

MINUTES
WEST BOYLSTON CONSERVATION COMMISSION
MAY 4, 2015 MEETING

MEMBERS PRESENT: William Chase (Chair), John Hadley (Vice-Chair), Charlene Hopkins (Vice-Chair), David Mercurio, David Eckhardt (Associate Member) 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 William Clougherty, P.E., MA DOT, Highway Division, District 3, Regarding Proposed Work :

Mr. Clougherty appeared before the Commission to discuss a problem with repeat beaver activity near the I-190 bridge, in the area over Prospect Street. He reported that MA DOT has engaged the services of a trapper, who will receive a permit through the Board of Health. He said that it is causing a significant flooding situation. Showing the Commission members the original construction plan for that area, he pointed out the area of beaver activity and blockage caused by them. He added that neighbors and abutters have concerns about flooding, but he has not heard any complaints yet of water in basements.

Mr. Clougherty further explained that they will need to use a large excavator due to the extent of the beavers' dam, and have an access route to bring it in without much disturbance. Mr. Eckhardt asked him if they will remove a sizable amount and try to restore it? Mr. Clougherty replied that they will try to re-establish what was there, and will remove debris. He continued that this could happen again because the beavers will keep returning, and after taking care of this situation, they are hoping that "beaver deceiver" equipment will slow down future activity. The Concomm members asked about what is done with the beavers and if any Concomm action is needed, and Mr. Clougherty replied that they relocate the beavers, and they only need permission through the Board of Health. Mr. Eckhardt asked Mr. Clougherty, when the work is complete, to notify the Commission so that they can visit the site.

James Cahn, Esquire, Request for Certificate of Compliance, 114 Lee Street, DEP File #327-0044:

(This Order of Conditions was issued to Casa Builders in 1986; Ms. Hopkins brought a copy of the Order and plans, however she mentioned that these plans were not referenced in the Order of Conditions; the original Order, along with the file, probably is still archived at the Mixer Building, the former Town Hall). Ms. Hopkins stated that some partial Certificates of Compliance were issued, on lots 24-35 and 38, but the entire project has not been released. Vincent Vignaly of Planning Board, who was present, added that he was a Concomm member when the original Order of Conditions was issued, but did not sign it. Ms. Hopkins continued that the owner at 114 Lee Street is trying to sell the property, but the title examiner determined that the Order of Conditions was not released. Ms. Hopkins said that we should contact the Assessor's Office to see where 114 Lee Street is, but Mr. Chase added that the work

there has been completed for years but the builder never released it. Mr. Hadley opined that this should not hold up the sale of the property. Mr. Mercurio asked if it would be possible for the Commission to go out and physically determine if it is under their jurisdiction or not? Mr. Chase replied that there are at least 300 feet of wetlands. Ms. Hopkins and Mr. Chase both agreed that the matter should be cleaned up now; the Clerk will try to contact the original builder, Casa Builders, and send a letter regarding the situation if she does not hear from them.

Therefore, Mr. Hadley moved to issue a Partial Certificate of Compliance for 114 Lee Street, so that the property may be transferred. Mr. Eckhardt seconded. All in favor. Also, the Clerk was authorized to contact the developer and let them know when the next meeting will take place.

Discussion With Planning Board Regarding Proposed Wetland Bylaws:

(Representatives were Vincent Vignaly, Christopher Olson and Mark Frieden). Mr. Vignaly stated that the Planning Board reviewed the draft submitted to them by Concomm and they made comments. Mr. Vignaly said that the biggest issue that Planning Board had with the bylaws was that there was not adequate justification shown to support why Concomm needs anything other than the Wetlands Protection Act. Mr. Chase and Ms. Hopkins discussed how bylaws would be more definitive and opined that it would be easier to get through the court system with them rather than trying to use the Wetlands Protection Act (WPA) for enforcement. They want people to take action, and not ignore the Commission; they feel that the WPA is too open, but the bylaws define, and that Concomm was supposed to be autonomous, but that they need to go through the Town Administrator and Board of Selectmen in order to make many decisions, and discussed some examples in Town of where they had seen violations take place; numerous complaint letters were sent to the people in violation, but nothing happened as Concomm had no authority to enforce them.

