



Norton Conservation Commission
70 East Main Street
Norton MA 02766

NORTON TOWN CLERK
APR 14 2010
RECEIVED

Monday, February 22, 2010

Attendance

Ron O'Reilly (Chairman), David Henry (Vice-Chairman), Julian Kadish, Earl Willcott, Kathleen Giblin, Lisa Carrozza, and Jennifer Carlino, Conservation Agent

Chris Baker was absent.

Minutes

The meeting started at 7:00 pm.

The members reviewed the draft minutes of **January 25, 2010**. David Henry made a motion, seconded by Lisa Carrozza, to accept the minutes as written. Approved. Kathleen Goblin abstained from voting.

The members reviewed the draft minutes of **February 1, 2010**. Ron O'Reilly pointed out a typo. David Henry made a motion, seconded by Julian Kadish, to accept the minutes as amended. Approved. Kathleen Goblin and Lisa Carrozza abstained from voting.

The members reviewed the draft minutes of **February 8, 2010**. Kathleen Giblin made a motion, seconded by Julian Kadish, to accept the minutes as written. Approved.

The members reviewed the Bills Payable Sheet (The Sun Chronicle). Earl Willcott made a motion, seconded by David Henry, to pay the bill. Approved.

Ron O'Reilly announced that the proposed Wetland Bylaw Rules and Regulations would be discussed at the end of tonight's meeting and everyone was invited to attend.

Discussion ensued regarding a request to re-consider the decision to deny a timber harvest at **Colonial Acre Condominiums** by the Norton Conservation Commission. (Discussions were held at meetings of January 11, 2010 and January 25, 2010.

Ron O'Reilly read a letter written by Michael Thomas of the Colonial Acre Condominium Trust dated February 1, 2010 as follows:

Dear Mr. O'Reilly,

We are writing to request a review of the Commission's denial of our request to conduct a selective timber harvest on the open-space acreage of the Colonial Acres Condo Association property off Dean Street and West Hodges Street.

Norton Conservation Commission
Monday, February 22, 2010
Minutes, page 2.

The reason for this request is the lack of information about the proposed harvest that was presented to the members that voted at the January 25, 2010 meeting. There was a site visit at the property on January 14, 2010, at which one member of the Commission attended, as well as Ms. Carlino. However, that Commission member was not able to attend the January 25th meeting in time for consideration, and we do not believe that a few pictures of trees with blue paint on them is sufficient grounds for rejection of our request.

In her January 26, 2010 letter informing us of the Commission's decision, Ms. Carlino erroneously referred to the intent of the proposed harvest as being for commercial profit. As presented in our letter of January 21, 2010, the intent of the harvest is two-fold: to establish the recreational trail; and to improve the forest health conditions of the pine-dominated areas of the property. The selected timber in the proposed harvest accomplishes those objectives, and their harvest does have commercial value, but that is only a secondary benefit.

A copy of the Forest Stewardship Plan prepared by a Mass. licensed forester, Marc Tremblay, in 2008 has previously been provided to the town. The inventory of those pine-dominated areas of Stands 2 and 3 (page 17 of the plan) illustrates that long-term forest health conditions are impacted by the current stocking level. Additionally, the white pine is impacting the health and vigor of the oaks in the stand, which provide diversity in species and habitat values. As pointed out during the site visit, a thinning would also improve the habitat conditions in the intermediate layers of the stands, which is currently lacking in structure change and evolve over time, so there is no way to "preserve the present condition" of a forest. Addition. It does not take a certified wildlife biologist to understand that benefit. As a professional forester, Mr. Tremblay is qualified to address upland wildlife habitat conditions and make qualified recommendations for their improvements.

The idea behind forest management is to take action to improve forest health conditions prior to those conditions becoming an "imminent or obvious hazard" from threat of disease or fire. Forests are not static environments, they ally, the "present condition" may not be favorable for habitat, forest health, or public safety reasons. The present condition of the Colonial Acres woodland is unsafe for trail access, and will only get worse as unhealthy trees die.

As you may be aware, current conservation easement practices include more flexible language that recognizes that forests are not static environments, and these newer easements take into consideration the benefits of a well-planned forest and wildlife habitat management program.

Although we understand that the proposed timber harvest may deviate slightly from the archaic language in the conservation restrictions applicable to the Colonial Acres property, we are hereby requesting that the Commission re-consider its 1/25/10 decision. We are offering a site visit that can be attended by all the members of the Commission, perhaps on a weekend to allow for work schedules.

