



City of Westfield Municipal Conservation Commission

NOVEMBER 14, 2023, AT 6:30PM
MINUTES

Conservation Commission members in attendance: Chairman Doe (DD), Vice Chairman James Murphy (JM), Edward Finnie (EF), Carl Grobe (CG), Lauren DiCarlo (LD), James Prystowski (JP) and Robert Florek (RF) Also, in attendance: Anna Meassick, Director of Conservation and Christina Ramos, Conservation Clerk

1. CALL TO ORDER

All Commissioners are present.

2. OPEN PARTICIPATION

- A. Chairman Doe asks if any members of the public would like to address the Commission on an item not subject to a public hearing. Seeing none, he moves onto item 3, public hearings.

3. PUBLIC MEETINGS (RDAs)

- A. 0 North Road – Adam Tree Farm
Proposal: Construction of disc golf course

Ryan Nelson is present as the representative. Andy Allen, applicant, is present.

Chairman Doe reads the legal language.

Mr. Nelson explains the existing disc golf course with existing pedestrian paths. They are looking for approval of existing conditions to do work going forward. There are two wetlands on the site, one isolated wetland and one bordering vegetated wetland. The project proposes to remove a bridge within a wetland and to establish a parking lot outside of the jurisdiction. They are not asking for a determination of wetland boundaries, just if the work is subject to local ordinance.

Director Meassick clarifies that isolated and bordering wetlands are both on site. She asks how the site currently exists and current site access.

Mr. Allen explains the driveway is gravel, goes over the bordering wetland which is connected via a culvert.

Commissioner Grobe asks what the current use is or what is proposed. Mr. Allen explains several holes play across the wetlands, but players walk around not through. He would like to eventually build two footbridges, which are not proposed under this application.

Chairman Doe asks if the lot is still a Christmas Tree Farm. Mr. Allen answers yes. He would like a site visit.

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Director Meassick asks what work is currently being proposed. Mr. Nelson confirms that the only work proposed within jurisdiction is the removal of the foot bridge and the parking lot is outside jurisdiction. They want to make sure the present use is allowed.

Chairman Doe asks for additional questions from the Commission. Seeing none, he asks questions from the audience. Seeing none, he entertains a motion to continue to November 28, 2023.

Vice Chairman Murphy motions to continue to November 28, 2023, for a site visit. Commissioner Grobe seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

4. PUBLIC HEARINGS (NOIs)

- A. 65 Sherwood Ave – David Guyott – DEP File #333-0842
Proposal: Construction of garage within Riverfront Area

Mr. Nelson requests a continuance to conduct a survey of the property.

Commissioner Grobe motions to continue to November 28, 2023, for a site visit. Commissioner Finnie seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

- B. 240 Russellville Road – Marat Markarian & Valerian Saribegov
Proposal: Septic system repair and existing house renovations within Buffer Zone
Ryan Nelson is present as the representative. The applicants, Mr. Markarian and Mr. Saribegov are also present with their lawyer, Attorney Matthew Donohue.

Chairman Doe reads the legal language.

Mr. Nelson presents the history of the site and the project. The septic system failed Title V inspection and the homeowners would like to replace it. There is a building envelope and permanent limit of work on the property which prevents work outside this area, but they are proposing the well be located 100ft away from the leach field and outside this limit of work.

Atty Donohue explains his interpretation of the Grant of Restriction Pursuant to the Enforcement Order. He argues the restriction contains language that the Commission can approve work outside the envelope. Vice Chairman Murphy interrupts to mention that they don't have to approve it, as Atty Donohue is implying. Atty Donohue agrees. He interprets the restriction to put it on the record that the Act applies to the site, which it already does prior to the restriction being deed recorded and it just serves to notify

owners. He does not feel the meaning behind the restriction should carry significance to the determination made for the notice of intent and the words should be interpreted as is.

Mr. Markarian says that they are not trying to build outside the envelope, just put in the well then restore. Mr. Saribegov wants to live there with his family.

Chairman Doe states that the restriction was drafted by the attorney of the homeowner at the time, Kathryn Cowles. She is the one who put the restriction on the land and recorded it and it was not a requirement of the Commission. There should be no work outside the restriction. Atty Donohue argues that the language of the restriction does not say no work can be done, it says no work can be done without approval.

