

REHOBOTH CONSERVATION COMMISSION

Meeting Minutes – July 6, 2010

Present: Chairman Scott Pennoyer, Vice Chairman Matt Habershaw, Thomas Nicholson, Robert Materne and; Conservation Agent Leeann Bradley.

Absent: Donna Choate, Bruce Andrews, Wendy Skinner, Associate Member: Karl Drown, Associate Member: David Perry and Stormwater Officer Michael Costello

CALL TO ORDER

Ch. Pennoyer called the meeting to order at 7:07 PM

CONCERNS & COMPLAINTS

1. 62 Blanding Road – manure/mulch pile.

Ms. Bradley stated that the Enforcement Order needs to be ratified. It is on the agenda for later in the meeting.

2. Route 6 – Palmer River - Possible Salt Marsh Alteration

Mr. Pennoyer stated to send a letter to the owner to come into the next meeting. To make sure that the edge is sured up.

Mr. Materne states to make sure you don't encroach on the resource area.

MINUTES

Minutes were tables to a future meeting

INVOICES

1. RIBP - \$20.86 – Meter Reading

Mr. Materne made a motion to pay the above-named invoice.

Mr. Nicholson seconded the motion. Motion passes

2. Ecosystem Solutions - \$1,200.00 – ANRAD review – Camp Ramsbottom

3. Ecosystem Solutions - \$3,300.00 – NOI Review – Camp Ramsbottom

Mr. Materne made a motion to pay the above-named invoices.

Mr. Nicholson seconded the motion. Motion passes

GENERAL BUSINESS

1. DuMontier – Spring Street – SE60-847 – ORAD – Request for Extension

Mr. Gene DuMontier of 47 Spring Street was present.

Mr. DuMontier asked for a 3-year extension on his ORAD.

Mr. Pennoyer stated that the ORAD was to overcome the presumption of an intermittent stream. The ORAD is only good for 3 years. DEP said that the applicant can use the same data from the first review of the stream.

Mr. Materne asked if there was a time limit?

Mr. Pennoyer replied that you can extend up to 3 years, up to 3 times.

Mr. Materne stated that he thought it was 1 year.

Mr. Pennoyer stated that you can extend to 3 years. This commission usually only does 1 year at a time. With this one being for a stream status we can extend for 3 years.

Mr. DuMontier asked that the same evidence can be used when asking for an extension be placed on record.

Mr. Pennoyer asked if the audience had any questions or concerns. There were none.

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Mr. Nicholson made a motion to issue a 3-year extension.

Mr. Habershaw seconded the motion. Motion passes.

Mr. DuMontier stated he had a question regarding his OOC. He is going to be coming in on a change with regards to stormwater. He is going to have his own peer review done and wants to know if the commission is willing to use that as a peer review. It will be from a neutral party.

Mr. Nicholson stated that the fact that you are paying him could get called into question. We will have to talk about it a little more.

Mr. DuMontier assured the commission that he was not looking for an answer tonight.

Mr. Nicholson stated that it just might be an administrative thing.

Mr. Pennoyer stated that his concern is if his credentials are up to date with DEP stormwater. If we are comfortable with it, I would be ok with it. Send us his credentials and we'll check with DEP.

2. Reorganization of the Commission

Was tabled to a future meeting.

3. Board of Health reviews

Ms. Bradley stated that she wanted to know if anyone would be able to help her with conducting Board of Health reviews. They are falling behind as I no longer have an aid in the office.

Mr. Materne stated that she could call him, if he's around he would do them.

Mr. Nicholson made a motion to have Mr. Materne conduct the six Board of Health reviews.

Mr. Habershaw seconded the motion. Motion passes.

4. 26 Meadowlark Drive- Johnson – Request for Extension

Mr. Habershaw made a motion to grant a continuance for 1 year.

Mr. Materne seconded the motion. Motion passes.

5. 23 Spring Street – Anderson – Request for COC

Mr. Pennoyer gave the commission and update regarding the project.

Mr. Pennoyer asked the audience if there were any questions or concerns? There were none.

Mr. Materne made a motion to grant a Certificate of Compliance.

Mr. Habershaw seconded the motion. Motion passes.

6. Rocky Run II – Deer Pond Crossing Amendment – Discussion

Mr. Pennoyer explained the letter and the reason for the request. They are asking to put in overflow pipes.

Mr. Materne stated they are asking to do something that is unnecessary and do work in the wetlands to improve something that already works.

