

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Tuesday, August 30, 2016
EXECUTIVE SESSION

Present: Tom Friedlander, Chairman; Beth Armstrong, Vice-Chairman; Mark Sevier; Dave Henkels; Bruce Porter (6:36 arrival); Charlie Russo (6:42 arrival)

On a motion by D. Henkels; 2nd C. Russo, the Commission voted unanimously by roll call vote to enter Executive Session for a discussion with Town Counsel George Pucci regarding strategy for response to request for court action on the 0 Washington Drive denial of Certificates of Compliance.

Discussion with Town Counsel: Discussion of Strategy for Court Action Relative to 0 Washington Drive

Present: George Pucci, Kopelman & Page

Atty. Pucci explained that the court action was filed under certiorari which is a judicial review of the record seeking the court to overturn the commission's decision not to issue the Certificates of Compliance outstanding for 0 Washington Drive. He noted that the court tends to send the issue back to the town for reexamination and a possible new decision. We have 90 days to file a certified copy of the record of all the information considered as part of the Commission's decision. He will file a counter-claim to preserve and to preserve the Commission's rights on the enforcement issues.

T. Friedlander stated that compliance has not been achieved and now all Order have expired, given the homeowners no mechanism to complete the requirements in the Orders. C. Russo stated that he would rather see the Commission discuss solutions rather than obstacles. B. Armstrong stated that she has little sympathy as the homeowners bought the property with original Order and have had plenty of time to comply with reasonable requirements that satisfy wetland performance standards. They also have Counsel advising them who should be aware of the deadlines of the expiration of the Order.

Atty. Pucci informed the Commission of the settlement meeting scheduled for Sept. 14. He said it was very unusual to involve the Town Manager in a settlement discussion.

M. Sevier stated that he did not see how the Commission could hold the homeowners responsible for the work of the beavers. D. Dineen explained that the violation is not related directly to the work of the beavers but to the fact that the homeowners installed a pipe in the beaver dam. The elevation of the pipe allows the pond level to be elevated above the maximum pond level set in the Order. Without the pipe, the Commission would not be enforcing the work of the beavers on the homeowner.

Atty. Pucci felt strongly that the Commission should prevail in court in this matter. The homeowners have not complied with the conditions in the Order.

B. Armstrong stated that the other big issue is the conservation restriction. M. Sevier questioned if the Commission has already given in on some issues, would that hurt the Commission in court. Atty. Pucci stated it would not. the Commission's agreement to revise some issues do not render the remaining issues invalid.

Responding to T. Friedlander. G. Pucci stated that the settlement meeting cannot reach any binding agreements. Any proposals for settlement must come back to the Commission for action. In another response to T. Friedlander, G. Pucci stated that it is acceptable to issue and Enforcement order and allow the remaining work under this EO. D. Dineen questioned how any perpetuity conditions get incorporated into a Certificate of Compliance without and Order issued. G. Pucci stated the Commission can just add them in as part of the COC vote. G. Pucci added that he would recommend issuing a Notice

of Violation under the wetland bylaw before issuing an EO. C. Russo questioned if the Commission should wait until the court action is completed before taking any further enforcement action. B. Armstrong noted that the Commission might want to wait to see if there is any commonality from the court action. Atty. Pucci asked if there was anything new to go into the EO. D. Dineen stated that there was nothing known but no Commissioners have been on site since the spring. B. Armstrong noted that the Orders were never appealed. She questioned if the EO should be issued before the settlement meeting and if the court would look at the fact that there was never an appeal of the Orders. G. Pucci responded that the court looks at compliant being very general and may not go into that detail.

C. Russo noted that the Orders were recorded and would presumably show up in a title search. this search would show there are no Certificates of Compliance (COC). G. Pucci agreed and stated that the cloud will remain in the title until COCs are recorded.

Atty. Pucci stated that the Commission is the first line of defense in wetland protection and it has a responsibility to uphold the conditions in any Order. He felt the only responsible course of action is to deny the COCs.

T. Friedlander questioned if Commission members wanted D. Dineen and himself to meet with the homeowners and attorneys in settlement discussion or if the Commissioners felt "been there, done that". B. Armstrong agreed that these types of discussions have been taking place with no movement toward compliance. She felt that if no promises were made and everyone at the meeting is aware that any actions must come back to the full Commission for approval, the meeting could occur. C. Russo stated that it should be made known that the Commission is not inclined to compromise any further on waiving conditions.

M. Sevier questioned who pays legal fees if they win in court. Atty. Pucci stated everyone pays their own legal fees unless the court finds "frivolous". In response to C. Russo, G. Pucci stated there is no personal liability for the Commissioners. Members are named in the suit in their official capacity and are technically not part of the lawsuit. D. Henkels questioned if the "anti-SLAPP" laws have any bearing on this case. G. Pucci stated they do not. The homeowners have a specific right of appeal.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously by roll call vote to reconvene in Regular Session (7:35pm).