



MONTAGUE CONSERVATION COMMISSION

Town Hall, One Avenue A · Turners Falls, MA 01376
(413) 863-3200 ext. 112 · Planner@montague-ma.gov

MEETING MINUTES

Thursday February 9, 2023- 6:30pm
Montague Town Hall, 1 Avenue A, Turners Falls
Upstairs Meeting Room and via Zoom

Commissioners Present: Chair Mark Fairbrother, Margaux Reckard, Donna Francis, Sean Werle, Justin Fermann, Anthony Reiber, Al Averill. **Absent:** Toby Carter.

Others Present: Maureen Pollock, Planner & Conservation Agent; Alan Weiss, Mark Hayden, Jill Ingham, and other members of the public.

MINUTES:

- **Approval of meeting minutes of January 12, 2023**

MOTION: Moved by Sean Werle, seconded by Margaux Reckard, and voted 7-0 to approve the meeting minutes from January 12, 2023, as amended.

PUBLIC MEETING:

- **6:32PM RDA #2023-02** Request for Determination filed by M. Hadyen to determine whether work to repair the existing septic system located at **409 Old Greenfield Road (Map 42, Parcel 85)** is subject to the Wetlands Protection Act.

A site visit was conducted on 2/9/23.

Alan Weiss presents the plan. A stream abuts the property to the North (Kettle Pond) and to enter the property you must cross an intermittent stream. There are also wetlands at the back of the house and a well location to consider. There was no other choice but to locate septic within 50 feet from a Resource Area. Gina McNeely from the Montague Board of Health was at the site visit and concurs that this is the best placement.

This project meets "Title 5" for offsets.

The plan is shown to the Conservation Commission. Mark Hayden describes the location of the old septic; about the same location but slightly west of the proposed design. The proposed location is further away from the intermittent stream.

Alan Weiss details the double silt fence profile. Written details are submitted in the plan. It's a short duration project and the area will be reseeded.

Donna Francis asks if there is enough room to work between the silt fence and the leach field? (Weiss: Yes. Access is from the driveway.)

Al Avrill asks about how they cross the intermittent stream. (Hayden: It's culvert under the drive.)

Al Averill asks about fill. (Weiss: This project is only slightly mounded and there will be no additional fill.)

The Conservation Agent recommends a negative determination #3 with conditions; no NOI with work done with a silt fence, straw waddle and reseeding with Native mix.

MOTION: Moved by Sean Werle, seconded by Donna Franklin, and voted 7-0 for a Box 3 Negative Determination to M. Hadyen for the repair work of the existing septic system located at 409 Old Greenfield Road (Map 42, Parcel 85), with conditions.

OTHER BUSINESS:

- **6:50PM Updates - DEP #229-180 Order of Conditions for restoration work at Franklin Commons, located at property identified as Millers Falls Road Assessors Map 23, Parcel 66.**

The Conservation Agent describes the history of the Conservation Commission's previously approved DEP #229-180 Order of Conditions, for restoration work activities, including, but not limited to: removal of construction debris, old structures and removal of visibly unsuitable soil material that might be disturbed within the 100 square foot area.

The Agent shows the Commission the DEP #229-180 Approved Site Plan - 'Wetlands Mitigation and Site Cleanup Plan," prepared by Beaver Brook Environmental Consultants, LLC, revision dated: August 7, 2001.

Testimony from the applicant, as documented in the Order of Conditions, indicates that 10-12 drums containing metal, arsenic and chromium were removed from the site.

The Order of Conditions did not include a condition requiring soil testing.

Sean Werle states that this Order of Conditions was issued by the Conservation Commission on August 23, 2001. It was recorded at the Franklin County Registry of Deeds (Book: 3851, Page 148). To date, the applicant has not requested a Certificate of Compliance. This property is currently posted for sale.

Sean Werle asks if someone needs to request the Certificate of Compliance, and can the Commission require soil testing?

The Agent believes that requiring testing may go beyond the scope of the Order of Conditions.

Justin Fermann thinks that it's difficult to demonstrate that the soil is cleaned without a soil test, and suggests that the Commission consider it, or, the applicant could provide documentation that they have removed 3" soil safely.

Margaux Reckard mentions Jill Ingham's letter in which she encourages the Commission to consider other options because the applicant failed to request a Certificate of Compliance. The Agent suggested that she would like to consult MassDEP about this.

Jill Ingham points out that there is a record of this issue “going back to 1987, 1990, 2001.” In Jill’s assessment the landowner did not comply but rather abandoned the land, adding that she never met him, and a neighbor met him once 20 years ago. She asks the Commission to understand the importance of the arsenic question. Jill claims that the applicant was going to voluntarily “do soil testing in 2001 but that never happened.” Jill is asking for the Commission/Town to do the soil clean-up and assess a penalty to the landowner. In one of the plans (August 7, 2001) Jill notes that “undated digital photos and filed data” were given to the Commission.

Justin Fermann responds that the direction of the Commission is to ensure that the conditions laid out long ago are met.

Jill Ingham is more concerned about the “bad faith” issue; the landowner has not done what was required.

Sean Werle comments that that the Commission does not have the mechanism to do anything until the applicant requests a certificate of compliance. According to the Agent, MassDEP concurs with Sean’s assessment of the situation.

Justin Ferman comments that the transfer of ownership is the point where the Commission has power.

The Agent will email Jill Ingrahm the approved site plan, as requested.

Mark Fairbrother asks if it is possible to sell the property if this is filed?

The Agent responds that it would be a matter between the lawyers and the buyer but the deeded Order of Conditions would not prohibit the sale. She notes she is not a lawyer, but this is her interpretation after speaking with Mass DEP.

Justin Fermann asked if there is a finish date.

The Agent responds that the three-year order has expired, and the applicant did not ask for an extension.

The Agent advises the Commission that until they receive a submitted Request for the Certificate of Compliance, the Commission can’t do anything. Once they get a request and (for example) it's determined that the work as not been done, then the Commission may require a new Notice of Intent filing with the Conservation Commission and MassDEP.

Justin Fermann asks if there is anything the Commission can “trigger” the request.

Sean Werle mentions that the meeting minutes from this meeting are a good record for future buyers.

Jill Ingham (as well as Walter Ramsey) has conveyed to the realtor that there is an Order of Conditions on the property.

OTHER BUSINESS NOT ANTICIPATED WITHIN 48 HOURS:

- Montague Center Water District pump house at 104 Main Street - Gary Dillon of the Montague Center Water District requested an emergency certificate to cut 3-5 small trees and dig to access field line for repair work of a 3 inch field line from the water pump to water storage tank, which is frozen due to the arctic chill that occurred on February 3, 2023. About 400 houses rely on that water district. Water is currently being provided to all houses by the Turners Falls Water District until the field line is repaired. The Agent met with Gary Dillon on site on February 7, 2023 and determined that the situation was an emergency. Some small trees need to be cut down in order to get to the broken line.

Temporary land disturbances will be seeded in the spring. The Agent thinks that maintaining a clear path for a utility line is good practice for moving forward. Renaissance excavators have been hired. After the work is done, the Commission will approve the work and vote.

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ADJOURN:

MOTION: Moved by Sean Werle, seconded by Anthony Reiber, and voted 7-0 to adjourn at 7:28pm.