Director Meassick explains that the enforcement order being the cause of the restriction to reach compliance. The Commission needs to make a decision based upon compliance with the enforcement order and the restriction.

Mr. Nelson mentions that they are not building so the building envelope does not apply. Director Meassick disagrees because it is also a permanent limit of work. Atty Donohue interprets this to mean that they can do work within the restriction or outside of the restriction if the Commission approves it. Chairman Doe explains the law department backs them that no work is allowed outside the permanent limit of work. Atty Donohue states again that is not the language of the restriction.

Director Meassick explains the restriction references deed recorded plans which says permanent limit of work. Atty Donohue claims anything outside the limit of work is not subject to the restriction. Director Meassick says the entire property is subject to restriction based upon the book and page referenced and iron pins of the lot. She walks Atty Donohue through the enforcement originally issued in 2012.

Director Meassick pulls up the book and page referenced in the restriction to demonstrate it applies to the entire property. She explains the intent of the restriction is to notify future owners of the restriction. Atty Donohue claims that the property owner saw that the Act applies to the property under section A.

Vice Chairman Murphy speaks to say that Atty Donohue is alluding that the Commission would approve it. Atty Donohue is not intending to convey that, but that the project should follow any formal review process. The restriction so written is a copy and paste of the Act and does not prevent the Commission from approving the project.

Commissioner Grobe asks where the new system is proposed and where the existing system is. Mr. Nelson points it out on the site plans.

Mr. Nelson asks what the concerns of the Commission are under the interest of the Act. Commissioner Grobe asks about the dispersion area. Mr. Nelson says no disturbance will occur in the dispersion area and the proposed well is located at a minimum of 20 feet from the dispersion area.

Director Meassick explains the minutes, notes, and correspondence in the file from 2012-2014. Mr. Nelson states that the Commission would be taking private land. Director Meassick states that the land was voluntarily given up by the owner and the restriction was drafted by the attorney of the owner. The Commission did not require the restriction under the enforcement order, but it was proposed to them as a solution and accepted. Commissioner Grobe would like the Law Department to look at it. Director Meassick explains that the Law Department has already given their input that no work can be done outside the permanent limit of work.

Mr. Nelson asks again what interests under the Act are being disturbed.

Director Meassick explains that because the restriction exists for the purpose of preventing future disturbance to the resource area, then work outside the restriction will disturb a resource area subject to protection under the Act. Atty Donohue states that is not what the restriction reads.

Mr. Nelson mentions that leachate is polluting groundwater. The system has not been used for over a decade.

Rob Perez of 237 Russellville Road would like to see the property maintained and lived in. He is concerned about water runoff if alteration is to occur on the site and how it will impact his well. Director Meassick explains the restriction was put into place to prevent water issues such as that. Mr. Nelson explains that the setbacks are all met for the septic system.

Commissioner Grobe suggests denying the project for being outside the limit of work. Chairman Doe explains again that the limit of work was there to satisfy the enforcement order which was recorded to the deed. Atty Donohue argues that the grant of restriction was the only thing recorded and it does not detail additional information. Director Meassick reminds him that the as-built plan was also recorded which says very clearly, building envelope and permanent limit of work.

Director Meassick attempts to explain that approval is required for work pursuant to the Act and the permanent limit of work is there in addition to the requirements under the Act. The Commission cannot grant approval beyond the limit of work. Atty Donohue argues that the restriction does not say that, and the restriction was required by the Commission. She reads the requirements under the enforcement order which do not include a permanent limit of work and that the limit was proposed as a solution.

Atty Donohue claims his clients are making a good faith attempt and said they bought it with a working system that later failed. Director Meassick informs him that is not true, and the system failed years ago. The homeowners bought the property with a failed system and knowledge of that. Chairman Doe confirms this. Atty Donohue admits to not knowing the full history of the property, but the Commission has not given a reason for denial under the Act or Ordinance. He thinks the Commission should consider the burden to the applicant purchasing a property that he cannot use. He does not feel his client should suffer from the consequences of the prior owner.

