

MELROSE CONSERVATION COMMISSION

Minutes for Thursday, January 15, 2009

Mayor's Conference Room

The meeting came to order at 7:30 p.m.

Present from the commission were: Kevin Anderson, Richard Doucette, Keith Fleming, Susan Murphy and Joseph Nerden.

Present from the public were: Craig Bennett, Robert Beshara, Dave Dickerson, Stanley Gayglik, Arthur Giangrande, Karen Hall, Louis Izzi, Dana Jewell, Ann Marton, Pamela Oliver and Brian Skinner.

Correspondence

Notice for the Middlesex Conservation Commission Meeting
Notice for a filing before the Planning Board regarding a duplex. There is a conservation restriction on the filing.
Notice regarding pond management

Invoice

An invoice for secretarial services for Meredith Beauchesne in the amount of \$67.50.

MOTION

Commissioner Nerden motioned to approve and pay the invoice for secretarial services to Meredith Beauchesne in the amount of \$67.50, seconded by Commissioner Anderson, voted unanimously.

Minutes

November 20, 2008 meeting minutes

MOTION

Commissioner Anderson motioned to approve and accept the November 20, 2008 meeting minutes, seconded by Commissioner Fleming, voted unanimously.

December 4, 2008 meeting minutes

MOTION

Commissioner Doucette motioned to approve and accept the December 4, 2008 meeting minutes, seconded by Commissioner Fleming, voted unanimously.

Bellevue Golf Course **Extension Request (217-0154)**

Brian Skimmer, from the Bellevue Golf Course and Bob Beshara, City Engineer were present. An Order of Conditions was issued for dredging of a stream on the golf course and is about to expire in February 2009. Recently, Mr. Skinner called the Conservation office to complain that work that the city was doing on the Fells Way was causing the stream that they had just dredged under the Order of Conditions to become filled again. It is unknown whether that work or runoff from the roadway is causing the siltation in the stream, but the city has agreed to go back in and dredge the stream again. The applicant is, therefore, requesting an extension on their Order of Conditions for the city to perform the work. The city will be doing tree trimming and is planning on going in next week to do the work. The same contractor would be doing the work. The city is supposed to contact the commission prior to any work, silt screens will be put in downstream, and the commission can inspect the screens.

After the Order of Conditions had been issued, the Commission received comments back from DEP as to the status of the stream and whether the work could be done depending on that status. Chairman Murphy read the DEP comments to the group and clarified that it is a stream. The work was already performed by a contractor for the golf course and it has been observed that the silt is building up and blocking the flow of the stream, so it is clear that the work needs to be done. Mr. Beshara explained that it was a man-made brook that was built when the Fells was built. The brook travels into the Saugus River. Mr. Beshara explained that a special bucket, without teeth, will be used to dig up the muck and then it will be hauled away. Commissioner Nerden understands the conditions and that there are no violations by the DEP rules and law and sees no problem extending because it is not yet expired.

When Mr. Skinner asked about a long term maintenance plan, Chairman Murphy told Mr. Beshara and Mr. Skinner that for the long-term plan, they have to come back before the commission to discuss that, but for right now, the extension is for dealing with the existing problem.

MOTION

Commissioner Doucette motioned to approve a six-month extension on the open Order of Conditions, DEP# 217-0154, for Bellevue Golf Course, seconded by Commissioner Nerden, voted unanimously.

Continue Public Hearings

105 Penny Road

Request for Determination

The applicant, Arthur Giangrande, submitted an up-to-date plan, dated September 30, 2008, reflecting the conditions on the site which is actually a hammerhead design instead of the rounded cul-de sac. Mr. Giangrande said there were no changes to the drainage plans. When his new lot is sold, he will be back before the Commission with a Notice of Intent. Mr. Doucette asked if the stone swale will be altered when Lot B is built. Mr. Giangrande said no. He said there is actually an earth berm and there shouldn't be any changes to the stone swale. A site visit has been conducted, and the property is in order. Chairman Murphy told the owner that if there are changes, he has to come back before the commission. Mr. Giangrande was advised to come in for a Certificate of Compliance on the lot completed in the spring..