Mr. Pennoyer stated that he didn't want any more water to come from Cameron Way to the pond than what goes there now. I'm afraid of deterioration of the culverts on Cameron Way, flooding of the Bezier's, more than what they are already getting, flooding downstream. That would be high volume. I would rather leave it the way it is it works.

Mr. Materne stated that he felt the same way.

Mr. Pennoyer stated a letter should be sent to the Planning Board and the applicant. He was also asked about the retaining wall on pond 1. My response was that it's a superseding OOC issued by DEP. If they want to make any changes, they need to talk to DEP. Send a letter stating that after several months of field observation that the proposed work would take place in the buffer zone and resource area. It is unwarranted.

Mr. Materne stated that the work is unnecessary.

Mr. Materne made a motion to issue the letter.

Mr. Nicholson seconded the motion. Motion passes.

PUBLIC HEARINGS & MEETINGS

1. Lopes – 83 Plain. – ANRAD – SE60-913

Mr. Pennoyer opened the public hearing.
Mr. Brandon Faneuf of Ecosystem Solutions was present on behalf of the applicant.
Mr. Faneuf presented the plans.
Mr. Pennoyer stated that the commission had been out to the site.
Mr. Materne stated that where the MAHW flag 17 is should jog in across the wall to connect to flag 22.
Mr. Pennoyer asked if the applicant agreed to that.
Mr. Faneuf replied yes, to eliminate flags 18-21.
Mr. Materne stated yes.
Mr. Faneuf stated consider it done.
Mr. Pennoyer asked the audience if there were any questions or concerns. There were none.
Mr. Materne made a motion to close the public hearing.
Mr. Habershaw seconded the motion. Motion passes.
Mr. Materne made a motion to issue an ORAD as accurate once revised plans are received.
Mr. Habershaw seconded the motion. Motion passes.

2. Cordeiro – 97 Salisbury St. – NOI – SE60-908

Mr. Pennoyer stated this was continued from a previous public hearing.
Mr. Steven Gioiosa from Sitec Engineering was present.
Mr. Gioiosa presented plans.
Mr. Pennoyer stated that the silt fence should be changed to wattles.
Mr. Gioiosa stated that this is a short-term project.
Mr. Nicholson stated there is no intake structure where the pipe is.
Mr. Pennoyer stated that the pipe needs to be long enough.
Mr. Nicholson stated that nothing directing water to it.
Mr. Pennoyer stated that the commission would need detail on it. We can condition that the pipe needs to be maintained, the rip rap area is ok, maintaining the swale must be done by hand.
Mr. Materne asked why are we going to let them do work in a wetland? Wasn't all of this wetland burned 3-4 years ago? So, it's already been worked on once and national grid will be maintaining it somewhat automatically. I have a problem changing water hydrology or changing flow patterns because of hydrology in an existing wetland.
Mr. Pennoyer stated that he wants it to continue to work the same way it does today.
Mr. Materne asked how will cutting the brush change it?
Mr. Pennoyer stated by removing it by hand, picking up paper and clumps of leaves.
Mr. Materne stated that's picking up litter.
Mr. Nicholson stated fallen trees.
Mr. Materne stated that's all part of the natural progression of things. That happens in every wetland.
Mr. Pennoyer stated he agreed. He would like to find a fine line to help them maintain so that we don't have to. You need to be able to maintain the drainage swales and wetlands. Otherwise they get clogged up.
Mr. Nicholson stated that this is not all wetlands. You have a pipe coming in and a pipe going out. This is a conveyance facility.
Mr. Materne stated the only reason the ditch is even there is because it was a corn field. The farmer put in a ditch to give him more of a field. Now it's a change of use. So now it reverts back to a wetland.
Mr. Pennoyer stated that he wanted them to be able to maintain that so they don't flood out the people across the street. I know wetlands move.
Mr. Materne stated that it has moved on this one.
Mr. Pennoyer stated they have moved a lot on this one, several times.

Mr. Materne stated that he is not blaming the current owner but the line on the plan is quite a bit different than the 2004 plan. How will maintaining the ditch, doing all this work, affect the people upstream, the water still flows.

Mr. Pennoyer stated correct me if I'm wrong but all he is talking about doing is common maintenance, removing debris, fallen trees.

Mr. materne stated that there will never be a tree on that property because National Grid is going to make sure of that. They clear all the trees out of the power lines.

Mr. Nicholson stated that there is a swale on Fairfield Ave, if it had been cleaned out there is a lot of trouble going on that could have been avoided if someone had been able to clean the culvert out.

