



City of Westfield, Massachusetts

Municipal Conservation Commission

April 28, 2020
MEETING MINUTES



Conservation Commission members in attendance: Chairman David Doe, Vice Chairman James Murphy, Thomas Sharp, Carl Grobe, Alex Fagnand, Clifford Laraway and Robert Florek. Also in attendance: Meredith Borenstein, Conservation Coordinator and Colleen Fegan-Nunez, Administrative Assistant.

Pursuant to Governor Baker's March 12, 2020 Emergency Order suspending certain provisions of the open meeting law as well as the additional Order by the Governor limiting the number of persons gathering in one place, this meeting of the City of Westfield Conservation Commission is being conducted solely through remote participation. Please know that persons who wish to listen to the meeting in progress can do so by tuning into Channel 15. If, despite our best efforts, we are unable to provide for real time access, a record of this meeting will be posted on the city's website as soon as possible.

1. CALL TO ORDER

Chairman Doe calls the meeting to order at 6:31 pm. He takes attendance. All Commission members are present.

2. OPEN PARTICIPATION

Commissioner Sharp asks if in the future the Commission will have the capability to have a public meeting that will include the public allowing for public comment. Coordinator Borenstein states that it will be possible by including the Zoom meeting link on the agenda. Commissioner Sharp states that the Governor has allowed these types of meeting with the majority of the Commission off site. Commissioner Sharp states that the Governor has also extended the time frame of when NOI's and RDA's need to be heard by the Commission. He states that there will be 45 days after the state reopens to hear all of the NOI's and RDA's that have come in while the state has been on lock down. Chairman Doe states that this is also his understanding. Coordinator Borenstein verifies that this is her understanding and this is also what the Legal Department has expressed to her. Commissioner Fagnand states that he was part of a Public Meeting in another town and that the Public was able to participate in a Zoom meeting. Commissioner Sharp states that he feels that the Commission has informally agreed that, unless the stay at home order continues to the fall, the Commission will not hold a meeting addressing any of the pending NOI's and RDA's until the stay at home is lifted. Chairman Doe states that because the Commission so heavily depends on viewing the plans that Coordinator Borenstein presents via the computer screen at City Hall, there would have to be more

coordination between the office and the proponents representatives so that they can present their arguments and give the people of the public the ability to ask questions. He states that there is one more meeting before the Governor can lift the stay at home so he would like to keep things as they are with the hopes that the state will be opened back up for the first meeting in June. Coordinator Borenstein asks Commissioner Fagnand if his presentation to the other city was a continuation. He states that it was but there was a full presentation before his and that presenter was able to do a full question and answer for the public and the Commission. Vice Chairman Murphy states that he uses a different program called WebX in which maps and such could be put on our computer screens. Coordinator Borenstein believes that this is possible with Zoom. Chairman Doe tries to present a document and is successful. Coordinator Borenstein asks when the Commission would like to begin having meetings that address the pending NOI's and RDA's. Chairman Doe asks how many there are. Coordinator Borenstein states that there is one continuation, three RDA's and two NOI's. Chairman Doe states that he would like to wait one more meeting.

3. ENFORCEMENT

A. 1223 East Mountain Road-Mark and Chris Dupuis Working without a permit

Coordinator Borenstein states that she spoke to Mr. Dupuis about the chains at the stream crossing. She states that he had the same safety concerns that the Commission had in the previous meeting. She states that the chains are bright yellow or orange and the signs will be attached to them. She states that she consulted with GZA and looked at the plans, gates were installed 100 feet away from the brook and the chains were installed closer to the brook. She states that it would be difficult to fly through that area as anyone going in to that area must first pass a gate and then the chains. Coordinator Borenstein states that she feels that blocking the stream is the best way to keep people from driving through it. Coordinator Borenstein states that the Dupuis' continue to look for access to their property given that the current road does not meet the fire codes of the city. She states that the road does not meet the grade requirements. She states that apparently there are easements off of East Mountain Road and Old Holyoke Road on property not owned by the Dupuis'. She refers to an email sent to her by City Councilman Onyski. Commissioner Laraway states that the easement at 1166 East Mountain Road will require more than another acre of trees to be removed. He states that the road will still enter the property before the current stream crossing which also does not meet the fire standards. Vice Chairman Murphy asks if a NOI or RDA would be required to build the new road. Chairman Doe states that yes one of those would be required. Coordinator Borenstein states that GZA did a site walk and did not find any wetlands. She states that she would like to see the area herself just to verify but for the top of the hill they are very close to resource areas so something must be filed. She did communicate this to the Dupuis' via email. She asks if the Commission would like her to send them a certified letter on letter head just to make things more official. She states that she does have an email and that the Dupuis' answered her stating that for any new work a permit would be filed.