MOTION

Commissioner Doucette motioned to issue a Negative 3 Determination with no additional conditions, seconded by Commissioner Anderson, voted unanimously.

Ell Pond Park Stepping Stone Project

Request for Determination

Ms. Tiemann, the applicant for the Mosaic tile project received a grant from the Melrose Arts Counsel to create and install tiles in front of the park benches at Ell Pond. The work is being overseen by the Ell Pond Commission who felt it would be beneficial to both if they were to combine this project with another project they want to do in the area of turning the bocci court into a garden area. Less than a cubic yard of fill needs to be removed for the tile project and this fill will be used to fill in the abandoned bocci court. Another eight or nine yards of fill will have to be brought in as well to fill in the old bocci court and bring the area level. The bocci court was formerly an old shuffle board court which was removed a couple of years ago. The space does flood occasionally.

Chairman Murphy asked if there were any questions from the commissioners. Commissioner Anderson asked if the bocci court had been raised. Mr. Dickerson told the commission that about eight to nine cubic yards of fill need to be brought in to make it level. Chairman Murphy stated that it is going to be brought back to the previous grade.

MOTION

Commissioner Anderson motioned to issue a Negative 3 Determination with no additional conditions, seconded by Commissioner Doucette, voted unanimously.

Public Hearings

67 Greenwood Street (217-0169)

MOTION

Commissioner Doucette motioned to ratify the second Emergency Certification issued for 67 Greenwood Street, seconded by Commissioner Anderson, voted unanimously.

Ann Marton, from LEC Environmental and Collin Bergeron from Commonwealth Tank, Inc. were present. A Notice of Intent is now being filed for restoration and remediation of an oil tank leak that released 200 gallons of #2 heating oil to soil and groundwater. Work at the site has been done under the two Emergency Certificates issued by the Conservation Commission and an Immediate Response Action Plan under MassDEP. The report indicates that approx. five cubic yards of petroleum contaminated soil has been excavated. Part of the work being done was the installation of groundwater monitoring wells and groundwater recovery wells. The maximum limit of work is about 20 feet off of the wetlands and the area is contained within a chain link fence. Water is being released into the yard at a rate of ten gallons per minute and filtered through a carbon mixer. There are two, 2,500 frac-tanks on site that hold the excavated soil. Mr. Bergeron said the oil was 13" over groundwater and is now down to a half an inch.

Mr. Bergeron told the commission that flow charts were in the book and fully explained the procedure to the commission. Everything that is being done is standard work and procedure. By going down eight feet, it is still two feet above the grade of the wetlands. Mr. Bergeron believes as a result of the monitoring that nothing is moving into the wetlands. Mr. Bergeron reminded the commission that all permits will be applied for to prove that the water and the site are clean. The DEP and the EPA have rules and guidelines for dewatering.

The abutter at 53 Greenwood St. said that the wetland area has been saturated since this all happened. Mr. Bergeron said that the house is at an elevation 10' above the wetlands. He said they have filed for a NPDES permit and they are going by their standards.

Chairman Murphy asked if there were any comments or questions from the public. Stanley Gayglik was present from the public. Mr. Gayglik, an abutter to the property, is in the same level of flood plain. There have been many floods over the years and the water levels are up and is concerned because this is a flood zone. Mr. Gayglik inquired as to why the home had an underground tank. It was explained that since the lot was old, that is how it was done years ago back in the 50's. Mr. Gayglik had concerns about the drainage pipe in the area, and Chairman Murphy listened to Mr. Gay lick's concerns but told him that the hearing was not dealing with that issue. Mr. Bergeron told the commission that borings have been used and monitored and that nothing has been found.