Thank you for your consideration. Respectfully,

Michael Thomas Property Manager
For the Colonial Acres Condo Association, Inc.

Norton Conservation Commission
Monday, February 22, 2010
Minutes, page 3.

Cc: Jennifer Carlino, Norton Conservation Agent Joseph Perry, DEC Forester, Charles Gabriel, Norton Town Planner

After reading the letter from Michael Thomas of the Colonial Acres Condominium Association, Inc. Mr. O'Reilly proceeded to read a response letter from Town Counsel, Kopelman & Paige as follows:

Dear Members of the Conservation Commission:

You have requested an opinion regarding the Conservation Restriction (the "Restriction") recorded at the Bristol County Registry of Deeds on August 30, 1991 as Docket No. 30096 from Robert A. Junior, as Trustee of STV Realty Trust to the Town for a 46.61 acre parcel of land located off of Dean Street and West Hodges Street as part of the Colonial Acres Condominium project.. Under Section A.4, the Restriction prohibits. the "cutting, removing or otherwise destroying of trees, grasses or other vegetation, except" as provided for under Section B. Under Section B.2, the property owner may construct, maintain and mark trails for pedestrian use; and under Section B.3 the owner may, "in accordance with generally accepted forestry management practices," perform "selective pruning and cutting to control or prevent hazard, disease, or fire, to preserve the present condition of the Premises, including old fields" and may undertake such activities "in compliance with a plan prepared by a wildlife biologist and approved by Grantee, to improve the wildlife habitat." During December of 2009, Colonial Acres Condominium Trust (the "Trust"), the owner of the 46.61 acre parcel, sought a determination from the Conservation Commission that the Trust may proceed with "a selective timber harvest on a 17 acre portion" of the property that is subject to the Restriction. During January 2010, the Trust provided new correspondence stating that it intends to establish a recreational trail and remove unhealthy trees, and thin out the growing stock to ensure a healthier forest: The Trust proposes to remove approximately 357 trees or approximately one-third of the trees on the relevant portion of the subject property. The Trust has not identified any hazard, disease or fire issue that would require the cutting, nor. has it presented a plan prepared by a wildlife biologist to establish that the proposed removal would improve wildlife habitat.

In my opinion, the Conservation Commission should review the materials provided by the Trust and determine whether the Trust's. proposal is a commercial harvest of timber, which is clearly prohibited by the Restriction, or whether_ any of the exemptive criteria under Restriction Section B.2 or B.3 have been satisfied.

In my further opinion based upon the materials provided to me the Conservation Commission has a factual basis on which, to conclude that the proposal is a commercial harvest because, while the proposed skid trails shown on the cutting plan materials could provide the basis for a recreational trail, that is not the stated purpose of the plan and is only secondary to the main purpose of removing one-third of all of the trees within the protected 17 acre area, well beyond the proposed skid trail areas, and no materials have been provided to establish that there is any pest or other hazard or disease or fire hazard present to support the cutting plan, nor has a plan prepared by a wildlife biologist been presented.

Norton Conservation Commission
Monday, February 22, 2010
Minutes, page 4.

A proper series of findings (prepare in the alternative) for the Conservation Commission to consider and vote upon is set forth below:

I. Preliminary Findings:

- A. The Colonial Acres Condominium Trust (the "Trust") seeks a determination from the Commission that a proposed forest cutting plan, dated November 11, 2009, (the "Cutting Plan") would not violate the Conservation Restriction recorded in the Bristol County Registry of Deeds on August 30, 1991 as Docket No. 30096 as granted from Robert A. Junior, as Trustee of STV Realty Trust to the Town, for a 46.61 acre parcel of land located off of Dean Street and West Hodges Street as part of the Colonial Acres Condominium project (the "Restriction").
- B. The Cutting Plan proposes to cut 357 trees or one-third of the trees within the relevant area that is protected by the Restriction.
- C. The Cutting Plan proposes skid trails, but does/does not indicate any recreational trails that are to be constructed.
- D. The Cutting Plan and other materials presented did/did not identify any hazard (i.e., pest, disease or fire threat).
- E. The Cutting Plan was/was not accompanied by a plan prepared by a wildlife biologist..

II. Determinations.

- A. The purpose of the Cutting Plan is/is not to create recreational trails within the meaning of Restriction Section B.2.
- B. The purpose of the Cutting Plan is/is not to control or prevent hazard, disease or fire or to preserve the present condition of the Premises.
- C. The purpose of the Cutting Plan is/is not to improve the wildlife habitat.
- D. The Cutting Plan would/would not violate the prohibitions against cutting and removing trees set forth under the Restriction.

