

CONSERVATION COMMISSION

AMENDED AGENDA

DECEMBER 7, 2011

7:00 PM

TOWN HALL - 472 MAIN STREET - ROOM 204

7:00 Land Stewardship Committee - Conservation Land - Memorial Bench Policy (010)

7:30 Continuation - Abb. Notice of Resource Area Delineation - 366 Pope Road

(020) Peer Review - Brian Butler - 12-06-2011

(021) Stamski & McNary Letter & Revised Plan

7:45 Hybrid Farm Presentation (030)

Letters Received on behalf of Hybrid Farm:

031 - Public & Neighbors Letters of Support

032 - Out of State Letters of Support

033 - Pony Club, Employees, Veterinarians, Farrier & Professionals

034 - Equestrian Students & Riders

035 - (1) Parents & Family Members of Students & Riders

035 - (2) Parents & Family Members of Students & Riders

036 - Schools

037 - The Wee Ones

*** – Additional Letters Received 12-2-2011

038 A - Public & Neighbors

038 B - Parents

038 C - Equestrian Riders & Students

039 - 12-05-2011 – Letters via Email

Conservation Commission – Q & A Handout (0301)

MINUTES

November 9 OSRP

comments rec'd by

TT, ADM, FP, WF – signature

November 16

“ “ “

TT, TM, FP

**CONSERVATION COMMISSION
MINUTES
DECEMBER 7, 2011
7:00 PM
TOWN HALL - 472 MAIN STREET - ROOM 204**

COMMISSIONERS PRESENT: Terry Maitland, Andrew Magee, Fran Portante, Amy Green, Jim Colman, Tom Arnold, Bill Froberg

CONSERVATION ADMINISTRATOR & RECORDING SECRETARY: Tom Tidman

VISITORS: Rich Harrington, Mike Paratore, Bettina Abe, Jim Snyder-Grant, Joshua Nyer, Sarah Dawley, Anna Dawley, Isabella V. Choate, Mark Boudreau, Laurence Ullman, Bob Guba, Stella Ko, Izzy Carey, Sharon Logan, Kathleen Pantano, Wick McConnon, Rita McConnon, Carol Stone, Joan Cirillo, Frank Harrigan, Scott Kessloff

7:00 Land Stewardship Committee - Conservation Land - Memorial Bench Policy (010)

Joan Cirillo presented a policy that the Land Stewardship Committee (LSCom) is asking the Conservation Commission (ConCom) to adopt regarding placement of memorial benches on Acton's conservation lands. Ms. Cirillo has researched what other communities are doing and wanted the policy to be "fair" to all participants/donors, without judging to award some applications and not others. It is envisioned that there would be very few benches placed in the conservation lands, generally not far from entrances. This program will be driven by prospective donors of benches, not as a fundraiser. A variety of bench styles will be offered as options.

Mr. Magee noted there needs to be clarification of what "conservation lands" are versus what is considered as general municipal properties so that a list of possible properties is made and appended to the program.

There was discussion about the appropriate number of benches per conservation area. Mr. Maitland said that the ConCom will need to continue this conversation with the LSCom and the Natural Resources Dept., and tabled the discussion until January 18, 2011.

7:45 Continuation - Abb. Notice of Resource Area Delineation - 366 Pope Road (020-022)

Site walk conducted 12/6/2011 with consultant Brian Butler from Oxbow Associates.

Rich Harrington from Stamski & McNary presented an amended plan dated 12-7-2011. Items added to the plan are the Isolated Wetland now shown as Bordering Vegetated Wetland (BVW) showing the intermittent stream, the stream and stone sump including the 100' buffer zone. The "ornamental feature" is added to the plan including the three stream segments. Mr. Harrington stated that it is his understanding that the wetland set-backs will not be enacted in the three intermittent stream segment areas; the peer review submitted by Brian Butler of Oxbow Associates, dated 12/6/2011, outlines the limited value of the segment areas.

Upon query by Mr. Arnold, Mr. Harrington confirmed that the lower meadow is not a jurisdictional resource area; the lower meadow does not qualify as a resource area as outlined in the Oxbow Associates letter and by Dave Crossman of B & C Associates.

