

MINUTES

CALL TO ORDER

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

ATTENDANCE

Present: Angus (C), Boice, Allen, Healey, Brooks, Butler

Staff: Ziomek, Willson

CHAIR, DIRECTOR & WETLANDS ADM REPORTS

Ziomek stated the CPA articles, funding for Fort River Farm, Conservation Restrictions and due diligence, were supported by Town Mtg. Cons. Dept. working on plan for Fort River Farm, closing in next couple weeks. There will be opportunities for Commissioners to be involved, plan to work with Ag Commission. Also hoping to do farming workshops, Ag Com/Cons Com run.

Puffer's Pond is getting active, had first (and hopefully only) college gathering there last weekend. Police broke it up. Brad & Chet are interviewing and hiring summer staff, they will start mid-June. Carol Gray got a \$4000 grant for trail development on Southeast St. parcel focusing on birds and butterflies. Will bring preliminary plan to Commission.

MINUTES

Reviewed and approved 3-26-14 minutes.

Boice moved and Allen seconded. Commission VOTED (4-0-0, Brooks & Butler abstained) to approve the minutes of 3-26-14.

PERMITS/DISCUSSIONS

7:15 PM Enforcement Order (cont'd from 3-26-14 mtg)– Matt Biskup & Danya Teitelbaum for clearing within Riverfront at Russellville Rd. (Map 4B, Parcel 5).

Angus reviewed project history, two Enforcement Orders have been issued. 2nd issued March 31, 2014 which we will ratify tonight. Request to applicant was to delineate line in ag use and develop re-vegetation plan certified by a wetland scientist.

Frank DiLuna, land owner's lawyer, provided supplemental information to memorandum he had previously submitted. He stated activities that happened were maintenance activities that are exempt from WPA. Farmers are cross-commoditizing, going from hay field to pasture which he stated is exempt from WPA. Needs a fence to keep cattle in, keep them away from plants that make them sick such as bittersweet, honeysuckle, etc. Farmer can go 100ft from edge of active field to practice "ag hygiene" - clean up of species dangerous to cattle. Work was done in February, no pesticides were used, removed

buckthorn, vegetation will all grow back in. He asked that the violation be revoked and the action be considered exempt as he believes it is. The edge of the field is very apparent, that is where the fence is going to go, past that will be the "necessary lands" that can be cleared up to 100' for ag hygiene.

Angus stated resource areas are Riverfront, Land Subject to Flooding & Bank. Angus read some of ag regs, saying field edge maintenance does not allow clearing within 25 of a water body that is not managed within the land in production. Ag regs pre-date Rivers Protection Act so don't reference Riverfront, Con Com has the discretion to apply what regs say to Riverfront area if we think it's appropriate. Angus stated she believes the vegetation along Swamp Brook does not relate to the current use of the land, hay field, therefore not in LIAU and not exempt. If farmers had wanted to expand LIAU they should have come before the Commission with a request.

DiLuna refers Commission to letter from USDA. USDA is funding portion of this project, if farmers violate USDA regs they lose funding and insurance offered through USDA. USDA regs say you can't expand LIAU. They inspected and said activity didn't expand LIAU. He said clearing is related to haying, you don't want invasives getting into hay field. Angus stated if they wanted to remove invasives they should have come before the Commission with a request and the Commission could have guided them to do it in a better way for the Riverfront than the way they did it. DiLuna said a 6 ft path (field edge) is needed next to fence to keep veg away from cattle, it will be mowed, the remaining land up to brook will be maintained to keep invasives out but veg will grow back.

Healey asked why all veg was cleared if only need 6 ft path. DiLuna said needed a baseline, remove weeds so can now manage invasives. Healey stated she thought at the last meeting the farmers had stated the goal was to bring the land into ag use. DiLuna said the farmers "better understand it now". He added but they did what the law allows them to do in terms of maintaining the field edge. Willson stated she felt the story had changed and wanted to know where the fence was going. DiLuna said the plan is to put the fence along the edge of the active field. Ziomek stated on an earlier site visit it had been stated that grazing would take place within the cleared area, outside the current hay field. DiLuna showed on picture where obvious line is at edge of active haying, that's where fence will go.

