

MINUTES
WEST BOYLSTON CONSERVATION COMMISSION
MAY 2, 2016 MEETING

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

MEMBERS ABSENT: Mark Meola.

At 7:00, Mr. Hadley moved to open the meeting. Mr. Eckhardt seconded. All in favor. (A Public Hearing for Pan Am Railways, Request for Determination of Applicability, was scheduled for 7:00, but no representative was present yet. Mr. Chase asked for a motion to postpone the hearing until later in the meeting; Mr. Hadley made the motion, Mr. Mercurio seconded, all were in favor).

Informal Discussion Regarding Gerardo's Bakery Driveway Work:

(Gerardo Sarli and Julian Votruba represented). Mr. Votruba described the work that Mr. Sarli wanted to do on his driveway, which was in addition to work done according to an Order of Conditions issued several months ago by the Commission. Mr. Eckhardt asked Mr. Votruba for his qualifications, which he described to him, and then told him that he agreed with their proposals but wanted Mr. Votruba to send the Commission a note defining what they intend to do, their qualifications to do the work, and referencing of new drawings by title and date; all of this would be support for what they want to do in case there were any questions from DCR or DEP. He continued that they want proper documentation especially since the wetland boundaries were thought to be different a couple of months ago (at the aforementioned public hearing that issued the Order of Conditions). Mr. Eckhardt added that this will be documented in the minutes of this meeting, and instructed Mr. Votruba to contact the Commission if there are any objections by DCR or DEP. Mr. Votruba then asked how to handle the open Order of Conditions-would he need to amend it or close it and open a new one? Mr. Eckhardt responded that there are two options; they can amend the Order of Conditions, or they can file a Request for Determination of Applicability and have a public hearing at the June 6 meeting, probably obtaining a negative determination. Mr. Eckhardt continued, that the Order of Conditions would have to be concluded with a Certificate of Compliance, but the Commission would need to see the vegetation and he asked if any planting has been done? Mr. Votruba showed them the rip rap indicated on his map. The Concomm members discussed the possibility of extending the current Order of Conditions, possibly issuing a Partial Certificate of Compliance for the work already done, or filing of another Notice of Intent, possibly for agricultural reasons. Mr. Eckhardt then suggested that it would be appropriate for Mr. Chase to write them a letter, based on the documents and discussion, that the criteria was satisfied. He asked Mr. Votruba how far from the wetlands the work would be? Mr. Votruba replied 15 to 18 feet in the buffer zone (he already stated that it would be 200 feet from the riverfront). Mr. Eckhardt asked about the slope of the property? Mr. Votruba described that it is a 2 to 1 slope, 45 degrees with rip rap, and the driveway will be pitched towards a catch basin with storm sceptor. Mr.

Eckhardt then instructed him to, as soon as possible, explain in writing the riverfront issue and rip rap use, then the Chair will acknowledge and agree with the assessment, and he suggested a Request for Determination at the June 6 meeting (copies of the correspondence should go to DCR and DEP also). After some discussion with the Commission members about what filing they would need, Mr. Votruba decided that they would do a Request for Determination, as it would be less expensive than another Notice of Intent. Mr. Chase said that he would send a note about this to Tristan Lundgren of DCR. Mr. Votruba acknowledged that the key was certainty of the location of the brook, and having the engineer's stamp.

Minutes of April 11 Meeting:

After review of the minutes by the Commission members, Ms. Hopkins moved to accept the minutes, subject to some corrections by her. Mr. Eckhardt seconded. All in favor.

Update on Afra Terrace "As-Built" Questions:

Mr. Chase discussed that the last "as-built" submitted by developer Iqbal Ali had problems regarding snow removal on the plan. Ms. Hopkins mentioned also that a fence was damaged by a tree and the fence must be fixed and the tree removed. Mr. Chase said that he talked to Mr. Ali earlier in the day; he did not know why he was on the agenda. Ms. Hopkins said that the ZBA should be notified that there is still work to be done and Concomm has not signed off yet on the "as-built."

Update on Quinapoxet Dam Project:

Ms. Hopkins discussed that soil borings were supposed to be done on April 25, but were postponed to the 27th due to the weather. She instructed the Clerk to contact Georgeann Keer for an update to find out if the testing was completed or if it was still being done.

Update on Chief Minnich Property:

Mr. Chase discussed that Mr. Ali said that he gave no offer on the property; supposedly, he gave an offer of \$300,000.

Update on 263 Maple Street Conservation Restriction Property:

Ms. Hopkins said that the Board of Selectmen voted for the Town to accept that property, which the owner wanted to gift as a Conservation Restriction to the Conservation Commission, and explained that it cannot be built upon.