Mr. Magee corrected Mr. Harrington as to the setbacks to the intermittent stream, noting that there is a stream channel with banks in the BVW to the north of the site and in the pipes across the property, and these banks have both setbacks and buffer zones regardless of their location inside or outside of the pipes. Mr. Magee noted that the function of the banks of the intermittent stream

channels located within the pipes is likely limited to storm damage and flood control, but that the Commission would nonetheless want to review any work within the buffer zone of the pipes so as to insure that this function is not lost as a result of any nearby activities. It is likely that these piped sections could be moved around as long as the interests of the Act and Bylaw were protected and/or mitigated.

Mr. Maitland noted that the revised 12/7/2011 plan being presented tonight captures what was discussed during the site walk on 12/6.

Upon query by Mr. Arnold, Mr. Magee noted that the 'ornamental feature' could theoretically be moved but it would involve a waiver under the Bylaw, in a future Notice of Intent.

Mr. Harrington stated that the underground pipe is not a resource area and does not have a buffer zone.

Mr. Magee again corrected Mr. Harrington, noting the intermittent stream flows out of a BVW and retains its status as an intermittent stream with banks as it flows through the pipe. Mr. Magee noted it similarly retains its setbacks and buffer zones within the pipe segments. Mr. Magee noted that the Commission needs to be aware of any future activity within 100' of the underground pipe since the Commission has jurisdiction within 100' of the bank of an intermittent stream.

Mr. Harrington added two red-line changes to the 12-7-11 plan noting "(bank) intermittent stream to pipes between Segments 1, 2 and 3" as discussed with the Commission.

8:15 Mr. Maitland closed the hearing.

Decision - Order of Resource Area Delineation - 366 Pope Road - 85-107

Mr. Arnold moved that the Commission approve the delineation as "Modified, BVW and Other" accepting the Wetland Delineation Flags as shown on the plan, dated 11/3/2011 revised 12/7/2011 with the red-line change dated 12/7/2011, pertaining to intermittent stream (bank) label to pipes between Segments 1, 2 & 3.

Mr. Magee asked that the flag numbers and stream segments be included in the written Order of Conditions as well as the redlined plans, and then itemized them. The Commission specifically did not make a finding as to the limits of the buffer zones of the intermittent streams, as these limits did not appear to be correct on the site plans.

Mr. Froberg 2nd, motion passed unanimously.

[See file in the Conservation Office also located in DocuShare: Conservation Commission - 2011 Meetings 12-07-2011 - 020-022 and Conservation Commission- Wetland Filings - 366 Pope Road.]

8:20 Hybrid Farm Presentation & Discussion (030 - 039)

Mr. Maitland noted to all parties present that the Commission is gathering facts at tonight's meeting and will not make any conclusions or decisions regarding the land license agreement with Hybrid Farm at this time. Mr. Maitland outlined the facts and presented a slide show containing information known to the Commission *[See Powerpoint presentation in Docushare: Conservation Commission - Hybrid Farm - 217 Nagog Hill Road - 12-07-2011 - Conservation Commission Presentation - Hybrid Farm]*

In reference to the Commission's "Q & A Handout" provided at this meeting, Rita McConnon of Hybrid Farm explained that the existing fencing has many gates that are not locked. There is a gate at the entrance to the paddock near the barn. All of the fields have gates and none are locked. Fencing is necessary and land purchased with Self-Help Program funds allows for fencing.

Wick McConnon stated that he can understand the need for, and will help with installation of, signs.

Mr. Magee stated that the license agreement states that the Town can allow the McConnon's a short-term, renewable license agreement without going out to bid. It is public land and the public should be aware of that, especially if there are 30 horses on site. The Town should draft a new license agreement with the McConnons.

Mrs. McConnon stated that they do not have horses in the large, southeastern, forested area. The public is informed of this if they read the trail map at the kiosk. This information is necessary for safety sake of the public, horses, kids and dogs.

Ms. Portante stated that the boundaries should have been adjusted and wetland issues should have been rectified long ago; signage is a very resolvable issue.

Mr. McConnon stated that it is their feeling that the land is temporarily denuded of vegetation. Hybrid Farm provides a value to the community while in operation; the land can recuperate, it is not 'destroyed.'

