

MINUTES

CALL TO ORDER

Meeting called to order by Ms. Angus, Chair at 7:00 p.m.

ATTENDANCE

Members: Angus (C), Allen, Boice, Butler, Clark

Absent: Brooks, Healey

Staff: Ziomek, Willson

COMMENTS FROM CHAIR, DIRECTOR'S & WETLAND ADM'S REPORTS

Willson stated she met with contractor on Montague Rd where repaving being done. They walked down by the Mill River and identified a couple of areas from which they will remove invasive plants and will replant in the spring. Amherst College road just permitted at last meeting – they have erosion control up and have started paving. Simple Gifts Farm Stand – finally ready to go.

MISCELLANEOUS ITEMS:

Bluebird Meadow Interpretive Signs

Carol Gray will not be attending meeting. Willson has seen some of the changes that she has made and they are much better, but Carol is not done yet. The Commission wants the next time Ms Gray comes before them to be the last time and that they will be ready to vote on whether they approve the signs and whether they approve having them go up in the conservation area.

Willson toured Fearing Brook watershed with a representative from the Division of Ecological Restoration (DER) because she has applied for a grant with them. The grant provides a lot of technical assistance and not a specific amount of money. If you get the grant you get put on a list of priority projects until you finish the project. There is some money and a lot a technical assistance – they help with fund raising, etc.

The MET money is almost all spent. A lot of sampling was done, NEE was hired to help with the sampling and we also had a student from Amherst College doing data collection. Since then, working in conjunction with DPW, we ordered and installed five catch basin filter systems and also purchased and installed drain markers throughout Town.

CONSERVATION COMMISSION'S ACTION

Review Minutes: March 23, 2016.

Motion Boice, Second Clark Commission VOTED unanimously (5-0-0) to approve the minutes of March 23, 2016.

7:15 PM Informal Discussion – Conservation Dept. staff for MA Fish & Game grant application.

Ziomek indicated that the Conservation Department would like to submit a grant seeking funding to rent equipment to help maintain some of our early successional habitat. This is a program that Brad

Bordewieck is working on. Need to take back some of the field edges as Atkins Flats, Eastman Brook, Lawrence Swamp Cons. Area. Brad is seeking approximately \$21,000 for equipment rental. Probably won't be able to do the work without the grant. There is a small match – we would provide \$4K – \$5K in matching personnel. The Commission is being asked to sign a letter of support to submit with the grant application.

Secondly, we are getting ready to close in the next few weeks on the Stowes/Stosz properties. Next step is to have the Commission accept the properties by signing the agreement.

Motion Butler, Second Boice Commission VOTED unanimously (5-0-0) to accept the Stowes/Stosz Conservation Restriction for the care/custody of management of the property.

PERMITS/CERTIFICATES

7:30 PM Notice of Intent – Adrian Fabos for construction of a single family house and driveway including a stream crossing and wetland impacts at 310 South East St. (Map 17B, Parcels 13 & 14).

Bucky Sparkle, the owner's representative, gave a brief description of the project. Mr. Fabos intends to build a single family home adjacent to the property at 310 South East Street. However, an intermittent stream runs along the length of the Fabos property and access to the flag lot is not accessible from abutter's property. In order to gain access to the proposed siting of the house, it will be necessary to have the driveway cross the stream and wetland. Use of existing driveway on abutters' property is not possible, because the abutters are not interested in expanding access.

They looking to get an easement so that they can cross at the narrower portion. Chuck Dauchy, Environmental Consultant, did the flagging. A lot of the wetland is presently mown lawn, but there is some wet meadow and shrubs along the intermittent bed. The stream bed is 2.5' wide about 1' deep in terms of channel section. They are proposing using a 6' wide box culvert to span the 2.5' wide stream bed. They may use a temp culvert for getting the utilities underneath the stream. Intend to get a 10' paved driveway with a little gravel at the outside edges. Also will be building stone walls at the outlet of the culvert, will have a little bit of grade change that they will have to overcome. Would rather not fill, so for the most part using field boulders. Looking to replicate just over 2:1 for that disturbance and will work with Chuck Dauchy during the process.