Angell Brook Board of Trustees:

(Bob Mercier and Cheryl represented). Previously, the Board of Trustees sent the Commission a letter discussing their concerns about the fore bays. As Mr. Chase had suggested to them, they established a baseline for conditions. They commented that the stormwater ponds are working well, and that they want the fore bays cleaned out before the Board of Trustees takes over responsibility for the property from the developer. They also spoke to the developer and asked him for an operation and maintenance plan. They do not have a record of cleaning out of silt; all the fore bays need to be cleaned. Planning Board walked the property, also. The Trustees contacted Keystone, the development company. Mr. Chase asked Mr. Mercier how he knew that there was silt if he did not know what was there in the beginning? Mr. Mercier replied that the silt level rods were only installed recently. Mr. Chase then informed him that, if they build a pond, they need a benchmark for it and it will be built according to the benchmark. Mr. Mercier responded that no one told them what materials they needed

to use. They were told there were six inches to one foot of silt in the fore bays, and they have to be cleaned out but they do not know to what degree; there are 10 or 11 fore bays. Mr. Mercurio asked Mr. Mercier if there were ever benchmarks or elevations indicated in any of the plans? Mr. Mercier replied that there were numbers of what were probably elevations but he was not sure. He added that Keystone does not have a log of maintenance, which was supposed to be checked every month. The Commission members discussed what types of materials would be at the bottom of the fore bays (Mr. Mercurio said that it depends, perhaps clay or gravel), and Mr. Eckhardt explained that a fore bay is to collect silt. Mr. Mercurio told Mr. Mercier that Concomm needs to see the latest plan, with proposed elevations, but they also need to see existing ones. Mr. Chase suggested that the Trustees get an engineer to meet with them and explain what they should have versus what they do have. In response to a question from Cheryl, Ms. Hopkins replied that Michael Staiti (the developer) should give the Trustees the original property plan so that it can be compared with what exists now. (Ms. Hopkins instructed the Clerk to check the archives to see if the original plans are there).

Public Hearing, Adoption of Wetland Bylaws:

(This public hearing was planned at the March Concomm meeting; the subject will be on the warrant for the May Town Meeting and the public hearing is required for adoption of bylaws). Ms. Hopkins informed everyone present that the warrant for the meeting had been released, and the Commission members agreed to submit the December, 2015 draft of the bylaws for the warrant. She explained that legal advice told them that the draft given them by the Bylaw Committee and Planning Board previously was not legal; there were no provisions for regulation areas and the Commission would not have funding to punish violators so they would have to refer to the Wetlands Protection Act for fees. Jon Meindersma, Chair of the Bylaw Committee (in the audience), responded that the Bylaw Committee did not propose anything and suggested targeting the Town bylaws to enforce. Mr. Chase explained that the Commission tried to get all of the Town Boards together. Ms. Hopkins explained that it was developed with the help of the NRWA, DCR thought that it was a good bylaw (John Scannell recommended it), and over 200 towns in Massachusetts have bylaws. In response to a question from Mr. Meindersma, Ms. Hopkins explained that the bylaws would define regulatory zones that the Commission will enforce. Mr. Meindersma asked why the State regulations were not sufficient? Mr. Chase asserted that the Commission would go to court with violators and lose as the State regulations were too ambiguous. Several Commission members discussed how they received input from many sources, including from the DEP Circuit Rider, Tristan Lundgren of DCR was going to follow up with a letter of support, and local politicians expressed support for it. They also obtained outside legal opinion. The Commission members also gave examples in the Town of violation situations where the Concomm had no recourse to stop the violations, and the only options other than bylaws would be for the Commission to budget for consultation with Town Counsel under the Wetlands Protection Act, or for DCR or DEP to pursue the situations because the Town would not pursue them.

Mr. Hadley brought up the situation of Gerardo Sarli, who came before the Commission voluntarily this evening to inform them of work he was proposing, and asked if the bylaws would change anything in that situation? Ms. Hopkins replied that the bylaws would be a guideline for the public, and that Mr. Sarli was coming before the board rather than just going ahead and doing the work without permission. Mr. Chase asserted that the Commission could get Cease and Desist orders from the Building Inspector if they had the bylaws. Mr. Mercurio asserted that, in other towns, DEP comes in and stops projects. Mr. Chase and Mr. Eckhardt responded that it would be an option from the State, and that DEP told the Commission that they needed bylaws. Mr. Eckhardt continued that the Commission needs a tool to stop violators similar to a situation in West Boylston, and asserted that the State has no

will or budget to stop them. He added that more towns in MA have bylaws than not. Mr. Mercurio expressed the concern that regulations, which do not have to be proposed before the Town, might be strict and “choke” people. Ms. Hopkins responded that there would have to be a quorum of the board to pass a regulation. Mr. Eckhardt continued that the current situation of the Commission, DCR, DEP and the Town have not been strong enough to stop violators, and they have been working for three years on the bylaws. Ms. Hopkins then read the “Regulations” section of the draft bylaw, which stated that, if fees or procedures are to be changed, that must be done at a public hearing. Mr. Mercurio also expressed concern about the language of the bylaw in the future. Mr. Chase suggested that the language can be changed so that, if regulations are to be changed, the Board of Selectmen must vote on it.

