

**MINUTES
WEST BOYLSTON CONSERVATION COMMISSION
NOVEMBER 2, 2015 MEETING**

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

MEMBERS ABSENT: David Eckhardt (Associate Member) and Mark Meola.

Ms. Hopkins moved to open the meeting at 7:00 p.m. Mr. Chase seconded. All in favor.

Informal Discussion with Michael Kittredge of DPW:

Mr. Kittredge appeared in front of the Commission to discuss proposed work by DPW on Route 140. A DPW truck had gone over Gates Brook and caused some damage on Worcester Street, and they propose to repair the side of the road (on which they thought erosion had taken place also) with gravel and three-inch stone, putting rip rap on top of that. The Commission opined that the work would be a good idea and would save money for the Town and Mr. Hadley moved that Concomm give approval to the project. Mr. Mercurio seconded. All in favor.

Update on Afra Terrace:

No new information or correspondence was received, therefore no discussion took place.

Update on 491 Prospect Street:

Ms. Hopkins mentioned the e-mail sent out to the Commission members that a meeting with DEP was going to take place.

Update on Proposed Police Station and Senior Center:

Mr. Hadley informed the Concomm members that the Police Station proposal went through, but the Senior Center did not.

Minutes of 10/5 and 10/26 Meetings:

Regarding the 10/5/15 minutes, after review of the draft minutes by the Commission members, Mr. Hadley moved to accept the minutes as submitted. Mr. Mercurio seconded. All in favor.

Regarding the minutes of the 10/26/15 interim meeting, Ms. Hopkins noted that a negative determination was issued for the RDA, but there should have also been a positive determination, subject to the filing of a Notice of Intent, so that the minutes should be revised to reflect this (also, the determination needed to have this added to the paperwork). With no other comments or changes, Mr. Hadley moved to accept the minutes with changes. Ms. Hopkins seconded. All in favor.

Discussion of Proposed Wetland Bylaws with Mark Archambeault of the NRWA, Planning Board and Bylaw Committee:

Mr. Chase explained that the subject of this discussion was suggested changes by Planning Board to the draft bylaws drawn up by Mr. Archambeault and the Commission. Mr. Chase suggested that they run down the draft (draft 6) with the marked changes and discuss each separately. Mr. Archambeault wanted to discuss suggested changes by the Planning Board made previously to his draft bylaws. One area he discussed where he had some issues was "Purpose and Intent," where Planning Board proposed eliminating "and adjoining land areas" which Mr. Archambeault presumed meant the buffer zone. Mr. Chase believed that their concern was expansion of authority; Mr. Archambeault said that they would want something stronger than the minimum, but not excessive. Another area regarded resource areas and inclusion of the buffer zone as a resource area and deciding how far to take this. He had no issues with "Jurisdiction" or "Exemptions" sections, but said that he had the most comments on the changes in the "Presumptions" section. Mr. Archambeault said to Planning Board, that it only applies to Bordering Vegetated Wetlands, not any wetland, which makes a difference. Vincent Vignaly of Planning Board asked him to explain the difference. Mr. Chase responded with the example of 491 Prospect Street, which has had dumping issues, and there are wetlands down grade from that dumping. Ms. Hopkins added that Concomm was told that this wetland is perennial and goes into Wachusett Reservoir. Mr. Vignaly then asked if it is a perennial stream, wetlands with stream, or another? Mr. Chase replied that it is the land between, and the first 100 feet are not wetlands. Mr. Archambeault added that the Wetlands Protection Act only covers BVW's. Mr. Mercurio opined that it would make the law more stringent and more difficult for the person. Mr. Vignaly asked if any puddle would be considered a wetland? Mr. Archambeault replied that there is a threshold size. Mr. Archambeault added that a 25-foot no alteration zone would be better than none and would be amenable to the Town, but from a scientific perspective it should be higher, such as 35-40 feet. Mr. Vignaly responded that studies vary as to how wide a buffer zone should be. Mr. Chase responded that his goal tonight was for parties to try to meet in the middle, realizing where they are all coming from, but that they want to have this in place before the State develops new regulations which will be imposed on the Town. Mr. Mercurio added that it has to be something that the Town can live with. Mr. Archambeault agreed that buffer zones can vary greatly and added that slope affects the buffer also. After discussion, Mr. Vignaly said that he thought that a 25 foot no-alteration zone was reasonable to protect the wetlands-this is in addition to DEP's stormwater standards that are already in place. Mr. Chase added that, at a later time, if the Commission has any problems, they can oversee this.