Angus asked then how was clearing of all veg, invasives & non-invasives, needed and related to haying. DiLuna said to keep plants/seeds from getting into field. How related to pasture is cattle get sick from many of the plants. Angus stated we do permit invasive removal projects but we would never permit a plan saying remove everything and see what grows up. She added there are ways to selectively remove and treat invasives. DiLuna said it's common ag practice to remove invasives by clearing, UMASS Ag and NRCS have stated such. Brooks stated this is not common ag use, not allowed in the regs and not good invasives removal it just spreads the seeds.

Dan Kaplan, Brookfield Farm, asked what is the ag exemption? He believes farmers were acting under the belief that they were exempt partially because NRCS said they were. The fact that there aren't very old, large trees indicates that the area was cleared before. Angus stated the ortho photos show no clearing within the last 5 yrs. He added just going in and selectively removing multi-flora rose is not feasible. Angus responded that this is a discussion about the Ag exemption and whether what was done falls within it.

DiLuna stated the machine used was a hydro-buncher. Kaplan asked if the Commission was saying that that machine could pull out a 10" tree. Healey said she saw stumps that were at least 4-6".

Ruth Hazard, Chair of the Ag Commission, she visited the site today and observed the sides of the stream that had been cleared and those that hadn't. Veg on those that hadn't hangs over field. This field was rented for a few years and not managed to keep that encroachment from happening. Hurting land in production, have to cut back to bank to avoid encroachment. Some of the invasives are vines that are climbing up the trees and killing the trees, some of removed trees were dead from invasives. Only bare soil was where heavy canopy existed, didn't see any erosion where veg cleared. Ferns and wildflowers coming up, indication soil not disturbed. No erosion occurring from clearing. Angus stated that ag exemption is only allowed as long as erosion and sedimentation aren't occurring.

Angus reviewed that the Commission is being asked to reconsider that finding that this action was a violation. Healey asked if it is right that they couldn't clear within 25' of the stream. DiLuna said if waterbody not part of ag activity, there is evidence this stream was straightened and cleaned out, part of ag use. Angus read from regs. DiLuna read from the Guidance Doc.

Butler stated he feels the intent has changed. DiLuna said it's the activity not the intent we need to look at to see if exempt. Butler said it's whether they meant to expand or not, expansion not exempt. DiLuna said their lawyer is telling the farmer/land owner they can't expand. Healey said farmer told us differently. DiLuna said NRCS told them they could, Angus said NRCS doesn't administer the WPA.

Ziomek stated that the Enforcement Order asked for a permanent marking of LIAU, how is temporary cattle fencing going to accomplish that. Commission also asked for revegetation plan haven't heard about that. DiLuna said solar electric fence with wooden end posts and nylon posts in between. Could set end posts and have Commission check locations. In terms of reveg plan let grow back and manage invasives. Could put down a meadow mix to stabilize bank.

Butler asked to hear from Matt & Danya about what their intent was. Matt said they would like to speak through their attorney. Ziomek stated options are to reconsider EO, let EO stand or other option have staff meet with applicant and applicant's lawyer to clarify and talk through next steps to move forward before next Con Com mtg. Angus stated she wants to let EO stand and wants update ASAP on meeting its requirements.

DiLuna said applicant would like EO reconsidered because funding from NRCS could depend on resolving EO issue. Kaplan stated EO says that farmers violated law, maybe what they did was exempt, Cons Com just said it's hard to interpret the law. If looking at intent look at that they did work in winter least impact. If they had filed maybe they would have been exempt.

Butler stated he wasn't at the previous meetings, was it clearly stated by applicant that they intended to expand crop land. Commission – yes. Angus said she wants to remind the Commission of the size of this violation and the ramifications if we don't enforce the law. Brooks said continue EO have staff work with applicant, get fence in ASAP, area seems to be restoring itself. Healey said continue EO, establish permanent fence, still require revegetation plan in writing.

