

CONSERVATION COMMISSION



Town of GREENFIELD, MASSACHUSETTS
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GREENFIELD CONSERVATION COMMISSION Minutes of March 24, 2009 7:00 p.m.

Greenfield Middle School Auditorium
195 Federal Street

The meeting called to order at 7:03 by Chair Alex Haro with the following members:

Present: Alex Haro, Chair; Tim Mosher, Vice-chair; Tom DeHoyos; Dee Letourneau

Absent: None

Also Present: Ralph Kunkel, Conservation Agent and members of the Public.

Approval of Minutes of March 10, 2009

Motion: Moved by DeHoyos, seconded by Mosher, and voted 3-0 (Letourneau abstained) to approve the minutes of March 10, 2009 as submitted.

Public Meetings/Hearings:

7:04 p.m. Russell Haddleton, Mackin Construction Co. – to review a Notice of Intent for property located at Assessors Map R04 Lot 44 to conduct continued cleanup and assessment of fuel oil impacted soils and groundwater pursuant to 310 CMR 40.0000 (MCP) to address risk to public health and the environment, with associated *in situ* restoration and other mitigation for unavoidable impact to resource areas. Continued from March 10, 2009

Haro opened the public hearing and reviewed the proposed protocol for the evening:

1. The applicant would present
2. Public Comment would be heard
3. The hearing would be closed
4. Within 21 days the Commission would have time to consider approval or denial of the project.

The applicant, Russell Haddleton, was present and the following personnel were present on behalf of the applicant: Jeff Roelofs, attorney, Eric Nelson and Tony Wonseski of SVE, Bruce Tease of ECS, and Amy Ball of Horsley & Witten.

Nelson asked to make a point of clarification that this was a joint hearing as the applicant filed the NOI under the Massachusetts Wetlands Protection Act and the Greenfield Wetlands Protection Ordinance. Nelson then gave a brief history of the site and the on-going site cleanup stating that there is a 90 – 95 % range of completion for the clean-up; Wetland 4 is all that remains to be cleaned; some of the work had already been done outside the buffer zone in the vicinity of Wetland 4 and some had been done through a prior NOI within the buffer zone. Nelson reminded the Commission that this work is mandated under 310 CMR 40.0000. Nelson stated that where storage tanks were removed, extensive monitoring wells had been installed and revealed contamination down to a depth of 5 -10 feet below the existing grade. Nelson said the proposal is to

remove the sediments in the top 1 foot of the Wetland in an approximate area of 1,928 square feet; when the sediments have been removed there would be at depth test pits to determine the extent of the underground contamination. Nelson said they currently do not know how far that at depth contamination extends; however monitoring wells on the other side of the wetland revealed that the contamination probably does not extend beyond the wetlands. Nelson showed the surface limits of work and a proposed access road to be installed in the area where the tanks were removed. Nelson said there may be a need for a frac tank for the water pumped out of the deep excavations. Nelson showed both an "at-best" proposal for limits of work and a "worst-case" proposal for limits of work. Nelson reminded the Commission that previously they had used the same technique right up to the haul pile work limit and that the polluted soils were extracted and then trucked off site to Chicopee to an asphalt batching plant which is a DEP licensed receiving facility. Nelson said clean soil was brought back and put into those sites where contaminated soil had been removed. Nelson stated that when they are finished with the cleanup they intend to do buffer zone enhancement in the area around Wetland 4.

Nelson then addressed the removal of construction equipment and debris in the area of Wetland 4. Nelson said that there are a few pockets of that debris left and they will be removing it during the clean up. Nelson explained that in the cleanup they would be removing cells that were 10' by 10' and having a depth ranging from 3' to 15'. The cleanup will continue until the contamination is no longer above acceptable standards. Nelson stated that the DEP and MCP will not allow the cleanup to background but only to an acceptable level because of the Wetland Resource. Nelson said they are requesting permission to do an *in situ* restoration of the 1,928 feet that would be in the central core location. Nelson pointed out a section that had 17 feet of linear bank and another of 12 feet of linear bank at each end of the channel, making a total of 29 feet of bank that would be impacted.

