaps meet with the Building Inspector in April. Ms. Schmitz ended her presentation with some final comments. She opined that the bylaws are a good idea, and liked the fees and setbacks in this type of bylaw, and felt that there were not too many restrictions. Mr. Eckhardt suggested that, when DPW is interested in doing so, perhaps they can work with the Commission on stormwater bylaws.

Minutes of January 5 Meeting:

After review of the minutes by the Commission members, Mr. Hadley moved to accept the minutes as submitted. Ms. Hopkins seconded. All in favor.

Afra Terrace:

Mr. Chase decided that they would speak with Leon Gaumond about the subject before discussing at a Concomm meeting.

Wachusett Liquors:

They are still in possession of a temporary occupancy permit

Update on WPI Project:

Mr. Eckhardt continued discussion of the project.

Hosmer/Keyes Street Resident Questions:

Mr. Beardsley, a resident, spoke with Mr. Chase regarding questions about the property; Mr. Chase stated to Mr. Beardsley that approval was not required from Concomm, and Mr. Beardsley withdrew his questions.

Maple Street Tree Cutting Complaint:

Mr. Eckhardt discussed the new protocol of DCR Forester, where they are obligated to give the scope of work to Concomm; he stated that the documentation came to the Commission, and he found the work to be in good practice and to conform with protocol.

With no more comments from those present, Mr. Eckhardt moved to adjourn the meeting at 8:38 pm. Mr. Hadley seconded. All in favor.

Submitted by: _____

Date accepted: _____