

Conservation Commission Meeting Minutes – Tuesday, August 14, 2007

Attendance: Commission members, Mike Pulsifer, Dena DeSena, Mike Duddy, Carol Haas, John Herrick, John Planinsek and Dick Bauman; Town Planner Maureen O'Meara. Scott McMullin, Bob Danielson and Colen Peters attended in connection with the Maskewitz/McMullin Resource Protection Permit application, agenda item 3.

1. The meeting was called to order at 7:03 p.m.
2. The July meeting minutes were approved without change.

The Chairman decided to proceed with the **Maskewitz/McMullin Resource Protection Permit** review to accommodate Messrs. McMullin, Danielson and Peters as well as a Commission member who could not stay for the entire meeting.

3. Scott McMullin, his attorney Bob Danielson, and Colen Peters, a wetlands expert with the firm of TRC in Scarborough, were in attendance to discuss a wetlands mitigation plan developed by Mr. Peters for Mr. McMullin. At July's meeting, consideration of this topic concluded with the understanding that Mr. McMullin would return with a plan that substantially offset the loss of wetlands on the Maskewitz/McMullin property. If accepted, the Commission agreed to reconsider its original recommendation to deny issuance of the resource protection permit sought by Ms. Maskewitz and Mr. McMullin.

The entire plan, including narrative description, portions of a *Wetlands Planting Guide*, a site plan with the proposed wetland compensation area superimposed and photographs was distributed to Commission members prior to the meeting. Essentially, the plan proposes to create a wetland of approximately 8,000 square feet on the Maskewitz/McMullin property separated from the existing pond and filled area. According to Mr. Peters, moisture from wetlands on a nearby property drains into the proposed compensation area. Four different species of wetland shrubs, 100 in all, would be planted and mulched to establish the wetland environment. The proposed compensation area is almost twice that of the filled area and in Mr. Peters' opinion, would have equal or greater ecological value.

After the presentation, Commission members asked questions about the plantings, the source and quantity of available moisture and whether any trees surrounding the site would have to be cut (No tree cutting is necessary). Maureen asked if the private road that is next to the proposed compensation area is actually located where shown on the site plan, which was submitted to the Planning Board for subdivision approval. Mr. Danielson responded that he believed it was, based on the pin location references on the site plan but would check on it prior to the next Planning Board meeting.

After all questions from Commission members were answered, a motion was made to accept the plan as providing a satisfactory replacement for the lost

wetlands and to supercede our previous Planning Board recommendation with one recommending approval of the Maskewitz/McMullin permit application. During discussion of the resolution, concern was expressed about protecting the compensation wetland from possible actions by future owners. After further discussion, the Commission decided that the issue was in fact a Planning Board matter. Another concern related to whether the Commission should do anything to avoid having our recommendation be seen as precedent setting and, if so, what should be done. Following additional discussion, the Commission decided that we should address the precedence issue and do so by providing reasons for our recommendation in the form of findings.

Among the reasons expressed by Commission members in support of a new recommendation were; the nature of the filled wetlands as being small, isolated and of limited ecological value, the size of the compensation wetlands compared to the filled wetlands, the classification of the wetlands as RP2 rather than RP1 and the fact that the current property owner had nothing to do with the filling. Maureen was asked to draft wording for the findings and send them out to Commission members for approval.

At this time the Commission voted unanimously to recommend to the Planning Board that the Resource Protection Permit requested by Ms. Maskewitz and Mr. McMullin be issued, contingent on implementation of their Wetlands Compensation Plan and future enforcement of applicable zoning ordinance requirements.

4. Correspondence:

- Letter from Moore – Chapman re: Winnick Woods. See item 5.
- Letter from D. Tibbetts re: Purple Loosestrife. See item 7.
- Letter re: Liability for tree falls. This letter from the Risk Management Services unit of the Maine Municipal Association confirms that municipalities are generally not liable if trees on town-owned land fall and damage private property.
- Letter from Maine Audubon re: Maine IBA program. This letter informs the Commission about Audubon's *Important Bird Areas* (IBA) Program and the designation of areas within the Town for inclusion in a Cape Elizabeth IBA. The IBA program seeks to "conserve, restore and maintain habitats for birds and other wildlife."

5. Winnick Woods Parking Lot changes. Maureen advised us that the final payment for relocating the parking area at Winnick Woods was received from Janice Chapman and Bruce Moore. Accordingly, she will be contacting Skip Murray to initiate movement of the parking area to its new location.

Along with the payment, Ms. Chapman and Mr. Moore submitted two landscaping plans; one for plantings on their property and the other for plantings

on the adjacent Town land. Gnome Landscaping created both plans for purposes of creating a visual screen between the Chapman – Moore residence and the parking area.

Following review of the plans, an extended discussion occurred, focused primarily on what should be done about Town property landscaping. Several Commission members who met with Ms. Chapman and Mr. Moore in the early spring expressed their opinion that no specific landscaping commitment had been made and what was considered was much more modest than Gnome's plan. In their opinion, screening of the Chapman – Moore property could be satisfactorily accomplished by moving trees already on the site and, if necessary, bringing in a few nursery plants. The labor involved would be done by Commission members and volunteers, if needed.

Another idea proposed was to landscape the whole parking lot area to create an especially attractive entrance to one of the Town's most important natural areas. This would likely require more and larger nursery stock along with grading and mulching, based on a professionally developed landscaping plan. In the course of discussing this idea, it was suggested that a landscape architect who lives in Town might be willing to volunteer their services. Also, Public Works might be able to help out with site preparation work.

After additional discussion, it was decided that a final determination of what to do about Winnick Woods landscaping will be made some time after the parking area is moved.

- 6. Maine Association of Conservation Commissions.** Email from Bob Shafto, Executive Director of the Association of Conservation Commissions was reviewed. The organization will be formally constituted in September and at that time invite all active Conservation Commissions it is aware of to become members. Dues for a municipality of our size will be \$150 annually. After discussion, the Commission decided that joining the Association might be beneficial and voted unanimously to allocate the funds. Before renewing its membership for another year, the Commission will consider whether the benefits derived were worth the cost.
- 7. Purple Loosetrife update.** Carol reported that she and Mike Pulsifer had set out Loosetrife beetle 'pots' provided by the U.S. Fish and Wildlife Service. Carol has also documented the location of the loosetrife infestations that were treated and will distribute copies to Commission members. She asked members to let her know about other stands of loosetrife they come across which will be targeted for treatment in the future.
- 8. Trout Brook Watershed Plan.** Maureen reported that she has completed an initial draft of a Trout Brook watershed management plan and distributed copies to Cape, South Portland and State officials for comment. Among other provisions,

the plan would impose fees on development projects of a certain size both within and outside of the watershed boundaries. Fees collected on development within the watershed would fund projects that mitigate the impact of storm water runoff on the watershed. Fees on development outside the watershed would fund other storm water management activities. The Town Council has scheduled a public hearing on the fee proposals for September 10th.

- 9. Planning Board Meeting.** Maureen reviewed items on the agenda for the August 21st Planning Board meeting. No items except the Maskewitz/McMullin Resource Protection Permit application, which was considered at this meeting, requires the Commission's attention.
- 10. Monthly Trail Walk.** No trail walk was scheduled for August.
- 11.** The meeting was adjourned at 9:00 p.m. The next meeting is scheduled for Tuesday, September 11, 2007.