

## MINUTES

### CALL TO ORDER

Meeting called to order by Ms. Angus, Chair at 7:05 p.m.

### ATTENDANCE

Present: Angus (C), Allen, Boice, Healey  
Staff: Ziomek, Willson

### CHAIR, DIRECTOR & WETLANDS ADM REPORTS

Ziomek stated field crew has finished wood chipping at Plum Springs. Starting to hear dog complaints, off-leash, lots of dog poop at Amethyst Brook. A kiosk is planned for Amethyst Brook that will contain rules about dogs. Getting ready for Town meeting, Cons Dept budget similar to last year, asking for two items from Capital Budget - trailer and brush hog. Saul property will be voted on. It is currently owned by Kestrel Trust. Ziomek & Angus to come before the Finance Com regarding Saul property. Carol Gray received a grant to enhance Southeast St property, she would like to come before the Commission soon to discuss.

### APPROVE MINUTES

Approve minutes of 5-22-13 & 2-26-14.

Boice moved and Healey seconded. Commission VOTED (3-0-0, Angus abstained) to approve the minutes of 5-22-13.

Healey moved and Allen seconded. Commission VOTED (3-0-0, Angus abstained) to approve the minutes of 2-26-14.

### PERMITS/DISCUSSIONS

7:15 PM 7:15 PM Application for Research on Cons. Land – Joan Milam, UMASS, to study spotted turtles in Lawrence Swamp.

Mike Jones, UMASS, presented proposed research project. Project to be conducted partially on town watershed land, conservation land, and private land. They have received permission from DPW to use watershed land. They will be trapping the turtles using cages and bait and examining the turtles. They will cross the wetlands on foot, not mechanized equipment. Asking for a one year permit, will come back to the Commission if study changes and if they decide to continue another year. Commission would like a copy of the study results. Healey acknowledges she works in the same dept. at UMASS.

Boice moved and Healey seconded. Commission VOTED (4-0-0) to approve the research application.

7:30 PM Notice of Intent (cont'd from 2-12-14 mtg) - Peter Heronemus for construction of a single family house and associated driveway within resource areas on West St. (Map 22B, Parcel 1).

Applicant not required to come to meeting. Willson stated that the delineation can still not be confirmed due to the snow. She discussed with applicant continuing hearing until snow melts.

Boice moved and Healey seconded. Commission VOTED (4-0-0) to continue the public hearing until April 23<sup>rd</sup>, 2014 at 7:45 PM. Applicant did agree via email to date and time.

7:45 PM Enforcement Order – Matt Biskup & Danya Teitelbaum for clearing within Riverfront at Russellville Rd. (Map 4B, Parcel 5).

Angus provided a background to Con Com's role in regard to enforcement orders. She stated there is a representative from DEP here for this hearing. NRCS has no role in administering or enforcing the state and local regulations. One Enforcement Order has been issued saying stop work and come to Con Com mtg. Clearing was done that impacted a number of resource areas protected under state and local law, bank, Riverfront, BVW and land subject to flooding. She stated that this is probably the most significant wetland violation Con Com has seen in Amherst. A preliminary look at length of clearing shows it to be 1.1 miles.

Willson stated that historical ortho photographs are in the Con Com's packets and show historical Land in Ag Use (LIAU). The vegetated buffer can be seen in the various photos. Angus stated that there is guidance as to what is considered LIAU. It consists of that land historically used to grow Ag products for profit plus a field edge. Willson stated the field edge consists of land used to support crop land, it has to be used for that or it's not exempt. Willson added that a map was provided to the Commission showing the where the Swamp Brook and Eastman Brook flow in Amherst, they are both very significant river systems.

Angus stated the Commission should also consider taking action against the contractor who was hired to do the clearing work. The contractor is a local business that has done work under the WPA, therefore, shouldn't have agreed to do the work without a permit. We can not issue any enforcement against NRCS, but could issue them a letter about being on the same page in regard to the regulations.