Mr. Pennoyer stated that he thinks for the better good of the seven people who live up gradient of the swale it would be better to allow it. I was also against a silt barrier underneath it, rip rap, and everything else, but I don't mind allowing people to maintain it.

Mr. Materne asked so you feel it's ok to maintain it?

Mr. Pennoyer replied I think it's a good idea.

Ms. Bradley asked what if they do it in the middle or end of October?

Mr. Pennoyer stated that you can condition that.

Ms. Bradley stated then the vegetation has died back. You get a clear look at what is there in the channel.

Mr. Materne stated that would be ok. What we want to make sure of is that not so much is cleaned up that we lose the wetlands.

Mr. Pennoyer asked the applicant if they understand Mr. Materne's concerns?

Mr. Gioiosa replied yes.

Mr. Pennoyer stated that he thought the commission should condition that the Conservation Commission will be contacted 24 hours prior to clean up.

Mr. Materne stated in perpetuity.

Mr. Pennoyer stated that the commission has the right to be on site the day clean up happens.

Mr. Materne stated he could compromise with that. The second thing is one thing I will not compromise on, with taking away the existing wetland line to make a lawn. Other than that one little cut for the fence. I do believe that we should put in here what was supposed to be there. That was permanent bounds to mark the wetlands. It was on the original plan. I'm against taking a wetland to make a lawn.

Ms. Bradley stated they should use the signs we have instead of bounds. The signs would be best. They are 6' off the ground.

Mr. Materne asked how big the sticks are they are going to use.

Ms. Bradley replied that it is in our specification and our policies.

Mr. Pennoyer went over the policy.

Mr. Pennoyer asked Mr. Materne you don't want them to alter 840'.

Mr. Materne replied no. It's a wetland and should stay that way. Plus, the replication area is right near a road. There will be salt and everything else going into it. Just leave the lawn where it is, leave the wetlands where they are. I agree that they want to put a fence across the little corner. Maybe 6' on the other side of the fence so he can get his lawn mower around it but that's it.

Mr. Nicholson asked it's an existing lawn isn't it?

Mr. Materne stated because it was turned into one.

Mr. Nicholson asked why can't it stay a lawn?

Mr. Materne state no, it's hydric soil., in 2 years you'll see wetland plants growing there. This is the difficult part. You have a wetland; soils say it's a wetland. They are not losing their ability to enjoy their property by keeping this wetland as it is.

Mr. Gioiosa stated it terms of what is proposed here, I understand the concern of the commission member. I go back to the fact that it is a wetland based on soils in that area and I agree that given time it probably would come back as a wetland. We're talking about a small area of square footage that's already been altered to allow the applicant to do minor alteration. To have it establish as an upland with replication. It's adjacent to a wetland system that has been there for some time. The water that is feeding that system is not being changed. So, the replication area is going to get the same water, the same containments that the wetland system is getting. So, it's function as a wetland is clearly not going to change. We are talking about going from one side of the wetlands, with a difference of 50. It's not going to have an impact on the ability of the replication area to thrive and grown anymore than the existing wetland system is altered or prohibited from growing because containments from the road enters that wetland system. I don't think there is material difference from the slither on the lawn side verses the replication area in this case. I think if we are moving 100's of feet from a pristine wetland in the middle of the woods and trying to relocate off the edge of the road. I think that would be a valid concern. I don't think that's the same concern here.

Mr. Materne stated I think it is. We would be setting a president.

Mr. Pennoyer stated that it's already a lawn. It was illegally filled.

Mr. Materne stated that it was illegally cut. Nothing helps a lawn grow greater than a wetland because it's always wet, the soils are wet. You have instant fertilizer and water. So, lawns grow better in a wetland. So, how many sq. ft. are you proposing to create a lawn?

Mr. Gioiosa replied 350' here and 480' below.

Mr. Materne stated ok, so, over 700 sq. ft. Well over 700 sq. ft. that's a little bit. Someone else come in and says you gave that guy only 700 sq. ft. I propose 850 sq. ft. and turn it into a lawn, it's only a little bit. I don't think this is a necessary case.

Mr. Gioiosa stated he disagreed. In fairness. I would guarantee you this commission has approved alterations greater than 850 sq. ft. in the past.

Mr. Materne stated we have because they are doing a roadway crossing or something like that. It's to gain access to your property. Without having that roadway, you lose the use of your property.

Mr. Gioiosa stated I think each case is different. Roadway crossings were approved where the person had use of the property, now they have better use of their property. Precedent doesn't occur. It's up to the commission to decide.