Mr. Vignaly reiterated that the Planning Board is looking for the need for bylaws to be substantiated. Concomm members responded, saying that they distributed the draft last year and invited Planning Board to discuss it, as they wanted the other boards to understand it. Ms. Hopkins also mentioned that the new DEP Circuit Rider for the Central Region gave them several good ideas. Mr. Mercurio questioned the need for a new set of bylaws, and proposed adopting the WPA as written, but have an enforcement addendum to it, such as for ticketing, perhaps through the Building Inspector? The Commission members explained that the WPA is not a bylaw, it is state law, and they cannot amend it. Mr. Eckhardt described the process of Concomm trying to enforce the WPA, which requires retaining the services of Town Counsel; the bylaws would be alternative enforcement, and explained how Mark Archambeault of the Nashua River Watershed Association was helping them develop it, drawing upon successful bylaws in other towns. Mr. Vignaly then said that the state code applies to every town, but Mr. Chase responded that the enforcement procedure is not clear or easy, requiring counsel and other Town boards' support, and Ms. Hopkins added that the bylaws can be amended anytime.

Next, Mr. Vignaly discussed some other items of comment in the draft bylaws. First was wording regarding buffer jurisdiction; next was some rewording in the second paragraph of the "purpose", requesting removal of the words "additional" and "expand." (Mr. Vignaly said that he would e-mail the agreed changes to the Clerk). Concomm and Planning Board then discussed some other enforcement problem areas in the Town.

Mr. Vignaly then discussed "exemptions" regarding removal of dead and dying trees and material, and recommended adding the word "dangerous" to specify something such as might be hanging over a house, or in a yard where children play.

He next mentioned the section discussing fencing around existing vegetable gardens, which does not mention regular yards or flowers, so he recommended changing the wording to "yard fencing."

The Commission members, though, commented that it should refer to fencing that is not in a resource area to protect wetlands.

Mr. Vignaly then discussed page 3, regarding altering setbacks, and recommended that it should say if the cost of compliance is greater than 20% of project cost as a reason to alter the setback; they all agreed that the point of this is for people to need to appear before the Commission to discuss their situations.

Next Mr. Vignaly wanted to clarify “disturbance of existing vegetation.” Mr. Chase clarified that this was referring to “natural vegetation.” Mr. Vignaly questioned the restriction of 25 feet, but Mr. Chase replied that the applicant would need a good reason why they could not stay back the 25 feet, and Ms. Hopkins mentioned the 100-foot buffer zone in state law. Mr. Vignaly opined that this would put limits on structures such as dumpsters, but Concomm members felt that this number is more for enforcement and court action. Mr. Vignaly suggested that “25-feet, no alteration” is easier. He added that the new sanitary waste disposal in September will not be within 100 ft. Board of Health has a 100-foot setback. Repairs will be reduced to 25 feet, and they must comply with Title V; the Commission agreed that Title V is very clear.

Mr. Vignaly continued that petroleum products above or below ground should be 100 feet away from a wetland area. Mr. Chase mentioned the example of Cumberland Farms, where there is a secondary aquifer.

Next, the Commission and Mr. Vignaly discussed amounts of petroleum products. Mr. Chase and Mr. Mercurio agreed that petroleum storage should be measured in gallons, such as for a backhoe in someone’s yard. Mr. Vignaly stated that they would not want storage or maintenance vehicles within 100 feet of wetlands, and that “use” and “storage” are not the same. The Commission and Mr. Vignaly then discussed storage and quantities and the meaning of “in excess of regular residential use”, and he said that he would look at what DCR has for wording regarding this subject.