Matt Biskup stated that he and Danya purchased the property in 2012. He referred to the ortho photos as showing little vegetation along the brook in 1967, some mature trees in 2001, and more of a vegetated buffer by 2009 which he said was because the farm had been neglected over the years. They are under contract with APR who require you to keep the land in production. They wanted fencing to keep cattle so they went to NRCS for funding who said they could apply under a "brush management" grant category. NRCS said they could use the machine they used to cut the vegetation and they would fund it. They applied along with applying for some other financial needs for the farm and received funding. They read the Farming in Wetland Resource Areas Guide put out by the state and thought what they were doing was exempt under general maintenance, trimming of field edges, etc. So they hired a contractor and he came and did the work. They stopped work when Beth came by and told them they were in violation. Same day they came into Town Hall and met with Willson and Ziomek. Since then have conducted site visits with NRCS reps, Willson, Ziomek and Cons Com.

Angus stated that under the regulations normal maintenance of LIAU does not allow expansion of crop land into resource areas. Management of field edges does not allow removal of trees and understory within 25 ft of a stream or water body not used in the land in production. She stated today at the site visit

it was very clear where the crop land/field edge ended and where vegetation used to be along the brook. Everything on the Brook side of that line is not in LIAU, so the exemptions in the guidance document don't apply.

Willson presented pictures from site visits on overhead. Angus said bottom line is work was done in an area of the property not exempt from the regulations. Mark Stinson, DEP Circuit Rider, asked if the intent was to clear an area for cattle to get to water? Matt said no, they were losing viable land to mostly invasives and wanted to clear them out and use the land. Stinson stated farmers don't clear right up to the water, it allows runoff of fertilizers and pesticides and soil erosion. Streams will warm up without shade, during flooding without rooted vegetation you'll start losing farm land. He stated he couldn't believe NRCS would fund this, they know the importance of a riparian buffer. He added he didn't realize there was 1.1 miles of alteration. Angus stated we just figured that out today.

Healey asked what was the goal, to expand usable farm land? Danya stated their thought was leave the mature trees, those that weren't dead from bittersweet, as the vegetated buffer. Over the years the field edges had become overgrown with multi flower rose & bittersweet and were encroaching on the farmland, not ideal for maximizing farmland. She said that APR sees it as not all potential farmland is in production and NRCS sees the invasives as taking over and encroaching. Willson asked did either of those groups mention permitting under the WPA? She said no. She added they were trying to get an NRCS grant for fencing, but to get that the edge for the fence had to be cleared.

Angus stated the permitting path way should have been to come before the Commission with an application for invasives removal by hand, maybe herbicides, as resource area improvement. Stinson asked when was the farmland last in production. Matt responded this year, continuous before that, he purchased it in 2012 and hayed in 2012.

Abby Getman, Ag Commission, stated she agrees that Matt & Danya got conflicting advice and she would like to see clarity brought to the Ag Com that could then bring info to farmers on abiding by the wetland regulations. Ziomek stated we have been talking about having workshops for farmers.

Healey stated we need to have the area revegetated with native species of all sizes. Angus stated the debris needs to be removed from the stream and she asked the Commission do we want a delineation done, how do we want to have the resource area edge marked - in the field, on a plan? In terms of restoration of the riparian buffer we typically will require owner to work with a wetland scientist to come up with a planting plan. We will take into account the potential cost to restore such a large area. Healey supports requiring use of a consultant because it's complicated, farmers obviously not knowledgeable about wetlands, we want it done right. Ziomek agreed that bringing a consultant in is a good idea. He suggested getting out now before vegetation grows in and marking the edge of LIAU that is pretty obvious right now. That would eliminate having to do a full delineation or hire a surveyor. Both physically in the field and then GPS those points and get them on a plan. He suggested the farmers look to NRCS for funding to restore the stream area.