Commissioner Nerden inquired as to how closely a project like this is monitored by DEP. Mr. Bergeron told the commission that they are in constant contact with the DEP and that the DEP

has been to the site multiple times. Mr. Bergeron assured the neighbor that they are not adding any additional water to the area. They are only taking the water there now and cycling it through to clean out any contaminants. It is only before the commission because of the discharge of water. Nothing has gotten into the wetlands and there is no additional water. Mr. Bergeron noted that on November 12, 2008, there was a big storm, and the water came up about 1 ½ to 2 feet and it never got past the barriers.

Chairman Murphy asked if there were any other comments or questions.

MOTION

Commissioner Nerden motioned to close the public comment, seconded by Commissioner Anderson, voted unanimously.

Commissioner Nerden asked that a Completion Report be sent to the commission. That was agreed. Also, the commission will be copied on all reports. The conditions that were agreed upon were – a copy of the DEP certification and the commission to be copied on all Response Action Reports.

MOTION

Commissioner Nerden motioned to close public hearing, seconded by Commissioner Anderson, voted unanimously.

MOTION

Commissioner Doucette motioned to issue an Order of Conditions, seconded by Commissioner Anderson, voted unanimously.

28 Rudolf Street (217-0064)

Mr. Beshara reported that the street is in good shape. There is no erosion with the exception of some regular potholes and everything is working fine. There have been no issues since the work has been done. It was agreed that once the commission issues the Certificate of Compliance, the problems then fall into the hands of the city.

MOTION

Commissioner Doucette motioned to issued a Certificate of Compliance for 28 Rudolf Street, seconded by Commissioner Nerden, voted unanimously.

Ell Pond Drainage – Pond Levels

Commissioner Anderson asked Mr. Beshara to talk to the commission about the pond levels because some questions have come before the commission. Mr. Beshara explained that the city monitors the weather and the anticipated rain amount of the storm. If there is a report, 24-48

hours in advance, the pond will be dropped by 7/10ths. The city then waits a day and confirms the report. For example, the last storm was a good storm, four inches and there were no breaks. The gate was dropped and fully open and the elevation was 43 and it kept up with the rain. It is a four-day operational period with one to two increments of adjustments prior to the storm. Mr. Beshara believes that the lowest the pond has gone down was 44. The gate was dropped but then the storm didn't come through. When the pond is frozen, it is set at 44 because there is no storage capacity and has been dropped 7/10ths of a foot in case there is a big storm. 44.7 is the normal level for the spring, summer and fall. It was agreed that the pond wouldn't go any lower but that it is stuck at that level because of the winter. Mr. Beshara explained that there is a marker in the pond right at the gate. Everyone can see it. Commissioner Anderson thanked Mr. Beshara for coming in and explaining the procedure and let Mr. Beshara that there was only one concern from a previous meeting. It was agreed that if the commission had any more inquiries, they would let Mr. Beshara know.

77 Swains Pond Avenue

The property owner was given a Cease and Desist Order from the Building Inspector for work that he has been doing on a slope on his property and was sent a letter from the Commission on December 8th, advising him to stop all work, hire a wetland consultant and come before the Commission on January 15th. On January 15th, Mr. Hancock, the owner, left a message that he was away on vacation and could not make the meeting. Attorney Izzi from Bell & Izzi was present representing Craig Bennett, the homeowner at 87 Swains Pond Avenue to talk about some of the concerns and ongoing problems in the neighborhood. Attorney Izzi stated that the homeowner of 77 Swains Pond Avenue has consistently trespassed onto the property of 87 Swains Pond Avenue and that it is now a Land Court case. Craig Bennett has a No Trespassing Order placed on the homeowner of 77 Swains Pond Avenue which has been violated by Mr. Hancock. Mr. Bennett passed around multiple photos of the property at 77 Swains Pond Avenue and of his property at 87 Swains Pond Avenue showing a stream on his property and work being done to it.