Ruth Hazard, Con Com should acknowledge they were not aware of regs/guidance doc. Angus we never said we didn't understand regs/guidance. The new information brought by lawyer that Con Com discussing is change in intent of work not new info on regs. Hazard encourages Commission to rescind EO because it's putting farmers at risk of losing funding and farm. Ziomek stated that an NRCS rep said to him in the field that the clearing was more extensive than NRCS had envisioned/planned for the project.

DiLuna stated he has 60 days from the issuance of the EO to act (appeal to Superior Court). Brooks moved to let EO stand and staff work with applicant to expeditiously accomplish what was required in EO. Butler said OK with them not hiring consultant but doing reveg plan themselves. Butler amendment to Brooks motion is to have applicant come back to Commission with proposed reveg plan done by applicant (consultant not required).

Brooks moved and Healey seconded on Brooks motion (includes consultant putting together reveg plan). Commission VOTED (3-3-0) - doesn't pass.

Butler moved to maintain EO, change language in 3rd bullet to say applicant may put reveg plan together themselves, consultant not required.

Butler moved and Boice seconded. Commission VOTED (6-0-0) to modify EO as stated in motion.

Allen moved and Boice seconded to ratify March 31 Enforcement Order. Commission VOTED (6-0-0).

7:45 PM Abbreviated Notice of Resource Area Delineation – Retreat at Amherst, LLC for confirmation of resource areas and their boundaries at a property bounded by Henry St. and Flat Hills Rd (Map 6A, Parcels 84, 91, 95 & 96).

ANRAD filing opened by Vice Chair. Ziomek states that tonight's mtg conflicts with Amherst Town Mtg (going on tonight also) and many of the Town Mtg members have stated they want to be at the ANRAD hearing. He recommends to the Commission to continue hearing until May 29th which is not a Town Mtg night. Tony Wonseski, SVE Assoc., local engineer representing the Retreat, stated that they agree to the continuance of the hearing until May 29th at 7:30 PM.

Brooks moved and Healey seconded. Commission VOTED (5-0-0 Angus recused) to continue the public hearing until 7:30 PM on May 29, 2014.

8:00 PM Notice of Intent (cont'd from 4-23-14 mtg) – Peter Heronemus for construction of a single family house and associated driveway within resource areas on West St. (Map 22B, Parcel 1).

Peter Heronemus presented his newest house construction plan. House now located in northeast corner of property. Plan includes crossing and replication area, house outside 100' vernal pool setback and 50' building permit setback. Angus stated that the last plan with building in southern location was permissible, needed a limit of work marked and landscaping described. Heronemus didn't think house would have fit within 50' setback. Butler said he remembered house location was OK just landscaping would have been tight, just limit landscaping.

Angus we could approve this plan, if you want to change Commission reviews changes to determine whether warrant an Amendment or new NOI. Willson stated or we can just continue hearing and applicant can come back with another design attempt.

Healey moved and Boice seconded. Commission VOTED (6-0-0) to continue the public hearing until 7:15 PM on May 29, 2014.

8:15 PM Enforcement Order – Wagner Wood for clearing within Riverfront at Russellville Rd. (Map 4B, Parcel 5).

Angus stated Wagner here as contractor who did the work previously discussed on Russellville Rd. Unless others think necessary let's not go over all history of event already reviewed tonight. Frank DiLuna, Wagner's lawyer, and Jim Wagner, Wagner Wood presenting. DiLuna stated he would like the testimony and information presented previously under Matt & Danya Biskup to be incorporated into this matter. DiLuna stated he did submit a separate memorandum for this case.

DiLuna stated Mr. Wagner was contracted to remove vegetation in land adjacent to field, he thought the work was exempt. He did the work as to not cause erosion. Angus asked if contractor has done work in Amherst before subject to WPA and town bylaw. Wagner - yes. DiLuna added and under ag exemption which is what he thought he was performing under. Angus asked when work is obviously in resource areas do you typically ask clients if it's permitted? Wagner says you can ask, they may say yes or no whether they have them or not. Angus are you aware that as a contractor you are responsible to meet regs, make sure things are permitted even if land owner doesn't have permit. Wagner, no didn't think he was on the hook if doing something land owner asks. Angus - you are.