Director Meassick does not believe the as-built plans could get clearer than the language “permanent limit of work.” Chairman Doe explains again it is all deed recorded and should have been investigated. Atty Donohue does not feel the intent matters, what is written does. Director Meassick points again to the language “permanent limit of work.”

Chairman Doe asks for additional questions from the audience. Seeing none, he asks questions from the audience.

Atty Donohue requests a continuance to speak with the Commission’s legal department as he feels the language of the restriction is being violated. Director Meassick states that they have already spoken with legal, and they stand by the language of the restriction and permanent limit of work. She says the law department does not consult with the public.

Commissioner Grobe motions to continue to November 28, 2023, to allow Atty Donohue to attempt to reach out to the City’s legal department. Commissioner Finnie seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

5. ENFORCEMENT ORDERS

A. 246 Russellville Road

Violation: Disturbance of soils and vegetation in wetland, work without a permit

Mr. Nelson has been hired by the violators and requests a continuance for the draft restoration plan. A delineation has been completed.

Mr. Perez asks again that the impact is investigated thoroughly. Director Meassick will consult with DPW.

Vice Chairman Murphy motions to continue to November 28, 2023. Commissioner Prystowski seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

B. 63 Bayberry Lane

Violation of Order of Conditions

Samuel Shokov, the property owner, is present. Ryan Nelson from R. Levesque Associates is also present.

Mr. Shokov has explained the work completed as part of the enforcement. Director Meassick shows the photos submitted and explains the current site status. She recommends lifting the enforcement order. Mr. Nelson explains most of the changes on the new plans are outside the buffer zone.

Commissioner Grobe motions to lift the enforcement order. Commissioner Prystowski seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

6. CERTIFICATE OF COMPLIANCE

- A. 167 Springfield Street – Bertera Dodge – DEP File #333-773
Permit: Repaving of parking lot

Ryan Nelson from R. Levesque Associates is present as the representative.

Mr. Nelson walks the Commission through the project and current grades and compliance have been met. Director Meassick supports the issuance of a certificate of compliance.

Commissioner Grobe motions to issue the certificate of compliance. Commissioner Florek seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

7. COMMISSION DISCUSSION

- A. Regulations & Procedures Q&A
a. Appointment of Vice Chairman

Vice Chairman Murphy resigns. He has gone to about 750 meetings and reviewed over 3,500 proposals, has worked with 6 administrators and 3 chairs. Other Commissioners congratulate him on his service to the Commission.

Vice Chairman Murphy motions to appoint Commissioner Grobe as Vice Chairman. Commissioner Finnie seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

Chairman Doe mentions at this time he will be out on medical leave for several months and Vice Chairman Grobe will be in charge.

The motion passes.

- b. Ordinance Amendments

Director Meassick rewrote the ordinance from scratch after realizing numerous errors. She asks the Commission to review and give her feedback for the next meeting. She is working on regulations now to accompany the ordinance.

- c. Fees & Fines

Commissioner Finnie asks how the bonds, fees, and fines are calculated. Commissioner Murphy advises against a fixed formula as it can be problematic between different project types.

B. Pitoniak Fields Updates

Director Meassick announces the December 12, 2023, meeting will be held in Council Chambers for a presentation by Westfield State students.

C. LAND Grant acceptance

The Commission signs the LAND Grant acceptance letter.

D. Dupuis CR Signatures

The Commission signs the Dupuis Conservation Restriction letter.

E. Review and approval minutes

a. September 26, 2023

There are many revisions that need to be addressed. The Commission continues the minutes to the next meeting.

b. October 10, 2023

Vice Chairman Grobe motions to approve the minutes of October 10, 2023. Commissioner Murphy seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-abstained, RF-yes, DD-yes.

The motion passes.

c. October 24, 2023

The minutes were not completed.

F. Review of any additional administrative items

a. Cancellation of 12.28.2023 and 01.09.2024 meetings

Vice Chairman Grobe motions to cancel the December 28, 2023, and January 9, 2024, meetings. Commissioner Florek seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

9. MOTION TO ADJORN

Commissioner Murphy motions to adjourn at 8:06pm. Vice Chairman Grobe seconds. EF-yes, JP-yes, CG-yes, JM-yes, LD-yes, RF-yes, DD-yes.

The motion passes.

A true record, Attest:
Director of Conservation Anna Meassick