



SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting held Monday, September 9, 2019

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

On a motion by B. Porter, seconded by M. Sevier, 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:

Following the August 26, 2019 Executive Session, Atty. Weisheit conveyed the Commission's position on the Settlement Agreement with opposing Counsel. A counteroffer was proposed and sent to the Commission which agreed that the Hollyers would put forth \$3,000.00 towards installing a beaver deceiver, which the Town would install and maintain, at the current water level. The CR would be amended to allow municipal access and allow for maintenance activity.

M. Sevier asked who has assessed that the wetland system was now stable and in equilibrium. The Commission expressed concern with installing the beaver deceiver at the present water elevation and discussed what elevation made sense to restore: the elevation of the spillway, the existing elevation, or a compromised elevation. T. Friedlander felt that the spillway elevation should be restored per the Order of Conditions, questioning why a compromised elevation would be considered. Atty. Weisheit advised the Commission that it would be difficult to get a Judge to enforce that a certain water elevation be maintained which is being effected by a natural process beyond the landowners control. The Commission felt that the average person may not have understood that they needed to remove debris from the spillway to prevent beaver damming the outlet. Atty. Weisheit thought that the Hollyers may consider a compromised elevation. T. Friedlander did not find the Agreement acceptable.

D. Henkels expressed concern with any liability the Town may be assuming by taking on the installation and maintenance of a beaver deceiver. Atty. Weisheit explained that the Board of Selectmen would need to approve any agreement and there are statutory protections for the Town limiting exposure.

The Commission discussed the benefits and drawbacks of having the opportunity to maintain the water level with a beaver deceiver, and ecological benefits of having the ability to maintain the current environmental conditions.

Coordinator Capone showed the Commission aerials of the property, comparing 2003 to 2019. Aerials show the elevated water levels have converted a significant area of forested wetland, to

open water. The habitat that was present prior to the presence of the beaver dam, has been lost. The other ecological impact to consider is the presence of invasive species. Now that the tree cover is gone, onsite purple loosestrife and glossy buckthorn, are likely to invade if the water level were lowered, creating poor wildlife habitat. The Commission discussed bringing in a consultant to evaluate impacts associated with lowering the water level.

T. Friedlander entertained the proposition of having an environmental study compare impacts from the water elevation, cost to be shared with the Hollyers. If the elevation doesn't matter, then leave it up for the court to decide; don't have a beaver deceiver installed; and take the liability away from the Town.

Atty. Weisheit said the Hollyers will not agree to a study. He advised the Commission that if they win in court, then the court will order that the spillway be maintained. If the Commission loses, then the court will order that the Certificates of Compliance be issued, the spillway will not be required to be maintained and there would be no controls in place to manage the water level.

The Commission discussed maintaining the existing water elevation (155.4), to prevent future flooding or allowing beaver to continue to control the water elevation. The Commission discussed the provision in the proposed Agreement that the beaver deceiver company would be chosen by the Hollyers. The Commissioner requested the Agreement be amended that the vendor would be agreed to mutually. The Commission also discussed the temporary nature of a beaver dam, and what happens if it breaches and who is responsible for maintaining the spillway should the beaver dam no longer exist.

M. Sevier made a motion to conceptually agree to the proposed Settlement Agreement which provides for \$3000.00 to be provided by the Hollyers, with access provided to the Town for installation and maintenance of a beaver deceiver. And for Counsel to negotiate proposed changes discussed, subject to Board of Selectmen approval. Seconded by B. Porter.

Atty. Weisheit stated that he is would have additional negotiation that the spillway would be abandoned, by not enforcing the Special Conditions in the Order of Conditions that required maintenance of the spillway, however the Town would not waive any obligation to maintain the spillway in relation to other state or federal statute; the Town will not be held responsible for any failure in the beaver dam.

By roll call vote, the motion carried 6-1 (T. Friedlander opposed)

168 Horse Pond Road

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.