Angus stated this is also a limited project, so we can decide whether we need to grant relief or just call it a limited project. Willson asked Sparkle if they had looked at the east side of the stream for restoration, it looked lower at the site visit than the current location so might be easier to build a wetland. Sparkle responded it would pull it closer to the residences and that was less desirable and this is where Chuck thought it made the most sense. Willson asked to have Chuck look at the other side.

Angus asked Sparkle to go over the crossing detail. Sparkle pointed out the areas on the map – where the stream is, where the wetland is located, where the house will be situated and the location of the restoration area. He discussed the proposal to install a box culvert to deal with the stream crossing -and will install a temporary culvert to deal with utilities. At Briony's request Sparkle gave a verbal reply to the DEP comments.

Sparkle indicated that they will use silt fence for erosion control and will have a de-watering area, which may or may not be necessary, depending on time of construction. It will have two cells, to allow

cleaning out one and use the other, or if one fails, you can use the other and they are more than 50 feet away from the wetland.

Leonard Costa, abutter to the property since 1985, expressed concerns about flooding and location of the driveway. He said water comes over the banks of the stream during heavy rain. He suggested the new driveway be used as a common driveway for the other rental building on the property. Sparkle spoke to the issue of flooding and indicated that the culvert would not restrict the waters from flood or otherwise. The culvert won't affect any of the flooding situation that may or may not occur; also not part of a flood plain. Sparkle stated if there was a common drive created in the crossing area, that would more than double the wetland impact. It would be a much larger project and there wouldn't be space for the wetland replication area, it would be significant impediment to the project.

Motion Boice Second Butler Commission VOTED unanimously (5-0-0) to close the public hearing and issue an order of conditions with special conditions as discussed.

7:45 PM Request for Determination (cont'd from 10/13/16 mtg) – Paul Cole for jurisdictional status of two streams at 1194 West St. (Map 25B, Parcel 29).

Present: Tom Reidy, Chuck Dauchy, Paul Cole & Peter Wells

Tom Reidy, Atty. with Bacon & Wilson, gave an overview of the process they followed, first submitting an RFD which led the Commission to determine that the streams on the property were intermittent, proceeded through the Planning process and then submitted an NOI to develop a cluster subdivision on the property. There was an appeal of the Order of Conditions by an abutter. Superior Judge Carhart rendered a decision that the Commission should have taken observable and anecdotal information into consideration when making the determination that the streams were intermittent. There was a remand by the court back to the Commission and the Commission made a subsequent determination that both of the streams were perennial in 2008, which would have naturally expired, except there was a permanent extension act which caused it to expire in 2015, so there now are no determinations applicable to this land. Angus asked if the commission determination was under the bylaw only? Reidy said yes.

Reidy continued that there is now an RFD before the Commission which is submitted under State standards to determine whether or not these streams qualify, you have to look at State standards in determining stream status for determination. If you do follow that, then Mr. Dauchy has proven that neither of the streams qualify under the State standards. Our position is that the resource values were protected with that original order of conditions issued by the Commission. Angus stated your position at the last meeting was that if the Commission determines that the stream is perennial under the local bylaw, the performance standards are different, correct? Reidy answered correct – they are local performance standards. Angus stated it just adds confusion talking about the project. There is no project proposed at this point, just a request to determine whether the streams are perennial or intermittent under state and local regulations. You are asking us to make determinations under both the act and the bylaw? Reidy answered correct – two separate determinations.

Dauchy presented additional information on watershed, topography, and stormwater discharge.

Angus said we need to make a determination under both the WPA and the Town's Bylaw and the criteria for making those determinations are different. The State WPA regulations provide pretty straightforward guidance. The question has been raised – what is it under our bylaw and regulations that gives the Commission the discretion to consider additional information than the WPA regulations. We should look carefully at how the regulations define river, riverfront area and the performance standards

for that. The decision points to an odd part of our regulations which gives us the ability to ask for more information deemed necessary, at our discretion. I feel that gives us the flexibility to ask for more information. With that, the applicant is pushing us hard to focus on our definition of a river, which says, “river means any naturally flowing body of water that empties into any ocean, lake, pond or river and which flows throughout the year.” Naturally flowing and natural is not defined anywhere and it is hugely subjective.