If you have any further questions, please contact me.

Very truly yours,

Ilana M. Quirk

IMQ/ja Enc.

cc: Town Manager

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Norton Conservation Commission

Monday, February 22, 2010

Minutes, page 5.

Ron O'Reilly asked the Commission members if they wanted to make a motion to re-consider their decision to deny this project. No one made a motion to re-consider the denial of this project.

Marc Tremblay, Forester for the Colonial Acre Condominium Trust Association, stated that he thought it very unfair of the Commission to not re-consider their denial of the project and to not let town residents discuss the conditions of the forest to be cut. He suggested the commission go out into the forest and look at the conditions before making the decision not to re-consider the denial of this project.

Julian Kadish stated that a Conservation Restriction was created with regulations and those regulations must be complied with. He asked why the residents of the condominium association would request the conservation restriction be created and not want to abide by the rules and regulations of the restriction. Mr. Tremblay suggested the commission members take a look at the forest before making a decision and he stated that Town Counsel would have the right to make legal decisions but not biological decisions. Julian Kadish asked Mr. Tremblay if it was his opinion that one third of the trees should be removed to abide by the criteria stated in the conservation restriction and Mr. Tremblay replied that he meant one third of a certain size tree and not one third of all the trees.

Ron O'Reilly stated that Town Counsel has recommended to adhere to the rules and regulations of the conservation restriction and the submitted plan does not adhere to the rules and regulations of the conservation restriction.

The members reviewed a Notice of Intent – **(#250-855) – Fairland Farm LLC – Lot E, Parcels 191 & 195 (assessors map 12) Bay Road** - for proposed plans to construct a paved driveway within 100 feet of wetlands and a vernal pool. Scott Goddard of Carr Research Laboratory and Chris Yarworth of Yarworth Engineering Co., Inc. represented the applicant at the public hearing. Mr. Goddard stated the house and buildings will not be located within the buffer zones, resource areas and Riverfront Areas. He said what the applicant is requesting is a 12-foot wide access driveway to the rear of the property with frontage along Bay Road. He pointed out the various resource areas, buffer zone and the area of the vernal pool on the submitted plans in relation to where the new work is proposed. Mr. Goddard said that in the Order of Resource Area Delineation previously issue for this site, Jennifer Carlino has made reference to several publications referring to maintenance of undeveloped areas adjacent to vernal pools. He said that he did review the publications and pointed out to the members the areas adjacent to the vernal pool that will not be disturbed.

Mr. Goodard stated that there is an existing cart path that will be used for the driveway so that the site will not be broken up anymore than it is already. He said erosion control will be used during construction of the driveway. Mr. Goddard noted that the entire site is in a mapped area of Estimated Habitat of Rare and Endangered Species, mainly the Eastern Box Turtle. He said an application had been sent to the Natural Heritage and Endangered Species Program (NHESP) and MESA with a favorable no-adverse impact response. He said the project has been down-sized to comply with NHESP regulations and MESA. Mr. Goddard stated that after sending a copy the Notice of Intent to NHESP, a no-adverse impact letter was received.

Norton Conservation Commission

Monday, February 22, 2010

Minutes, page 6.

Chris Yarworth stated that a few poles were proposed for telephone. Jennifer Carlino requested a copy of the revised down-scaled plan. Lisa Carrozza suggested adding a visual barrier to the plan as well as erosion control details. Earl Willcott suggested having a turn-a-round somewhere to prevent an accident or confusion if two vehicles meet on the driveway at once. Jennifer Carlino noted there are a few piles of branches and grass clippings which should be removed before the new owners start work. Lisa Carrozza asked if the driveway width was approved by the Planning Board and Chris Yarworth stated the driveway width does not need Planning Board approval.

Jennifer Carlino asked Mr. Yarworth if the paving of the existing dirt road will cause water to flow directly towards the vernal pool and he replied that it would not because the applicant does not proposed any filling in, mostly leveling the road down flat and pitching it away from the vernal pool area and the grade will not be changed. Jennifer Carlino pointed out an area and asked if an erosion blanket was to be used and if the side slopes would be stabilized to prevent debris from washing down towards the vernal pool. Scott Goddard stated silt fence would be in place during construction. Lisa Carrozza asked what type of ground cover will be used for the side slopes and Mr. Goddard replied that some type of seed mix would be used and Lisa Carrozza requested a note be added to the plans to ensure that the contractor makes sure that the area is seeded before leaving the job. Chris Yarworth suggested having stone put on the slopes and Lisa Carrozza agreed this would be a good idea.