Mr. Bennett told members that the homeowner at 77 Swains Pond Avenue has created a dam and has stopped the flow of the stream. Mr. Bennett said he has observed earth being moved around the property, fill being brought in, as well as trees having been cut down. There was some question as to whether he set fire to his own barn. Commissioner Anderson asked Mr. Bennett if the drainage issues in the area have become worse since this activity by Mr. Hancock. Mr. Bennett told the commission that certain areas of the street, which have never before in the past been under water, are now. Mr. Hancock has also expressed a desire to cut down a large tree within the slope area. The property is under dispute to clarify the property line.

Alderman Forbes was present and advised member of the trying times that Mr. Bennett has had with this neighbor. Alderman Forbes asked the commission to issue the sternest warning possible; and said this homeowner has no regard for his land or the neighbors and is just doing what he wants to do. Mr. Hancock is severely impacting the neighborhood. Pam Oliver from 74 Swains Pond Avenue was also present on behalf of Mr. Bennett. She has witnessed Mr. Hancock's disrespect for the land and the neighbors.

Chairman Murphy explained that three things need to be established: (1) confirm eyewitness reports, (2) site visits to confirm that the work that has been done is within 100 feet of a resource area, and (3) confirm that the barn has been rebuilt within 100 feet of the stream.

There was some discussion on how to move forward. Commissioner Nerden mentioned that the commission may want to contact the DEP because they may want to handle a matter like this because there is no easy fix and there are multiple issues. Commissioner Anderson agreed. The law is quite clear but would like to hear what the homeowner has to say. Commissioner Doucette stated that the courts may need to be involved for the restoration of the site. There may also have to be a recording against the Deed so that a potential buyer will be aware of the situation. It was decided that the Commission would send Mr. Hancock a letter telling him to cease and desist because he was in violation of the Wetlands Protection Act and the Melrose Wetland Ordinance and that he should hire a wetlands consultant and come to the Conservation meeting on February 5th with proof of who he has hired. They will also set up other deadlines for Mr. Hancock to meet such as submitting a restoration plan. Members decided to issue an Enforcement Order to go along with the letter to Mr. Hancock. Chair will also contact DEP and keep them advised of the situation. The city's counsel will be advised of all correspondence also.

The homeowner is already in clear violation of the Ordinance and could, at this time, have fines against him. Attorney Izzi inquired as to how long it could possibly take for DEP to get involved in a case like this. Commissioner Nerden expressed that it is a straightforward case and there is historical data as well. The commission agreed to issue an Enforcement Order, give the homeowner one more chance to come in before the commission at the February 5, 2009 meeting and that more options will be discussed and acted upon at the next meeting. A Restoration Plan will be needed, but at this time, the commission is unsure of what that may be.

MOTION

Commissioner Doucette motioned to issue an Enforcement Order on 77 Swains Pond Avenue for the work that has been done in violation of the Melrose Wetland Ordinance and Wetlands Protection Act and to cease and desist all work, seconded by Commissioner Anderson, voted unanimously.

Summary, the homeowner is going to be given a second chance to appear before the commission on February 5, 2009. The homeowner must come in with a plan and a wetlands scientist. At the February 5, 2009 meeting, the issue will be discussed in detail and the homeowner will have to submit a Restoration Plan by February 15, 2009. If the homeowner chooses not to come in or comply, it will be addressed in his letter that fines will begin to accumulate and could be up towards the amount of \$250 per day. Also, attached to his letter will be a copy of the Enforcement Order that has been recorded. The cover letter to Mr. Hancock will be circulated to the commissioners. It was agreed that Attorney Izzi and Mr. Bennett will come to the February 5, 2009 meeting.

Adjourn

The meeting adjourned at 10:30 p.m.

MOTION

Commissioner Anderson motioned to adjourn the meeting at 10:30 p.m., seconded by Commissioner Doucette, voted unanimously.

Respectfully Submitted,

Meredith L. Beauchesne, Secretary