Mr. Materne stated he would vote no to allow that to be a lawn. I don't think it's necessary. There's already more than enough lawn and I don't want to use that as a judgement but I think you don't take the wetlands.

An abutter stated he is talking about putting a 10" pipe in. A 10" pipe isn't very big. I think it should be bigger than 10". I've seen that water. I have pumped it out of my basement.

Mr. Pennoyer asked what would you recommend?

The abutter stated at least a 14".

Mr. Pennoyer stated what we are trying to do is to get it to go where it's supposed to go. Not across the street and into your basement. Trying to get in over where the pipe is. What size is the pipe culvert under the road?

Mr. Gioiosa replied 12".

Mr. Pennoyer asked would you be comfortable changing it to a 14”?

Mr. Gioiosa stated that a 12” is standard. I’d rather go with a 12”.

Mr. Nicholson stated that he felt a 12” pipe is fine.

Mr. Gioiosa stated we will provide the commission with some calculations to give the gentleman some comfort on that. Last time there was no issue with the flow.

Mr. Pennoyer stated to give us a reason why you can’t go with a 14” pipe to make the abutter feel comfortable. We have to walk a fine line because what we are talking about is stormwater not the Wetlands Protection Act. I would respectfully request that information.

Mr. Gioiosa requested a continuance until July 20, 2010.

Mr. Nicholson made a motion to grant a continuance until July 20, 2010.

Mr. Habershaw seconded the motion. Motion passes.

GENERAL BUSINESS

7. Signatory Authority

Mr. Nicholson made a motion that Mr. Pennoyer be the signatory authority.

Mr. Habershaw seconded the motion. Motion passes.

8. Talent Bank Forms

Mr. Pennoyer stated the commission has three talent bank forms.

There were abutters in the audience regarding 62 Maple Street.

Mr. Pennoyer explained the process of a public hearing. But the legal ad didn’t make it into the paper in time so the public hearing can not be open. The applicant signed a 21-day waiver and the public hearing should be on the agenda for July 20, 2010.

Mr. Pennoyer stated that one of the talent bank forms was from Alan Gosslin. He is not against having associate members. My recommendations are in line with the commissions.

Mr. Materne stated that Mr. Perry has been on a commission for over 12 years in Attleboro. We have already made our recommendations.

Mr. Pennoyer stated he would go in front of the Board of Selectmen with our recommendations again.

Mr. Dave Perry has made 100% attendance. Mr. Matt Habershaw has been on the commission for 3 years, is always at site walks and meetings. Mr. Lou Gizzie as well has been on the commission for a year and brings a lot to the commission. I don’t want to take away from anyone that filled out a talent bank, but I feel we recommended the 3 best candidates. An associate member has never not been moved to a voting member as recommended.

The commission discussed their reasons for the recommendations already made and how to handle the 3 talent bank forms to be appointed as associate members.

9. Deer run Estates

Mr. Pennoyer stated they were allowed to revegetate, now we have some issues. There has been not maintenance done. I’m working with the DPW to correct the issues.

10. Donna Choate

Mr. Pennoyer stated he wanted to thank Ms. Donne Choate. She was a valuable member to the commission, was always neutral, gave a lot to the commission. She was very knowledgeable, made excellent decisions over the course of her time. Personally, would like to thank her for being a member of the commission. She will be missed. I wish her the best.

11. Baasch – 62 Blanding Rd. – Ratify EO

Ms. Bradley stated she sent the Enforcement Order out to Mr. Baasch after the last meeting.

Mr. Pennoyer stated to send him a letter to come to our next meeting.
Mr. Materne stated there is manure in the resource area.
Mr. Pennoyer asked Ms. Bradley to contact DEP. Ask them to set up a site visit immediately. This has been going on too long.
Mr. Materne made a motion to have Ms. Bradley send the letter to DEP.
Mr. Nicholson seconded the motion. Motion passes.

EXECUTIVE SESSION

Ch. Pennoyer stated the Commission will be entering into Executive Session to discuss pending litigation and will be returning to regular session solely for the purpose of adjournment.

Upon a motion made by Mr. Materne and seconded by Mr. Habershaw the Commission conducted a roll call vote to enter into Executive Session and return to regular session solely for the purpose of adjournment.

Roll Call vote

Bob Materne – Aye


Tom Nicholson – Aye

Matt Habershaw - Aye

Chairman Scott Pennoyer – Aye

The Commission entered Executive Session at 8:36pm.

For the Conservation Commission,


Robert Materne – Chairman

David Evans – Vice Chairman