Mrs. McConnon stated that it is difficult if Hybrid cannot erect fencing, she does not want to lose any horses and wishes to expand the number of horses further to expand the programs provided at Hybrid. She owns all of the horses with the exception of one boarder. Many of her horses are rescues; the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) is full and she cannot have any horses euthanized; her rescues were starved. Ms. McConnon noted that her veterinarian also provided a letter to the Commission stating that all of Hybrid's horses are well cared for. She does not know where these horses would go and Hybrid provides a service for the kids.

Mr. Maitland asked if the United States Department of Agriculture (USDA) has recommendations for acreage per number of horses.

Mr. Magee stated that it is his understanding that if one is to keep grass-fed horses you need one to two acres per horse. There is more land that the McConnon's could be using within previously licensed areas; so the Commission and Hybrid need to move towards a management plan. Runoff into wetlands and vernal pools is not a good condition. The Commission may be able to allow land to be used for grazing to lessen the impact; for example by rotating grazing areas every eight weeks.

Mrs. McConnon noted that grass won't grow among the treed areas because soil is too acidic and the surface too rocky.

Ms. Green noted that there are other groundcover plants that are able to grow in those soil conditions, so it's not all or nothing in any particular location.

Mr. Froberg noted that the Commission's top priority is to protect and define the resource areas and public access; management of the farm isn't within the Commission's purview. It is up to others to decide what's in the best interest of the animals.

Mr. Colman stated that the Commission should be protecting conservation and passive recreation use of the land. The premise of the Commission should not be what the horses need; the Commission has the responsibility to bring in experts to protect all interests. Mr. Colman stated that he believes there are two questions that need to be addressed:

- (1) What is the difference between a license and a lease regarding public land in a legal analysis including whether or not public bid is implicit?
- (2) Is commercial activity even allowed? (i.e. Are any revenue producing activities permitted on Town land?) These two questions must be answered before an operations management plan is agreed upon.

Mr. McConnon stated that Hybrid is not running commercial activities on Town land; however, the farm does occasionally lead trail rides through Nagog Hill conservation area for profit. He

maintains that trail riding enhances the quiet experience of the conservation lands and learning to ride a horse. Hybrid does not board horses for money/income.

Ms. McConnon stated that Hybrid had entered into an agreement with the Town of Acton Recreation Department allowing use of conservation land for riding lessons and then were told to stop and had been informed by the Recreation Department that Hybrid could use the front paddock for parties.

Mr. Maitland stated that the Commission may be able to create a management plan only in terms of the wetlands and the environmental impacts.

Mr. Colman noted that Town Counsel makes certain decisions because commercial activity changes the nature of the discussion; the Commission does not manage how Hybrid Farm conducts operations.

Mr. Magee stated that a license is a management plan; he is unsure if the Commission has the authority to even go forward at all. It appears that a crossover occurred when commercial activity began on public land. Mr. Magee stated that he is concerned about liability and also is not sure that the Commission is allowed to be the licensing authority, any license the Commission may create could later be rendered invalid in court in the event of a lawsuit for an accident on public land. All topics need to be reviewed by Town Counsel.

Ms. McConnon reported that the Town of Acton is named as the 'Insured' on Hybrid's insurance policy for \$1,000,000 coverage.

Terry Maitland opened the discussion to members of the public in attendance.

Acton resident, Carol Stone stated that it is her understanding that she can ride on conservation land and there are no consequences to the town if she is injured.

Mr. Maitland noted that the difference is that Ms. Stone is not charging money or paying someone to conduct her trail ride. Doing so does not appear to be legal could potentially put her and the town at risk of a lawsuit not covered by insurance.

Resident and LSCom member, Joan Cirillo, outlined her interpretation of the differences between Town of Acton liability and personal liability.

Resident and LSCom member, Bob Guba, stated that he thought originally the early 1980's Conservation Commissioners wanted to keep the land vegetated. Then there were movements of the gates and shifting of trails and horses were rotated until 1989. It is his recollection that it was in the 1990's that the number of horses escalated greatly. Both sides (town & Hybrid) were to blame as the license provisions were being violated and he wondered if Hybrid had permission for structures, etc. Currently the field next to the barn is all brown and he was astounded the land is stripped; he feels bad about the land. By Hybrid building up their business, he feels that the Town is now in a tough situation.