Mr. Vignaly next discussed exemptions and “exemptions to exemptions.” He recommended that they be expressed right up front. He then asked how Concomm handles complaints from neighbors, and Ms. Hopkins replied that a neighbor can’t submit a filing regarding someone else’s property, only the property owner can file, and Mr. Eckhardt added that the Request for Determination of Applicability is useful to the Commission, but restricted to filing to the property owner, proponent for that property or “his or her agent.” Mr. Vignaly suggested adding in that wording. The Commission members discussed the process of abutter notification, publishing of the legal ad in the newspaper, and posting of the public hearing with the Town for Notices of Intent, and Mr. Vignaly suggested that the publishing and posting requirements for Notices of Intent be added to the bylaws, as well as wording for rules regarding abutters’ distance from the property line and around bodies of water being added.

Next, Mr. Vignaly and the Commission members discussed access of the Concomm to protected lands in the Town, and the fact that appeals need to be made to Superior Court as there is no local authority to which they can go. They also discussed the need to have a public hearing before any bylaw changes are made, and Mr. Eckhardt responded that they will have a public hearing for the bylaws themselves. Mr. Vignaly suggested inviting several developers to obtain their input. Mr. Eckhardt asked Mr. Hadley, if Concomm proposes to have the bylaws voted upon at the Fall Town Meeting, when would they need to have a public hearing on the matter, and Mr. Hadley replied that it would need to be 60 days before the Town Meeting.

Mr. Vignaly next discussed an unrelated matter for information, that of the possible construction of a storage shed at the Masonic Hall, where Boy Scouts also meet, and whether or not they need to file with Concomm? Mr. Hadley suggested that they will be able to use the Bethlehem Bible Church Community Center, but Mr. Vignaly responded that many are Masons, therefore they might want to use that hall. They discussed what the shed would be composed of, the fact that there is a flood plain in the area and that it would be within the 100-foot buffer zone, but the Commission

members suggested that they could file a Request for Determination of Applicability but opined that there would be a negative determination and no problem with the work.

Discussion of Filing for 216 West Boylston Street:

The applicants filed a Request for Determination of Applicability, but it was too late to place an ad in the Telegram and Gazette or post a public hearing with the Town with 10 business days prior notice, so the public hearing will have to wait until the June 1 meeting. No representative attended either, so no discussion of the matter took place this evening.

Discussion of Angell Brook Orders of Conditions:

Mr. Hadley informed the Concomm members that the engineer was going to come in to review all of the site plans of all the Orders of Conditions, and Mr. Eckhardt suggested that Certificates of Compliance be done for all lots.

Asian Longhorned Beetle Update:

Mr. Eckhardt informed the Commission members that pockets of ALB infestations continue.

Minutes of April 6 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.

Regarding 491 Prospect Street, which was discussed in the minutes, Ms. Hopkins did visit the site, and did not see anything appearing hazardous, but did see piles of dumped materials which were discussed at the last meeting. She noted that there are wetlands behind the property's fence, but she was not able to see it or how far back it extends. She asked the Clerk to e-mail Chris Lund to let him know that she could not get to the wetlands themselves, but perhaps Concomm could obtain a complaint so that they could go onto the property, and that they will keep him updated on the matter.

Afra Terrace:

Mr. Hadley discussed what took place at the April 30 Zoning Board of Appeals meeting regarding Afra Terrace. He said that, at that meeting, Iqbal Ali, developer of Afra Terrace, asserted that he was in compliance with the Town boards and that he submitted an acceptable plan, but Mr. Hadley responded to him that the Conservation Commission did not accept the plan as it was not approved, and Mr. Ali said that he would have one for this (Concomm) meeting. David Femia of the Zoning Board of Appeals added that the Afra Terrace Board of Trustees hired a management company, and have sent many e-mails to ZBA with complaints regarding the development. Mr. Chase responded that the "as-built" plan is the item that Concomm is concerned with, and said that VHB was hired to compare the "as-built" with the original plan. Mr. Hadley commented that ZBA did not originally receive a cash bond. Mr. Chase recommended getting the opinion of an attorney. Mr. Femia added that ZBA received a check from the Building Inspector for hiring of the engineer.

With no further business to discuss, Mr. Chase moved to adjourn the meeting at 9:03 p.m. Mr. Eckhardt seconded. All in favor.

Submitted by: _____

Date accepted: _____