Coordinator Borenstein states that the abutters property as well as their whole site is mapped as Natural Heritage Endangered Species Habitat, so a permit would need to be issued from NHESP to do the new road. The Dupuis would also need all of the City permits. Commissioner Grobe states that he is concerned that the Dupuis' assume that with a right-of-way, a substantial road can be built. He states that it is not our jurisdiction but is unsure as to whether a right-of-way can be used in that manor. He states that it gives access but is not clear on whether improvements can be made. Commissioner Laraway states that the owner of 1166 East Mountain is fighting the improvements. Chairman Doe asks if sprinklers can be put in the building at the top of the road to make the existing road useable. Coordinator Borenstein states that she received a note from the Fire Department that they would be receptive to the sprinklers but they still need access to the site in case of a fire. The Fire Department is still waiting for engineered plans to review. Commissioner Fagnand ask if Coordinator Borenstein can communicate to the other departments that the Conservation Commission is most interested in using what has already been cleared in hopes the other departments can support that. Chairman Doe asks what will happen to the existing road, does it stay there or is it reforested. Commissioner Fagnand states that it could be a permit condition. Chairman Doe states that it seems that there is a battle in the courts between the neighbors and that Coordinator Borenstein should keep the other Boards apprised of what the Conservation Commission is doing. Coordinator Borenstein states that she will put together a letter to the Dupuis' reiterating that a permit is necessary for any new work and she will copy the other boards and ask to use the existing road to limit any further impacts in rare species habitat, Wetlands and Buffer Zones. Vice Chairman Murphy states that he would like to make clear that any new work within the jurisdiction of the Conservation Commission, anything that has not been approved by the Commission already requires a permit. Coordinator Borenstein asks if the Commission would like her to draft a letter to be approved at the next meeting. Vice Chairman Murphy does not want to wait the two weeks. Commissioner Murphy states that he was disturbed by the letter from Councilman Onyski. He is concerned about trees being tagged. He states that the letter should include that absolutely nothing, no work should be taking place on this property with out the approval of the Conservation Commission. Commissioner Sharp states that we have a freeze on all work. He states that it is important that we document that the property is completely closed at this point. Commissioner Laraway states that he has noticed stumps being moved and heavy equipment going on to the property from the road. He is unsure if this has anything to do with the work that the Con Com has already approved.

Vice Chairman Murphy motions that Coordinator Borenstein write a formal letter to the Dupuis' that no work is to be done on this property without approval from the Conservation Commission and that approval needs to be sought either through a NOI or a RDA and is second by Commissioner Laraway.

Chairman Doe states that perhaps mentioning the right of way in question.

Vice Chairman Murphy states that he would like to add "including access to the

property." JM-Yes, CL-Yes, CG-Yes, RF-Yes, AF-Yes, TS-Yes

Vice Chairman Murphy asks if Coordinator Borenstein can schedule a site visit. Coordinator Borenstein states that there is a May 1st deadline to get the plants installed so she will schedule it for next week. The Commissioners that have not previously seen the site would be invited.

Coordinator Borenstein states that she received an email requesting to move a gate on their property, it is not within resource area and has been approved by NHESP. It would be at the "1" flag on the map presented. Commissioner Sharp reiterates that Commission approval is needed because of the Enforcement Order. Chairman Doe asks if the red line on the map represents where the new road would be put in. Coordinator Borenstein states that it does represent the alleged easement. Chairman Doe asks if the new road would follow the "Bee Hive Trail." Coordinator Borenstein states that it would. She states that the plan presented is a just a delineation report from GZA saying that they looked within 100 feet of the trail and did not find any resource areas. The numbered markers on the plan are soil auger samples showing that it is all upland soils. Commissioner Grobe states that it is surprising that there were soil samples being taken and surveying the area with out any notification. Commissioner Laraway states that the area is all wooded and there is no reason for a gate there at this time. Chairman Doe asks Coordinator Borenstein to walk the area and see where the gate would be installed and ask why it is necessary. Vice Chairman Murphy asks if the gate will be on the alleged property line. Coordinator Borenstein states that it will be on their own property. Vice Chairman Murphy states that we should look at the area before the Commission approves the gate. Commissioner Fagnand states that he does not believe that GZA would mislead the Commission. He states that because the gate is outside of jurisdiction, he is in favor of allowing the gate to be installed. He states that the Commission does not need to know why the owner wants to do something on their property. Commissioner Fagnand does not want to be a constant impediment to progress on this property. Commissioner Sharp states that he is upset that Terry Reynolds, the engineer, designed the road without the proper permits. Coordinator Borenstein states that Mr. Reynolds was hired after the road had already been put in by the Dupuis'. She states that Mr. Reynolds was only hired to do the stream crossing and the storm water review plan per the Engineering Department. Commissioner Fagnand states that in the email from the Dupuis', the claim is that Mr. Reynolds was hired to design the stream crossing to stream crossing standards which he did. The Dupuis' are upset because the crossing is not wide enough to accommodate a fire truck. Coordinator Borenstein states that the crossing will need to become a small bridge. Commissioner Fagnand states the crossing will continue to scale up proportionally as the crossing gets wider; the openness must be increased to accommodate stream crossing standards. Vice Chairman Murphy states that a new stream crossing changes the scope of this project. He states that right now we are working under the Enforcement Order (EO), if this stream crossing goes up in scale would a NOI be required. Coordinator Borenstein states that it will be under the EO because the crossing was illegal. She also states that the Commission has more power under the EO.