Nelson introduced Amy Ball, certified wetlands scientist with Horsley & Witten. Ball stated that they were proposing to do an *in situ* restoration of Wetland 4; that it was designed based upon existing groundwater contours and elevations provided by the work that ECS had done and was designed to be in the same footprint as the existing Wetland. Ball said the core of the wetland would provide for a slightly greater than 1:1 restoration and would be held at elevation 275. Ball said there is additional information provided by VHB that had the wetland flagged at 276. Ball said that based upon the groundwater hydrology and their knowledge of the groundwater hydrology a maximum extent of the wetland would be up to 276 which would provide a 1.7:1 restoration. Ball said they had to design this to accommodate both elevations as they were not sure what will happen to ground water when the excavation begins down to 10' below grade. Ball said there would be no permanent impairment to the existing wetland once it is restored in place and in fact it could become larger but it will provide for the required 1:1 restoration. Ball said that as Nelson had pointed out the soils would be excavated and that in the best case scenario approximately half of Wetland 4 would be removed and in the worse case entire the entire wetland would have to be removed. Ball reiterated that whatever is impacted will be restored including the 12 & 17 feet of bank; in addition the 25-foot buffer would also be restored and debris that in that area would be cleaned up. Ball said the area would receive clean soils from off site and be revegetated. Ball said vegetation would include facultative or wetter vegetation within the fore wetland between elevations of 275 & 276 to meet the WPA requirement of greater than 50% wetland vegetation; from there the vegetation would taper to facultative upland species toward the outer reaches of the resource area; all of this would be overseeded with a wetland seed mix in the interior of

the resource area and a conservation seed mix within the 25-foot buffer and a restoration seed mix in the access area. Ball stated that the intent is to have the *in situ* restoration to insure no long term loss of wetland, and as well to have an enhanced buffer zone.

Eric Nelson submitted the green cards from the abutters mailings and then introduced Jeff Roelofs. Roelofs gave an overview of the legal aspects of how the project complies with the WPA as well as the local Ordinance. Roelofs said they have addressed in the narrative how the project complies with the performance standards for work within BVW as well as work within Bank. Roelofs stated that they were asking the Commission to review the project as a limited project. Roelofs addressed the DEP's comment #4 relative to 310 CMR 10.53(1) as it relates to buffer zone mitigation and enhancement work. Roelofs stated that the restored Wetland would function much as the existing wetland but would have a buffer zone, particularly the 25-foot no-disturb-zone that would provide greater protecting than the existing buffer zone. Roelofs addressed the provision of the Local Ordinance, provision aimed at preventing someone from destroying wetlands and replicating the wetlands elsewhere. Roelofs stated that the applicant believes the project complies with that provision. The project as proposed is to restore the wetland in place. Roelofs stated that the impacts in this particular project would be unavoidable as this is a clean-up mandated by state law. Roelofs reminded the Commission that the Question before the commission is not whether the Wetland should be impacted but how that destruction would be mitigated. Roelofs stated that since this would be a limited project, the Ordinance would not apply to a limited project. Roelofs presented a proposed Condition worked out with the proponents of the retail development project. The proposed Condition was in response to DEP's perception that there may be conflicts between the conditions that were approved in the Retail development and the work proposed in this NOI. Roelofs said this Condition was designed to prevent any conflicts should both projects go forward. Roelofs then read his proposed Condition into the Record. Roelofs then submitted a document entitled Proposed Motions and Findings.

Kunkel stated that he thought the Proposed Motions and Findings were out of Order. Haro stated that the Commission does not receive proposed motions from applicants. Roelofs asked to be permitted to read the document. Haro stated that the Commission would keep the written document as part of the materials that had been received but that the Commission would not consider them. Roelofs then stated that the DEP had asked the Commission to re-confirm the Bank delineation.

Kunkel asked permission to address that comment. Kunkel stated that When Nelson was first working the NOI he had come into the office for the Original Delineation and the files were not in order and Nelson had obtained a plan that was not the final approved plan. That the plan Nelson had looked at did not show bank, but in the final delineation bank was delineated. Kunkel stated that he had contacted DEP and told them that Bank was approved and DEP was satisfied as long as bank was delineated in the original approved delineations.

Roelofs said the applicant was looking to have the delineation clarified by reference to flags on the original delineation. Kunkel replied that if there is a difference between the delineations on the new plan submitted by SVE and the original delineation, the Commission would be required to approve a new delineation.

Roelofs stated that they were not looking for that and then submitted an oversized version of the VHB/SV-3 plan which was submitted with the NOI because it would be easier to

read. Roelofs stated that this plan identifies the BF flags, the Bank flags which show 17 linear feet of Bank on the North side and the delineation of the Bank on the South side. Roelofs asked that this be included in the record.