Lisa Carrozza requested the compost and leaves be removed from the edge of the vernal pool. Jennifer Carlino asked if the easement was actually the edge of the stockade fence and Mr. Yarworth said it was. David Henry made a motion, seconded by Kathleen Goblin, to continue the public hearing until the next regular meeting of Monday, March 8, 2010 in order to receive and review the revised plans. Approved.

The members reviewed a Notice of Intent – **(#250-856) – Paul Muscatiello – Parcel 52 (assessors map 16) 33 Young Avenue** – for proposed plans to construct an addition, porch and garage within 100 feet of Norton Reservoir. The applicant described the project to the members. He stated that he is proposing to construct an 18' x 27' addition consisting of two bedrooms to the Reservoir side of the house, a farmer's porch to the front of the house and construct a garage on the side of the house. He stated the construction of the garage would have to be approved by the Zoning Board of Appeals. He said he would like to add a driveway to come off of the right-of-way where his house is located. Mr. Muscatiello stated that a 20" oak tree will have to be removed but he is willing to replant a tree in a different location on the property. Lisa Carrozza asked if the septic system would have to be upgraded and Mr. Muscatiello replied that it was already updated in 2003. Lisa Carrozza requested the silt fence detail be added to the plans. Mr. Muscatiello requested that he put up a visual barrier (fence) to prevent recreational vehicles from driving over his property. Lisa Carrozza suggested that he install the visual barrier (fence) where the silt fence is after it is removed and requested the location of the visual barrier (fence) be added to the plans. Lisa Carrozza asked about the floodplain elevation contour and Jennifer Carlino said the foundation is well above the floodplain. She said a notation will be included in the Order of Conditions as to the contour. Earl Willcott made a motion, seconded by Julian Kadish, to close the public hearing. Approved.

The members reviewed a Notice of Intent – (#250-854) – Town of Norton/Conservation – Parcel 8 (assessors map 26) Chartley Pond dam/South Worcester Street – for proposed plans for maintenance of Chartley Pond dam. Jennifer Carlino stated she had included in the permit application a copy of the Chartley Pond Dam Phase 1 Evaluation that was submitted by Pare Corp. which listed the parts of the dam that needed repair. She said this permit would permit general on-going maintenance that is required by the Office of Dam Safety. Jennifer Carlino stated Pare Corp. will be submitting plans for each section of the dam when it is to be repaired. She said a public hearing, including abutter notification, will be held each time new plans are submitted to keep the public informed of all activities. She stated this permit will cover the whole maintenance plan and separate hearings will be held for the separate areas to be repaired. Kathleen Goblin made a motion, seconded by David Henry, to close the public hearing. Approved.

Ron O'Reilly noted that each member has received a letter from the Town Clerk dated February 9, 2010 regarding mandatory training required by the State Ethics Commission. He stated each member needs to sign an acknowledgment form that they have received a copy of this letter. He said each member is required to attend a workshop or complete an on-line exam regarding State Ethics for Municipal Employees which has to be completed by April 2, 2010.

Discussion ensued regarding the proposed **bylaw rules and regulations**.

The review began with Appendix A: Plan Submittal Requirements.

Lisa Carrozza asked Jennifer Carlino why, under Site Data, she added #11. Traffic counts may be required, since the Planning Board usually requires this. Jennifer Carlino said that it was suggested by Horsley Whitten Group to add this. Lisa Carrozza suggested changing the wording to read Vehicle trip generation based on "Average Daily Trip" (ADT) rate, if required in Section 5.E.

Lisa Carrozza suggested removing the word "temporarily" under Plan Notes, #2. and removing "CGP" after the word (NPDES).

Kathleen Goblin questioned the wording under Plan Notes, #1. requiring a post-and-rail fence to be used for a visual barrier. Jennifer Carlino suggested adding ",unless otherwise approved by the Commission".

Brad Bramwell suggested changing the color code under Plan Color Codes for #7. Drainage. He stated that yellow does not show when copied. Lisa Carrozza suggested changing the property line to black and drainage to orange. It was agreed to change the wording for the first sentence under Plan Color Codes to "All (7) copies of the submitted plans shall be marked with a highlighter or Colorplot with the color code listed below."