Mr. Chase continued that, for the Conservation Commission, individuals need to have schooling to be a Commissioner; this does not apply to any other board in the Town. Mr. Mercurio thought that the short version of the bylaw would give the Commission a tool, but Mr. Chase believed that there was not enough substance in it. He did understand Mr. Mercurio’s point, however, about a lot of power being given to only a few people, only three of which were licensed. Mr. Hadley responded that they could not go any further with this and, at this point, the people of the Town must decide. Regarding the “Regulations” paragraph, Ms. Hopkins added that the purpose of this section was so that the Commission did not have to go before the Town each time to make a change, whereas, to amend a bylaw, they would have to go to Town Meeting again.

Mr. Meindersma then commented, that he edited what he was sent, and that the shortened draft was not a Bylaw Committee proposal; but, it was thought that the original would not pass. He suggested that, if the Commission wanted enforcement, that they should add something for enforcement. Mr. Eckhardt commented that the shortened draft seemed to be a good alternative until it was examined further. Mr. Meindersma then asked, if the bylaw proves to be more restrictive than the State, could the Commission allow the individual to take an action? Ms. Hopkins responded that they do have an alternative, if a resident’s proposal shows that they are protection the wetlands, the Commission can try to work with the person so that they can do it. She added that the Concomm has authority in the 100-foot buffer zone, but the bylaw would define it better. John Farnsworth, who was present in the audience and will speak later at the meeting, commented that he could not think of a community that he knows of without a wetland bylaw. Mr. Chase and Ms. Hopkins added that the bylaws would make it easier for someone coming into the Town to know what they can and cannot do, thus saving them time. Mr. Meindersma then asked if “regulatory zones” was appropriate material for the “Regulations”? Mr. Chase responded that the Wetlands Protection Act is too vague for a court of law. Mr. Meindersma then asked, what if the Commission does not go to court, and just fines the person; could they then accept the ambiguity? Mr. Eckhardt replied that the Commission does not have suitable ways of dealing with some situations in or out of court. In response to a question from Mr. Mercurio, Mr. Chase replied that the Commission mainly wants to bring the violator before the board to talk with them.

David Femia, Clerk of the Zoning Board of Appeals, was present in the audience, and he asked if the bylaw is not approved at the Town Meeting, would the Commission still have to appeal to the Attorney General? Mr. Eckhardt replied that this is why the Commission had experts work on the bylaw. Mr. Femia asserted that the Town Meeting would not be the final word on the matter.

With no further questions or comments, Ms. Hopkins moved to close the public hearing. Mr. Chase seconded. All in favor. (Mr. Eckhardt took a moment to thank all of those involved in this process).

Informal Discussion with John Farnsworth Regarding Baldarelli Property, Laurel Street:

Mr. Farnsworth notified the Commission that they will file with DCR this week. He said that they finally have proof from Clark University archives of an existing crossing there, including aerial photographs and records. (Mr. Farnsworth showed the Commission members the crossing on a map, including Sterling Place and the railroad). Mr. Mercurio asked Mr. Farnsworth if there was a river or brook there? Mr. Farnsworth replied "yes." Mr. Mercurio asked if MA DOT has any issues there? Mr. Farnsworth responded that Ed Baldarelli's only access to get to his house is at that crossing; Baldarelli Bros., Inc. owns the other property. Mr. Chase added that Ed has 34 acres, with four culverts.

Mr. Farnsworth then commented that they will remove beaver dams there, they hope sometime this year. Ms. Hopkins suggested that this subject be removed from the agenda until Mr. Farnsworth has more information. Mr. Farnsworth said that the only change to their Order of Conditions would be the size of the pipes used. Mr. Eckhardt asked him to send Concomm a new email, telling them of the details of the project; the Clerk was instructed to place this on the June 6 agenda as an "Amended Order of Conditions."

With no further business to discuss, Mr. Hadley moved to adjourn the meeting at 8:38 p.m. Mr. Mercurio seconded. All in favor.

Submitted by: _____

Date accepted: _____