Next, those present discussed Mr. Archambeault's last real comment, which was regarding Clause 6C, "Limits on Activities," which discusses alteration of setbacks; Planning Board suggested changing "alter" to "reduce" setbacks, and wanted to add a clause about restricting the reduction if it would cause an increase in construction costs over 20%. He thought that Town Counsel might be consulted on whether or not to have a hardship by dollar amount given. In response to a question from Ms. Hopkins, Mr. Archambeault replied that less specificity would be better. Mr. Vignaly suggested adding "by more than 20% would be unreasonable", and thought there should be a dollar amount given. Mr. Hadley also thought this. Mr. Chase added that they want to be "project-friendly." Mr. Mercurio thought that there should be a percentage given in there. Mr. Chase suggested it read "subject to approval by Counsel." Ms. Hopkins and Mr. Chase commented that it would depend on the size of the project whether 20% is unreasonable, and Mr. Chase suggested stating that it "can't exceed" a certain amount. Jon Meindersma of Bylaw Committee then asked about setback reduction by the Commission under certain conditions, and surmised that it would mean that the setback cannot be reduced if it does not cause a overrun of the 20%. Mr. Vignaly responded that it can be overridden if the cost is too high or there are space limitations. Mr. Hadley commented that he agreed with the 20% or the fee is deemed unreasonable. Mr. Chase replied that it would give them the ability to give a reduced setback.

Mr. Meindersma replied that it gives Concomm the power but does not compel them to do so. Mr. Archambeault thought that because there is a financial rationale given it should be reviewed by Town Counsel. Mr. Chase thought that they should go with the 20% but sit down with Town Counsel for input. Mr. Archambeault added that dollar value can be deemed a hardship as with the Zoning Board of Appeals, but did not think that they should do that. Mr. Chase responded that the person with the money would come out ahead but the person without the money would fall behind, and that this is not where the Commission wants to be. Mr. Vignaly continued that this is why there should be a dollar amount for standards of unreasonableness because the developer will always have a different opinion from the Commission as to what is unreasonable. (After all discussion, Mr. Hadley and Mr. Chase agreed to leave the amount at 20% for the purposes of this evening).

Next, Mr. Vignaly stated that the bylaws must be heard at a public meeting. Mr. Mercurio added that the Bylaw Committee would vote to recommend passing it or not do so, then it would go to the Town Meeting. Mr. Meindersma clarified that the Bylaw Committee can only recommend. The Commission agreed that they would want to have a public meeting prior to the Town Meeting to inform the public before they needed to vote.