Commissioner Sharp states that because the work is under the EO that no fees were paid. Commissioner Fagnand states that fees will be necessary when they begin the Hemp operation. Commissioner Sharp asks if Commissioner Fagnand believes the stream crossing should be a NOI. Commissioner Fagnand says he does not, he feels it will just slow the process. Commissioner Sharp asks why there is a hurry. Commissioner Fagnand states that there is not a hurry because wildlife is pretty safe crossing this road because the site is not active. Commissioner Sharp states that he feels the Commission should have the extra protection of a NOI for the stream crossing. Vice Chairman Murphy states that this decision does not need to be made today because it is up to the Dupuis' to come up with a solution for the stream crossing. Coordinator Borenstein states that waiting to see what the best solution is and then a decision can be made. Vice Chairman Murphy states that we can decide what benefits the Commission and the environment the most. Coordinator Borenstein states that right now, it is a perched culvert that only allows water to travel through if the water is high, so if there are any fish or amphibians, they are unable to travel through the culvert. Small terrestrial animals would have to cross the road currently. She states that with the May 1st deadline the snakes begin coming out. She states that this site is very complicated.

B. 312 Montgomery Road (48R-75)-Stefan Paladi
Cutting trees within the 100 foot Buffer Zone (BZ).

Coordinator Borenstein asks if the Commission would like to approve the restoration plan. Commissioner Sharp asks why we tabled this at our last meeting. Clerk Nunez apologizes for not completing the minutes of April 14th. She states she has been working on a large project. Commissioner Sharp states that he believes that the silt fence was of some concern but there may have been other issues. Commissioner Fagnand asks if the house and septic could be staked out. Commissioner Murphy states that he believe the Commission was waiting for some more house placement information. Coordinator Borenstein states that Mr. Paladi did stake out the house and the garage location, he showed Commissioner Laraway, Commissioner Sharp and her, where the well placement was and where the septic system was but not where the reserve field was. Commissioner Sharp states that another site visit would be a good idea. Chairman Doe states that a SWPPP may need to be filed and that the fence may be a wildlife barrier. Coordinator Borenstein states that a site visit needs to be done to assess the fence being a wildlife barrier, whether the erosion controls are installed correctly and how close to the resource area the house and other site improvements are. She states that in the next meeting, the Commission can decide whether a third party review is necessary and if weekly or biweekly inspections are necessary. She states that there will be a lot of land disturbance and the construction if right on the 100 foot buffer line.

Vice Chairman Murphy motions to continue until May 12, 2020 and is second by Commissioner Grobe. CL-Yes, JM-Yes, RF-Yes, AF-Yes, TS-Yes, CG-Yes

6. DISCUSSION

A. Hampden Ponds Association, SOLitude Lake Mgt-DEP File #333-661
COC Request

Coordinator Borenstein states that there was no bond requested. She states that she checked the files and it seems that they have been treating the pond since 2006. She states that there is no pressure to get this done. Commissioner Sharp asks if the project completion reports were supplied to the town. Coordinator Borenstein states that they were. Commissioner Laraway is an abutter to this project. He states that the treatments absolutely work with no negative effects. Chairman Doe states that because they would have to all go to City Hall to sign, he is unsure about passing this. Commissioner Sharp asks if there is any hurry to pass this. Chairman Doe states that this must be completed before the new NOI is presented. Commissioner Sharp states that we can take this out of order in the meeting when the NOI is presented. Coordinator Borenstein states that the reports were filed and over the years (2006-2015) less frequent treatments occurred. Commissioner Laraway asks if there is a time constraint as to when the treatment will work best. Coordinator Borenstein states that she is unsure but she will check into it.

Commissioner Sharp motions to continue to the May 12, 2020 meeting and is second by Commissioner Grobe. JM-Yes, CL-Yes, CG-Yes, AF-Yes, RF-Yes, TS-Yes

7. COMMISSION DISCUSSION

- A. Regulations & Procedures Q & A-There are none at this time.
- B. Schedule Site Visits-Eversource RDA off Summit Lock Road

Coordinator Borenstein states that she would like to get a couple of Commission members to join her on this site visit. Vice Chairman Murphy asks that she send the time out via email.

- C. When do Commissioner Terms expire? Website is out of date.

Chairman Doe states that the City Clerk would have this information. Coordinator Borenstein states that our website is out of date. She explains why this came up. Chairman Doe asks Clerk Nunez if the City Clerk is the person to contact. Clerk Nunez states that it is either the Clerk or Personnel and that she will email both to see which it is and get the dates. She states that she will also contact the IT department to update the web site.

8. MOTION TO ADJOURN

Commissioner Fagnand motions to adjourn the meeting at 7:52 PM and is second by Commissioner Grobe. CL-Yes, JM-Yes, CG-Yes, RF-Yes, AF-Yes, TS-Yes

A true record, Attest:
Colleen Fegan-Nunez
Westfield Conservation Administrative Assistant

PRIVD