Angus stated we will be issuing a second Enforcement Order that will state what we decide tonight to have done. Debris removal - Ziomek said he didn't think there was a lot of debris in the stream itself, Healey said could cause more damage going in to take it out. Farmer said contractor did a good job keeping wood chips out of stream and removed any large wood pieces that fell into stream. He added that as Ziomek stated what will naturally grow back will be a mix of native and invasive species so his plan would be to mark the line and just let it grow back naturally. Danya said the plan using NRCS funds was to install a fence closer to the Brook and allow cattle to graze and keep the invasives down.

Angus said one option hire consultant come up with plan to delineate line and replant. Healey said she agrees with Ziomek formal delineation not necessary, just go out now and mark obvious field edge. Angus said other option is mark field edge and let grow back naturally. She added we encourage you to look into funding mechanisms, NRCS, other farm organizations, etc.

Matt asked if the large woody debris that ended up in the field can be removed so it doesn't end up in the bailer. Angus said yes, if it's in LIAU it's OK. He asked if the Enforcement Order will include removal of debris from streams. Angus said it may only say removal of debris caused by clearing if any. Allen added the large debris is good shading, habitat for fish shouldn't remove.

**Healey moved and Boice seconded. Commission VOTED (4-0-0)** to issue Enforcement Order #2 requiring the applicant to mark edge of LIAU both permanently in the field using survey stakes, blue wetland stakes or other monument, and record on a plan - GPS locations is fine formal survey or delineation not required, a certified wetland scientist must develop a planting plan using native species to restore the Riverfront.

Angus stated she would like the Commission to consider a separate Enforcement action against the contracted, Wagner Wood. Healey asked if we could do that next mtg. All agreed.

### **8:00 PM Emergency Certification – Breaching of beaver dams at Pomeroy Lane, Potwine Lane & Pomeroy Court.**

Ziomek said he got several calls about Plum Brook overtopping Potwine Lane. Dam downstream blocking plus beavers had blocked culverts. So we issued an Emergency Cert to breach that dam and to breach a series of other dams near Pomeroy Court to avoid that road being flooded. Since then some of the dams have been rebuilt, some more breaching has also been done. Dave & Beth are mtg with neighbors on Monday to discuss breaching and trapping on private land. No trapping will be done on Conservation Land.

Jennifer Dobson, Pomeroy Lane, stated that the breaching has made a significant difference the water is down quite a lot.

Healey moved and Allen seconded. Commission VOTED (4-0-0) to ratify the Emergency Cert.

8:15 PM Discussion - Review/comment on RFP for 3<sup>rd</sup> party review – Retreat

Willson asked once again if anyone had any comments on the draft RFP. No comments.

#### Miscellaneous Untimed Items:

- Vote on Norwottuck Rail Trail drainage improvements presented and discussed at the previous mtg.

Boice moved and Allen seconded. Commission VOTED (3-0-0, Healey abstained) to approve new plans that include a slight reduction in scope of permitted drainage work without requiring an amendment to the OOCs, and approve that MADOT & their contractors do the permitted work instead of MADCR.

- Vote on Mill St. Bridge conceptual plans

Willson read a statement she drafted for Commission that would go to the Select Board supporting Alternative 4, one lane with multi-use path. Healey said she is in favor of the bike/walking path option

with no vehicles. Boice stated reasons for Alt 4 in include that the state will pay for it, and that it will provide emergency vehicle access. Healey asked if we could change the statement to say the Con Com would support either of those two options but not the others. Ziomek stated that any statement should say that this opinion doesn't override permitting review. Commission decides to review new statement at next mtg in two weeks.

- Vote on RFP review subcommittee

No vote.

- Nominate/Vote on Vice Chair

No vote.

- Topics not reasonably anticipated 48 hours prior to the meeting.

### ADJOURNMENT

VOTED unanimously to adjourn the open meeting at 9:20 p.m.