



SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting held Monday, August 26, 2019

Present: Thomas Friedlander (Chairman), David Henkels (Vice Chairman), Bruce Porter, Richard Morse, Mark Sevier, Charlie Russo, Kasey Rogers, Lori Capone, Conservation Coordinator, and Attorney Alex Weisheit of KP Law (Town Counsel)

On a motion by K. Rogers, seconded by D. Henkels, the Commission voted unanimously by roll call vote to enter into Executive Session for a discussion with Town Counsel Alex Weisheit regarding strategy with respect to litigation regarding Zero Washington Drive and 168 Horse Pond Road, and to return to open session following this discussion.

Zero Washington Drive, DEP File #s 301-623, 301-1093, and 301-1117:

T. Friedlander updated the Commission on the site visit held August 13, 2019 to review the site for compliance with the Order of Conditions. The two outstanding matters, the restoration plantings and spillway maintenance were evaluated. T. Friedlander said DPW surveyed the water elevation prior to this site walk and it was found to be about three feet higher than the spillway elevation. T. Friedlander said the planting area looked sufficient. He and Dan Wells tried to find the spillway but were unable to. He did find a previously unknown black corrugated pipe through the beaver dam which was clogged. The spillway was not being maintained.

Atty. Weisheit said that the only outstanding item at this point is the water elevation. T. Friedlander said that he had suggested to the Hollyers that they either install a beaver deceiver or pump the pond down to the appropriate elevation to bring the site into compliance with the Order of Conditions.

M. Sevier asked how the appropriate water elevation was determined. Coordinator Capone responded that the spillway was originally installed to raise the water elevation. A hydrologic study was done at the time of the Order that looked at the flood storage capacity of the area. The spillway was to be designed with flash boards. The boards were to be maintained in place except the top board was to be removed prior to storm greater than the 50-year storm.

The Commission discussed the landowners responsibilities concerning maintenance of the spillway in relation to the beaver manipulating the water elevation by building a beaver dam. If the spillway had been maintained then it should not have been become blocked by the beavers.

M. Sevier asked Counsel what a reasonable person would understand regarding maintenance of the spillway and whether there was case law concerning maintaining water levels with beaver influence. Counsel responded that is would be difficult to convince a judge that the beaver influence was not due to natural causes.

The Commission discussed the likelihood of subsequent owners understanding their obligations related to maintaining the spillway and discussed whether a more practical long-term solution might be for the Town to obtain right of access and take on the responsibility for maintenance.

The Commission discussed that the beaver dam has been in place so long now that the system has reached equilibrium and whether it made sense to lower the water at this point. The Commission discussed past concerns with the higher water elevation impacting adjacent landowners with septic systems and a neighbor whose cow pasture had flooded. The Commission questioned whether the Town would be culpable if the beaver dam was allowed to remain and breached at some point, causing downstream flooding. Counsel indicated that it would be an act of God.

The Commission discussed a compromise where the Hollyers would pay for the initial installation of a beaver dam, which the Town would maintain in perpetuity. T. Friedlander suggested Counsel talk with opposing Counsel regarding the Hollyers installing a beaver deceiver at the correct height, thereby allowing the Commission to uphold the prior Commission's decision. Counsel said that opposing Counsel would want assurance that the Certificates of Compliance would be issued promptly following an agreed amount of money put forth by the Hollyers to pay for installation.

C. Russo made a motion to authorize Counsel to negotiate with opposing Counsel for the Hollyers to provide funds towards the installation of a beaver deceiver to be installed by a professional at the appropriate height, pending Town approval to allocate funds towards installation and maintenance, and pending an Easement is provided to the Town to allow installation and maintenance. M. Sevier seconded the motion. The Commission so voted unanimously.

168 Horse Pond Road, DEP File #301-1178:

To Be Released Upon Resolution

On motion made by R. Morse and seconded by D. Henkels, by roll call vote, the Commission voted unanimously to exit Executive Session and return to open session.