Resident, Scott Kessloff, stated that where the horses "eat" is not considered commercial. This is a rare activity that needs to be honored and protected. Acton has competent legal counsel. If the McConnon's can structure their programs in coordination with counsel, they provide a valuable service to the community. He asked that the Commission please help work to preserve this service and activity. He feels that horses and mud go together and both are rather enjoyable.

Ms. Cirillo discussed damage done by horses on the trails and encouraged the public to volunteer to help on conservation lands and to consider the impact of the herd on all of the Nagog Hill conservation area. She stated that she feels that this is a troubling pattern of non-compliance by the McConnons over 20 years. The Town may have given the original accommodation; the problem of downsizing the programs and the herd are now deposited on the Town of Acton to clean up the mess.

Mr. Maitland stated that he feels there should be a subcommittee involving the Commission, town counsel, the McConnors and the USDA; the Town needs to address the lapsed license and need a plan to move forward.

Mr. Arnold stated that the Commission needs town counsel's advice regarding commercial activities being conducted on town property.

Mr. Colman and Mr. Arnold stated that they will work on the setting up a sub-committee.

Resident and LSCom member, Jim Snyder-Grant, recommended caution on the term of "subcommittee" since the Board of Selectmen creates and appoints subcommittee and members; it would be best to create a working group.

Ms. McConnon stated that activities and issues evolved over the years; she paid the annual license fee. She is trying to do good work; her intentions are to give both the kids and horses what they need. Ms. McConnon read a statement about Hybrid's programs accolades, contributions and attributes, noting that Hybrid also teaches about nature, mows the back field, picks up litter and monitors kids partying on Nagog Hill conservation land. She also does not know how to get rid of half of her horses.

Mr. Maitland stated that the Commission is not impugning Hybrid's motives; the Commission and Hybrid have been remiss. The Commission will endeavor to bring the situation into compliance by following regulations. Mr. Maitland stated that he has heard about complaints over the years that Hybrid gets a "sweet deal."

Mr. Magee noted that the Town cannot ignore others' rights.

Mr. Maitland thanked everyone in attendance for their presence and comments.

MINUTES

Mr. Arnold moved that the Commission approve the minutes for November 9, 2011 Ms. Portante 2nd; unanimous.

9:45 Meeting adjourned



Terry Maitland
Chair

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12-07-2011

Properties

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Type	Title	Owner	Edited	Size	Actions
	Extra Information	naturales	12/08/11	1 KB	
	0001 - December 7 Amended Agenda	naturales	12/07/11	22 KB	
	010 - Land Stewardship Committee - Conservation Lands - Memorial Bench Policy	naturales	12/02/11	210 KB	
	020 - 365 Pope Road - Peer Review - Brian Butler 12-06-2011	naturales	12/06/11	54 KB	
	021 - 12-07-2011 - Stanski & Moflary Revisions Letter	naturales	12/07/11	363 KB	
	022 - 12-07-2011 - Revised AIRRAD Plan	naturales	12/07/11	3 KB	
	030 - Hybrid Farm Cover Letter & Slides	naturales	12/02/11	849 KB	
	030A - 12-07-2011 - O & A - Hybrid Farm	naturales	12/08/11	165 KB	
	031 - Public & Neighbors	naturales	12/02/11	8 MB	
	032 - Out of State Letters of Support	naturales	12/02/11	1 KB	
	033 - Pony Club, Employees, Veterinarians, Farrier & Professionals	naturales	12/02/11	4 MB	
	034 - Equestrian Students & Riders	naturales	12/02/11	10 MB	
	035 - [1] Parents & Family Members of Students & Riders	naturales	12/02/11	6 MB	
	035 - [2] Parents & Family Members of Students & Riders	naturales	12/02/11	10 MB	
	036 - Schools	naturales	12/02/11	5 MB	
	037 - The Wea Ones	naturales	12/02/11	8 MB	
	038 A - Public & Neighbors (Received 12-02-2011)	naturales	12/02/11	63 KB	
	038 B - Parents & Family Members of Students & Riders (Received 12-02-2011)	naturales	12/02/11	046 KB	
	038 C - Equestrian Students & Riders (Received 12-02-2011)	naturales	12/02/11	718 KB	
	039 - 12-05-2011 - Letters via Email	naturales	12/07/11	27 KB	

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12-07-2011 - Conservation Commission Presentation - Hybrid Farm (Powerpoint)

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