Do we want to knock one of them out first – the local determination seems more complicated. Do you understand the information with respect to the local performance standards?

- *River* is defined in our regulations as any naturally flowing body of water that empties into any ocean, lake, pond or river and which flows throughout the year
- *Riverfront area* references back to the definition in the WPA
- *Performance standards* for bank, reference the term riverfront, but they are not the same as the performance standards for riverfront at in WPA and we don't have similar language in our regulations for that

Boice says in her mind it is a naturally flowing stream. Angus says even if there is consensus that it is a naturally flowing stream, I'm not sure under our regulations, that makes it perennial. Our regs say, “and flows throughout the year.” Bylaw definition of a stream – any body of running water including brooks and creeks which moves in a defined channel in the ground due to a hydrolic gradient, a portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent, discontinuous, or ephemeral, does not flow throughout the year. Stream does not necessarily drain from an upgradient wetland.

Angus added our performance standards are tied to bank, they are not tied to stream or river. Willson said our bylaw does define riverfront area, but we don't necessarily tie it with river, which is probably a flaw in our bylaw. The definition of Riverfront in the bylaw refers to the Rivers Protection Act. So, you could make the assumption that if something is a river under the bylaw it has Riverfront. The applicant is saying no, they're saying if we determine it to be a river/perennial we still can't use the Rivers Protection Act and must use Bank performance standards.

Butler stated there is no argument that it doesn't flow throughout the year, the issue is more whether it is natural or not. Angus asked would you agree with that, your argument that this stream is intermittent under the Bylaw is tied to the concept that it is not naturally flowing? Dauchy responded correct we submit that even if the Commission finds that the streams do flow year round, that at least the northerly stream, does not meet the criteria of a naturally flowing stream because of the substantial changes in watershed.

Mr. Jacque, an abutter living at 1260 West Street, noted that during the drought this summer, water was being drawn from the stream to provide irrigation, which would imply that there is a lot of water there. Marty Epstein, abutter, grew up on that land and the streams were always running.

WPA Vote

Motion Butler Second Boice Commission VOTED unanimously (5-0-0) to make a determination that the two streams are intermittent under the WPA and its regulations.

Bylaw Vote

Motion Butler Second Boice Commission VOTED unanimously (5-0-0) to make a determination that under the Town of Amherst Bylaw these bodies of water be considered a River/Perennial subject to performance standards referenced at sections IV(A)(4).

8:00 PM Notice of Intent (cont'd from 10/13/16 mtg) – Amherst DPW to install a stormwater treatment chamber and replace the existing outlet pipe on the stormwater drainage system for Mill St. (Map 5B, Parcel 98).

Angus indicated that the only thing that the Commission had been waiting for were comments from Natural Heritage. Natural Heritage has provided comments that the project meets the performance standards for rare species under the Wetlands Protection Act.

Motion Clark Second Boice Commission VOTED unanimously (5-0-0) to issue an order of conditions.

8:15 PM Informal Discussion (cont'd from 10/13/16 mtg) – Amherst DPW regarding Mill St. bridge temporary easements.

Guilford Mooring stated he found out that the Commission can add their conditions in regard to the bridge construction to the license agreement for the easements. This is because no Order of Conditions will be issued only a 401 Water Quality Cert under the state.

2nd issue – federal highway money. Have to agree that the work that is being done will not degrade the recreation land in any way, which is called a 4F statement. The 4F Program is a federal program for road construction projects. If the work is going to impact or be adjacent to some type of recreation area, historic area, etc. the owners or caretakers have to agree that the project is going to have a minimal impact on the “asset” when the work is done.

The discussion on the license agreement and the vote on the 4F will be continued until the next meeting.

ADJOURNMENT

VOTED unanimously to adjourn the open meeting at 9:15 PM.