It was agreed to add a new number #1. under Wetland Replication Areas to read "Plans of replication areas shall not have greater than 1-foot contours." Under Wetland Replication Areas in #5, Jennifer Carlino suggested changing the word "pit-mound" to "pit and mound". David Henry suggested to change the word "size" to "sizes" in #6. under Wetland Replication Areas.

Norton Conservation Commission
Monday, February 22, 2010
Minutes, page 8.

Lisa Carrozza made a motion, seconded by Kathleen Goblin, to accept Appendix A: Plan Submittal Requirements, as amended. Approved.

Discussion ensued on Section 5: Project Review, Design Criteria and Construction Methods.

Julian Kadish asked why temporary disturbed areas have to be listed as well as permanently disturbed areas as listed under A. Calculating Impacts to Resource Areas and Jennifer Carlino stated that it is required under the Wetlands Protection Act at present. She stated the temporary areas are allowed to be labeled as temporary areas as is done at present.

David Henry noted that B. Rare Species was one long sentence and Jennifer Carlino replied that it the way it is written in the Wetlands Protection Act. Lisa Carrozza suggested deleting the words “or watch list” from the sentence.

Under Section C. Wetland Replication Areas, Jennifer Carlino suggested removing the words “with not less than 2-foot contours”.

Under F. Presumption of Drainage and Storm Water Management Standards, the following changes were discussed.

Julian Kadish asked why the words “shall be presumed to” have to be included in the first sentence. Jennifer Carlino stated the word “presumed” shall be used to describe significance of a particular resource area and the burden of proof is the applicant’s to prove that the significance is not relative to a particular resource area.

Lisa Carrozza asked why, under Standard 3: it stated “a minimum 2-foot separation” when it is already a 2-foot requirement with DEP. Jennifer Carlino stated this is not the case with all projects. She said Horsley-Whitten Group was checking into this and she stated that they would be working on eliminating duplicate wording or regulations.

Julian Kadish asked why, under Standard 3: the words “All projects” have to be used. He stated that the average homeowner would not be normally required to provide this information in Section 3 and Jennifer Carlino replied that it is noted in another section of the rules and regulations that “single-family houses will be done to the extent practicable” and the homeowner will not have to follow all the standards. Lisa Carrozza stated that DEP Storm Water standards do not apply to single-family houses.

Julian Kadish had questions for Standard 4 regarding an ACEC area and why the TSS removal rates were different. Lisa Carrozza stated that an extra step is required of property within an ACEC area. Jennifer Carlino said that is required in order to make the drinking water as clean as possible. She said this a standard procedure at the present time.

Under Standard 5, Lisa Carrozza asked if the number of vehicle trips per day was to remain at 750 and Jennifer Carlino replied that Horsley-Whitten Group was going to check this out for the commission.

Norton Conservation Commission
Monday, February 22, 2010
Minutes, page 9.

Jennifer Carlino stated that, in Standard 6, adding the word "additional" before Outstanding Resource Waters.

Under Standard 7, Lisa Carrozza asked why the Storm Water Handbook was being referenced and Jennifer Carlino stated that it lists the types of BMPs that can and cannot be used in a critical area. Lisa Carrozza stated that since it is already stated in the handbook, why is it being included in the proposed bylaw rules and regulations. Jennifer Carlino said she will have Horsley-Whitten Group look into this.

Under Standard 8, Lisa Carrozza asked if the wording should be "prior to construction" or "prior to close of hearing". Jennifer Carlino said to leave it as "prior to close of hearing" because the commission usually asks for it now.

Under Standard 9, Lisa Carrozza suggested changing the wording to "Proof of final inspection and cleaning" shall be submitted with a Request for a Certificate of Compliance.

Under Standard 10, Lisa Carrozza suggested changing the wording from the signed Illicit Discharge Statement shall be submitted "prior to the close of public hearing" to " with the storm water drainage report".

Under Plans and Drainage Report, Julian Kadish stated that not all snow will contain contaminants and should not have a limit of storage. Lisa Carrozza suggested that any regulations regarding snow storage and contaminants should be listed under Standard 5: Land Uses with Higher Potential Pollutant Loads (LUHPPLs). The commission agreed. Julian Kadish stated that the commission usually asks for snow removal information at the public hearing.

The members agreed to hold a special meeting on Monday, May 1, 2010 to continue with the review of the proposed bylaw rules and regulations.

Lisa Carrozza made a motion, seconded by Kathleen Goblin, to adjourn the meeting at 9:29 pm. Approved.

Respectfully Submitted,



Jennifer Carlino
Conservation Director
JC/pmb