Roelofs stated that another part of the Proposed Motions and Findings would be to review the project with respect to the Performance Standards and with respect to Limited Project Status. Roelofs stated that the reason for that proposal would be in the event the Commission were to approve the project as complying fully with the Performance Standards, the Commission would be justified in so doing; however, if that decision were challenged the applicant also wants the Limited Project Status to be brought forward with any challenge. Roelofs then stated if it were not also approved under Limited Project Status and it were appealed, should the court and the DEP agree with the appellants that it did not meet one or more of the Performance Standards, then the Applicant would be back before the Commission in a year. Roelofs added that were the Commission, however, to approve the Project both with respect to complying with the Performance Standards and as a Limited Project, both of those could be addressed within the same process; that it would be a procedural safeguard and would be procedural efficiency.

Haro stated that with respect to the Proposed Condition, Kunkel had received some comments back from DEP. Kunkel stated that DEP said they would not address the other Order of Conditions until this one was resolved. If DEP finds the *in situ* restoration acceptable, then they would be writing the Superseding Order of Conditions for the Retail Project and there would be no overlap in their opinion. Kunkel stated that the comments that accompanied the file number were written by collaboration between Robert McCollum, David Foulis and Mark Stinson.

Haro stated that the Commission had received the DEP Comments. Haro stated that while some of the comments had been addressed in the presentation, he would like to know if SVE had intended to respond to those comments in written form.

Roelofs stated that they were not planning on responding to those in writing; however they were prepared to respond to some or all of the comments at the current hearing. Haro said he did not think it would be necessary for the applicant to respond to each of the comments, that some of the material may be addressed in the questions that come forward.

Haro Opened Public Comment and stated that since there were two speakers he would grant 5 minutes to each speaker.

Mike Slahetka, 7 Factory Hollow, thanked the Commission for permission to speak. Slahetka then addressed Amy Ball's presentation stating that he thought it was "a bit limited." Slahetka asked if Horsley-Witten had prior experience and if so wanted to know if there was any way of finding out the success rate of their restorations and replications. Slahetka stated that in the hearing for the previous NOI that the citizens had asked if they would be allowed to access property and that they were not allowed to do so. Slahetka asked if they would be allowed to do so now. Haro told Slahetka he would have to contact Haddleton in writing.

Letourneau added that such a request should not be done at this hearing. Letourneau also addressed Slahetka's request for Horseley-Witten's credentials. Letourneau stated that they had been considered for Peer Review along with Norfolk Ram and that Steve Walk

was very impressed with their credentials. Letourneau asked Kunkel if he still had their Portfolio. Kunkel replied that he had the portfolio in the office.

Al Norman, 21 Grinnell Street, submitted a document dated March 24, 2009 and signed by 9 residents of Greenfield. Norman then stated that he had not had a chance to see the DEP comments and asked that the Chair extend the Public Hearing until he had an opportunity to comment on them. Norman then stated that this was a bitter sweet night for the appellants as it took them 5 months to the applicant back to this point. Norman went on to say that this was not where the Commission, the Applicant or the Land Owner wanted to be and began to tell the Commission that he and the appellants had asked the Commission to do this in the previous NOI. He was interrupted by DeHoyos who asked if this would be public comment on the wetlands or simply self serving comments. Norman replied that all of his comments were self-serving. Norman then addressed the document he had submitted and stating that the Commission could read the document for themselves, he read and emphasized the following points in the document:

1. Through their own careless stewardship of this land, the Mackin Company has polluted wetland 4 to a degree that its consultant, SVE has stated that the petroleum contamination in this resource area “presents an unacceptable risk to public health and the environment.”

3. The Mackin consultant ECS has stated that the level of contamination found in Wetland 4 demonstrates “the presence of a *readily apparent harm* [their emphasis] as defined in the Stage 1 Screening Process of the MCP, in accordance with 310 CMR 40.0995 for assessing risk to ecological receptors.” ECS states that “soils containing TOVs in excess of 50 ppm would be considered to contain petroleum hydrocarbon exceeding the S-1 MCP Method 1 Standards, based on previous soil excavation experience elsewhere on the site.”