Wagner stated in their subcontract agreement they have language stating all permitting needed obtained by landowner or eng., they sign and send back. No subcontract was done with Matt & Danya because agricultural. Butler asked if Wagner thought it was being done to expand the crop land? Wagner, no if expanding would have been removing stumps and roots for tillable land. He thought it was maintenance, invasives removal.

Angus stated we find they are not party to violation and they have met EO, we issue a 2nd EO asking them to be part of restoration effort. Willson added that as a contractor in this business Wagner possibly should understand the regulations better than the farmer. Wagner stated they still feel the work done was exempt based on their historical ag practices, Commission has different opinion and holds all the cards. Angus said Cons Com's decision can be appealed if you don't agree. Wagner so in addition to asking client if permitted with ag we need to ask their intent for cleared land and then it falls to interpretation of the law.

Brooks reads from bylaw. DiLuna states local regs do not apply to state ag exemption. Angus we will look into that. Wagner reads bylaw and states that this work is normal maintenance for them.

Angus Commission needs to decide if we want to ask anymore of Wagner or having them come to this meeting enough. At this point they have complied with the EO. DiLuna added they would like to see the EO rescinded so it doesn't have to be reported on their insurance. Ziomek stated he's lived in Amherst all his life never seen 5,000 linear ft of bank along a perennial or intermittent stream cleared. Wagner said not cleared, mowed.

Healey moved Brooks seconded that they have complied with the EO and that we don't take further action. Commission VOTED (6-0-0).

Boice motion Allen second to ratify EO to Wagner Wood. Commission VOTED (6-0-0).

Miscellaneous Untimed Items:

Review/Approve Draft Order of Conditions – UMASS/NUSCO Tilson Farm substation

Willson stated the Special Conditions include the Riverfront mitigation we discussed at our last meeting. These include removal of culverts, only replant if veg disturbed, Wetlands Adm inspect and decide if planting needed. 2nd bullet for removal of multi-flora rose and replanting with native species around Tilson Farm Rd. pond.

Pat Wagner stated nothing in draft OOCs about staying away from dump area. Like to see condition about not driving over that area or disturbing. Culverts sit on top of dump area. Brian Benito stated that culverts will be plucked by equipment located on road, worst case is they are winched out and drag on the ground. Mickey Marcus said old aerials show lots of fill being placed just north of this area, the old coal pile. The work under this project is south of that area. Boice stated we state in conditions no driving of equipment in area north of railroad crossing where old photos show dumping. Benito & Marcus OK with condition.

Butler moved and Brooks seconded. Commission VOTED (5-0-0, Angus abstained) to issue OOCs with condition no equipment to travel across northern area where historical dump located.

Emergency Cert – TOA DPW breaching beaver dam near Well #4

Moved to next meeting.

Enforcement Order – Cowls Inc. at 30 Cowl's Rd.

Willson stated Cowls took road cuttings and spread them across work yard within Riverfront. Approx 1 acre, ranges from 2 to 6" thick. Basically fill, EO asks them to remove.

Brooks moved and Allen seconded. Commission VOTED (5-0-0, Angus abstained) to ratify Enforcement Order.

Ratify Meadow St./Russellville Rd. Enf. Order #2

Done under 7:15PM agenda item.

Application for research on Cons land – Amy Strauss, UMASS, for Song Sparrow study. Song Sparrow research

Harvey asked is it OK to take a male away from nest during breeding season for research? Healey abstains project within her dept at UMASS. Brooks animal handling regulated by IOCOA, she must have gotten their approval. Have researcher come back in two weeks.

Topics not reasonably anticipated 48 hours prior to the meeting.

ADJOURNMENT

VOTED unanimously to adjourn the open meeting at 10:30 p.m.