Mr. Vignaly next brought up page 2, "Exemptions," and that Concomm does not have jurisdiction unless there is impact to wetlands. Mr. Hadley asked how 491 Prospect Street would be treated? Mr. Vignaly responded that even though Concomm thought that water from the dumping might affect the wetlands, if it has not done so then they do not have jurisdiction; under the WPA they cannot do something to prevent it, but got the appropriate party (Solid Waste) involved. But he warned against Concomm expanding their jurisdiction. Mr. Hadley suggested just leaving it as BVW in the bylaws. Mr. Chase explained that the purpose is so that Concomm can ticket someone for violations rather than having to go to the Town Administrator or Board of Selectmen for assistance, which could take months, as these violations can affect the wetlands immediately. Mr. Archambeault added that enforcement is the key thing to be gained here. Mr. Mercurio reiterated that the Town must live with the bylaws, and asked for any comments regarding "Enforcement?" Mr. Archambeault opined that they looked fine. Mr. Vignaly explained that they tried to clarify that it would only apply to areas where Concomm has jurisdiction. Regarding entering the property in question, Mr. Mercurio responded that it wouldn't be a problem if a violation or possible one takes place, but for the property owner, permission should be obtained from the property owner or tenant out of respect for the property owner. Mr. Chase suggested giving them 24 hours notice and Mr. Hadley agreed. Mr. Vignaly added that they do not want to limit the bylaw by the regulations. Ms. Hopkins responded that the regulations can be amended but not the bylaws. Mr. Vignaly explained to Mr. Mercurio that, if the bylaws are approved, they allow you to make regulations (after public notice and a public meeting), which instruct on how to implement what the bylaw says. Ms. Hopkins added that, with public notice, anyone can come before the board and say if they have any problems with the regulations. Mr. Frieden asked what would be done in case of an emergency? Mr. Chase replied that DCR or DEP would automatically have jurisdiction. As stated above, with 24-hours notice to the property owner or tenant, Mr. Chase reiterated that they could visit the property but he suggested going with the Building Inspector as the Enforcement Officer. Mr. Vignaly added that, years ago, Concomm received a call about a report of dumping, and they went out to the property to find it all cleaned up, and there was no need for enforcement, so sometimes problems get resolved.

The Commission agreed to leave the "25-ft. no-alteration zone" and "20% above which unreasonable cost" as is in the draft bylaws. Mr. Chase noted that this is a guideline; if deemed out of control, the State would intervene. Mr. Frieden responded that they would bring these areas up at Town Meeting first. Mr. Chase added that Prospect Street can be used as an example. Mr. Mercurio

asked Mr. Chase, regarding 491 Prospect Street, if Concomm could have through the Building Inspector that he can notify the property owner 24 hours in advance of a violation? Mr. Chase replied "yes" and that then they do not have to go to other boards. Mr. Meindersma continued that he did not know if he can comment because he is on the Bylaw Committee and suggested that "enforcement" be spelled out in the regulations. Ms. Hopkins suggested wording it as "in accordance with the regulations." Mr. Meindersma agreed that this might give clarity. Ms. Hopkins thought that they should consult with Mr. Lund about the wording.

Mr. Vignaly suggested working on the bylaws now, and on the regulations later. Mr. Archambeault said that he accepts the changes proposed by Planning Board. Mr. Vignaly said that he would make up a November, 2015 version of the draft bylaws. Mr. Meindersma suggested sending a red-lined version to Town Counsel, who, according to Mr. Chase, has not seen them. Ms. Hopkins added that Town Counsel will comment on it, but basically nothing has changed. Mr. Vignaly suggested that, in Concomm's presentation, that they state that the bylaws will increase enforcement and clarity and allow some jurisdictional changes, but will not be expanding jurisdiction. Mr. Chase commented that they would like a united front when the time comes to vote; Mr. Mercurio commented that they must think of the property owners and Concomm members after this board leaves, but Mr. Chase added that the Town needs protection as well. Mr. Vignaly said that he would send Concomm the final version, and they can send it to Town Counsel. Mr. Chase suggested one more meeting with Concomm, then sending it to Town Counsel; but he will ask the opinion of every board also.

(Mr. Vignaly next discussed the site plan review for 99 Hartwell Street, approved for interior work and work on the parking lot. Mr. Chase then informed him of work discussed at the public hearing earlier this evening and discussed a site visit by the Commission members and how the applicant is planning to deal with drainage issues. Mr. Vignaly said that the applicant would have to issue an amended site plan reflecting the drainage changes and send it to VHB for review).

With no more business to discuss, Mr. Hadley moved to adjourn the meeting at 8:11 p.m. Ms. Hopkins seconded. All in favor.

Submitted by: _____

Date accepted: _____