6. This extensive contamination has left Wetland 4 in a disturbed state from ecological and biological perspective. The extent to which animals and insects will be present in such an impaired resource is diminished because of its contamination. The presence of these “ecological receptors” would be diminished in such a disturbed resource area. It makes little sense to observe wetland 4 for obligate evidence or different types of facultative evidence while it is in such a disturbed, contaminated condition, in which ecological receptors are at risk because the sediments within the drainage basin “contain contaminants that exceed human and environmental risk-based standards under the MCP,” as pointed out by Horsley-Witten.

7. Mackin’s consultants have set the goal of having at least 75% of the disturbed vegetation of wetland 4 reestablished with indigenous wetland plant species within two growing seasons. SVE says after the restoration, “the wetlands would be in a cleaner condition and provide the same level of wetland functions as the existing wetlands.” State law requires a two growing season monitoring plan for the reestablishment of this wetland resource.

8. Only after the disturbed wetland has been fully restored can an accurate assessment of macro-invertebrates, and other ecological receptors at the site be analyzed. The Mackin Construction Company allowed wetland 4 to become ecologically disturbed by contamination.

9. Only after the conclusion of the required “grow-in and two year monitoring period,” can wetland 4 be said to have been successfully reestablished. Until that time, wetland 4 has not been given sufficient opportunity to reestablish itself as a fully-functioning resource area. Only after all soils have been stabilized with

vegetation can one assess this restored resource area for obligate and facultative evidence of a healthy wetland and/or vernal pool resource.

12. Our hydrogeologist, David Haines, stated in a letter to this Commission dated October 21, 2008, "I don't see any reason that the wetland could not be restored in place."

13. On December 18, 2008, the DEP sent a letter to Mackin regarding our request for access to the site. "Though the Department cannot compel property owners to allow access to anyone, the Department generally strongly advocates that property owners allow such access, with whatever reasonable conditions they deem appropriate. Such access allows a full public participation, peer review of scientific methodologies, findings, and assumptions, and generally assists the Department in carrying out its duties. The Department asks you to consider appellants' request to allow such access in this proceeding. Should such access not be permitted, the appellants may request access in further appellate proceedings, potentially delaying the resolution of such an appeal. There is case law to support such requests." Norman concluded his comments by saying that if the Commission grants this project limited status, he will sue the Commission.

Haro closed public comment.

Haro said he found the NOI to be thorough and complete. Haro then asked what would happen if the contamination in the wetland extended beyond the east channel. Roelofs replied that if they have to go beyond the area proposed, they would come back to the Commission for further review. Nelson said that there had been no significant findings in the borings to the East of the Channel.

Haro then addressed the restoration plan and commented that in the NOI the wetland is described as emergent marsh. Haro inquired why therefore it is proposed to be restored as a dense shrub marsh. Ball replied that the core wetland will be restored as an emergent marsh and the buffer zone would be restored as a shrub marsh. Haro asked why no cattails were included in the species list and asked if it would be more important to get other species established. Ball replied that they were interested in getting other species established because the cattails would come in on their own.

Haro asked how they would reference where to put the restored wetland once the clean-up is complete to ensure that the restored wetland is where the current wetland exists. Nelson replied that it will be surveyed before and after. Haro then asked if partial restoration would be going on how the east channel would be protected from silt if there were a siltation event. Nelson replied that silt socks would be installed along border. Nelson said they would be installed in such a way as not to be a barrier to water flow but would act as a filter. Haro referred to the statement that the site would be checked after a significant storm event and asked what would be classified as a significant storm event; specifically what criteria would be used for that. Nelson replied 0.2 inch of rain within a 24 hour period.

Haro addressed Ball and said that according to the design there were no expected changes to the hydrologic gradient, yet Ball in her presentation noted a potential increase to the existing hydrograph; Haro asked what caused the elevation to be increased by a foot. Ball said what she was referring to was based on the ground water contours in mid-July and that ground water can fluctuate up to two feet.

Ball said the elevation ranges from 274.6 – 274.9 in the central basin and with fluctuating ground waters could extend out to the 276 contour.

Haro asked what soil types would be used. Ball stated that it will be coarse sand based on ECS findings; and the coarse sand would be topped with fine sand, with loam on top of that; and then a soil with high organic content would be placed on the surface.

Haro asked if there would be any translocation of wildlife as excavation begins? Nelson said they would monitor that and added that they have not seen any wildlife to date. Haro asked if there would be any wildlife survey after the restoration was complete? Nelson said they would be open to that as a condition. Haro then asked who would be writing the monitoring reports. Nelson replied that Ball would be coming out twice a year. Nelson said that however, because of invasives it would be necessary for him to monitor more frequently. Roelofs said that if the commission wanted Ball to write the reports, that would be arranged. Haro said in the DEP comments they said the Commission should specify a date for the annual report. Nelson replied that it would probably be November.

