

Conservation Commission Meeting Minutes – Tuesday, July 10, 2007

Attendance: Commission members, Mike Pulsifer, Dena DeSena, Mike Duddy, Carol Haas, John Herrick and Dick Bauman; Town Planner Maureen O'Meara. Scott McMullin, Bob Danielson and Colen Peters attended in connection with agenda item 4, the Maskewitz/McMullin Resource Protection Permit application. Ted Darling, representing the Cape Elizabeth Land Trust was also in attendance.

1. The meeting was called to order at 7:05 p.m.
2. The June meeting minutes were approved without change.
3. **Correspondence.** None.
4. **Maskewitz/McMullin Resource Protection Permit.** Scott McMullin, his attorney Bob Danielson, and Colen Peters, a wetlands expert with the firm of TRC in Scarborough, were in attendance to ask that the Commission reconsider its recommendation to the Planning Board concerning the Resource Protection Permit requested by Mr. McMullin and Ms. Maskewitz. In May, the Commission reviewed the McMullin/Maskewitz application for a Permit that would retroactively authorize the partial filling of wetlands on their property, which was done by a prior owner, and recommended that the permit not be granted.

At Mr. McMullin's request, Mr. Danielson presented the applicants' arguments in support of their position. He stated that his clients were not previously aware a legally designated wetland existed on their property because of an inadequate "paper trail." He also said that four building permits had been issued for various projects since Mr. McMullin and Ms. Maskewitz bought the property and none of them made reference to the wetlands filling. Maureen responded by pointing out that the existence of wetlands is recorded on a map of the site filed in the Town's official 'building file' for the property. She also mentioned that, if the applicants contested the determination that a wetland had existed on the property and then was illegally filled, the property owners did not file a timely appeal to the Zoning Board of Appeals after being cited by the Code Enforcement Officer for the wetlands damage. Mr. Danielson said that he was pursuing a potential appeal with the Code Enforcement Officer, suggesting that a written decision had not been prepared so the appeal period may not yet have expired.

Mr. Danielson questioned the Town's resource protection permitting process, the potential impact of wetlands designations on property owners and the significance of his clients' wetlands. He then asked Mr. Peters to address the Commission.

After summarizing his vocational background, Mr. Peters pointed out that the Town's wetlands map did not show that wetlands existed on the McMullin /Maskewitz property. He suggested that the wetland on the property could be an ecological wetland, but not a jurisdictional wetland that would be regulated by

town ordinances. Commission member Herrick noted the disclaimer on the map that stipulates that field verification is required to determine the presence and limits of wetlands. A discussion followed concerning the size of wetland features appearing on the map compared to the size of the McMullin /Maskewitz wetlands. Maureen explained that the map is based primarily on County soils data which can only provide generalized information about Town wetlands and thus the need for field verification.

Mr. Peters also discussed the Zoning Ordinance standards which the Planning Board must apply when deciding whether issuance of a Resource Protection Permit is warranted. He considered each one in terms of its applicability to the wetlands filling in question and expressed the view that almost none of them applied. The resulting discussion focused on the standard that most seems to apply, which requires that a proposed wetlands action “will maintain or improve ecological and aesthetic values.” Mr. Peters suggested that this standard, while technically applicable, should not preclude issuance of a Permit inasmuch as the McMullin /Maskewitz wetland, at its full extent, was likely to have had only minimal ecological importance. Commission member Duddy asked Mr. Peters to comment on the ecological impact of the wetland filling. He said that if Mr. Peters could provide information that this filling and potentially other filling or conversion from natural vegetation to lawn did not have an ecological impact, he could be persuaded to not oppose this Resource Protection permit. Mr. Peters said that was a tall order.

Mr. McMullin stated that he was informed by a long time resident that the wetlands on his property was a farm pond at one time. In response to a question from the commission, Maureen advised that wetlands regulations make no distinction based on how the wetlands originated; its present characteristics are what matters for zoning regulation purposes. The possibility of the wetlands being somewhat of a manmade creation did move the discussion toward the idea of mitigating the damage by planting a portion of the former wetlands area with vegetation that would naturally occur in such an environment. Various members of the Commission who had throughout the discussion expressed concern for the situation faced by Mr. McMullin and Ms. Maskewitz spoke in favor of the idea. Mr. McMullin and his representatives also reacted positively.

The discussion concluded with the understanding that Mr. McMullin would provide the Commission with a detailed mitigation plan for consideration at its next meeting. He was advised that only a plan substantial enough to provide a significant mitigation impact would be acceptable to the Commission. If it is accepted, the Commission would reconsider its original Planning Board recommendation

- 5. Bond Issue Projects.** Considering the lateness of the hour, discussion of potential bond issue projects was postponed to the next meeting.

- 6. Trout Brook Watershed Plan.** Maureen reported that she met with South Portland officials to initiate work on a management plan for the Trout Brook Watershed. As previously noted, the watershed has received an 'Urban Impaired' designation. Accordingly, actions to improve the Trout Brook's water quality must be developed to avoid imposition of requirements by the State that would negatively impact the Town's land use objectives, as set forth in the Master Plan. She will continue to keep the Commission informed as events warrant.
- 7. Mountain Bikes Meeting.** Mike Duddy reported on a meeting called by Chris Franklin, the Land Trust's Executive Director, who met with members of the biking community that ride on trails in Cape Elizabeth. Problems attributable to the actions of some trail riders were discussed and various solutions considered. Several riders also volunteered to participate in future trail work activities.
- 8. Signs.** Maureen presented a new sample of the sign that will identify the main entrance to Winnick Woods. Commission members were enthusiastic about the sign and decided that its design and color scheme should be used for trailhead signs at other locations.
- 9. Planning Board Meeting.** No items on the Planning Board's agenda require consideration by the Conservation Commission.
- 10. Monthly Trail Walk.** No trail walk was scheduled at this meeting.
- 11.** The meeting was adjourned at 9:45 p.m. The next meeting is scheduled for Tuesday, August 14, 2007.