Mosher pointed out that the limit of bank had been established by Alec MacLeod and then stated that on the enlarged SV-3 map there was an additional flag. Mosher stated that currently snow is being stored at the northern end of wetland 4. Mosher said once the wetland was restored that would not be allowed to happen and that every effort would have to be made to avoid the area once it has been restored. Mosher stated that he would like to see soil from the surrounding property used instead of soil being brought in from elsewhere. Mosher then asked how they would ensure oil did not percolate up after the restoration is established. Nelson replied there would be a 90 day monitoring period to allow the ground water to be sampled before the restoration began. Nelson said there are and will continue to be monitoring wells in the area.

Ball said she could consider onsite soils if they were not contaminated with purple loose strife; that they would use loam from the site if there no invasives are in the soil.

Mosher asked how long this had been a fuel depot. Nelson replied since the 1950's. Haddleton said 50 years. Mosher then asked how long they have been proposing the clean-up project. Nelson said it was reported in 2005. Mosher asked who has paid and would continue to pay for the clean-up. Nelson said the property owner would be responsible.

DeHoyos asked if there was a written plan for controlling invasives. Ball replied that the plan is included in the NOI. DeHoyos then asked what would be the plan if the restoration were to fail. Nelson responded that the reason they got Horsley-Witten was because of their success rate. DeHoyos asked what happens if in two years the wetland does not meet Performance Standards. Ball replied that the Conservation Commission has it in their power to ask for further work. DeHoyos asked how they would protect the wetland from future endeavors on the site. Roelofs said there was a plan to enhance the buffer zone to protect that wetland.

Haro commented that once the restoration was complete there would be limited access to the south side of the wetland where there is debris. Haro asked if there was a plan to remove debris which would not be accessible once the wetland is restored. Nelson said that they would be open to a condition asking that they remove the debris before restoration begins.

Letourneau said she had no questions.

Haro said he was ready to close the Public Hearing. Roelofs suggested keeping it open for dialogue during deliberations of the conditions.

MOTION: Moved by Mosher, seconded by DeHoyos, and voted 4-0 to continue the Public Hearing for the DEP File Number 168-0269 to April 14, 2009 to 7:00 P.M. to be held at the Greenfield Police Station meeting room.

Other Business:

Carlin Barton, 59 Ferrante Avenue, stated that she has two dead trees on Cherry Rum Brook that she would like to have removed. Barton stated that the trees lie across the brook and have been dead for about 10 years. Barton submitted a site plan of her property depicting the trees that she wanted to have removed. Barton said that she planned to plant witch hazel on the banks across the stream. Barton said she also wanted to remove some Bishops weed and replace it with native plants.

Haro said if the trees are removed there should be no heavy equipment used and everything must be removed from the stream. Kunkel was asked to visit the site and to write Barton a letter explaining what she would be permitted to do.

Kunkel gave an update on the DPW's request for an Emergency Certification for the Pumping station. Kunkel said that the DEP and ACOE had recommended redirecting the course of the stream. The DPW would be applying for an NOI.

Kunkel read into the record a Memo from the DPW dated March 24, 2009 requesting permission to install haybales in the future *in lieu* of a silt fence at Wedgewood Gardens. Letourneau requested to know when the spring clean-up would happen from the dumping that was done this year. Kunkel was asked to inform the DPW that they would have to come before the Commission to request permission for use in the next year. Letourneau said she was not pleased with the appearance of the area where they had dumped snow this year.

DeHoyos asked Kunkel to check on the proposed plans at Greenfield Community College

Correspondence: None

Enforcement Orders: None

Site Visits: Site visit to the Butternut Street site for Wetlands Delineation rescheduled to Saturday April 11, 2009 8:00 a.m.

Site visit to Camp Kee-Wa-Nee Tuesday, March 31, 2009 7:30 a.m.

Next Meeting: Greenfield Police Station, April 24, 2009, 7:00 p.m.

Adjournment:

MOTION: Moved by Mosher, seconded by DeHoyos, and voted 4-0 to adjourn at 8:20 p.m.

Respectfully Submitted,

Ralph Kunkel
Conservation Agent

Alex Haro
Chair