



CONSERVATION COMMISSION
DRAFT MEETING MINUTES

Thursday, July 30, 2024 6:30 PM
Town Hall Annex: Town Hall, 1 Avenue A, Turners Falls and via Zoom

ROLL CALL

PRESENT: Mark Fairbrother (Chair), Toby Carter, Donna Francis, Margaux Reckard, Al Averill, Justin Fermann, Sean Werle. ABSENT: Anthony Reiber.

STAFF: Maureen Pollock (Staff Liaison, Planner/Conservation Agent)

ALSO PRESENT: James Arcoleo, Diane McClennan, Ariel Elan, Jennifer Unkles, Gary Powsner, Amanda Smith

Possible Violations: Falls Farm – Old Sunderland Road (Parcels #50-0-18), owner: James Arcoleo; Old Sunderland Road (Parcel #50-0-05), owner: Falls Farm LLC; and Meadow Road (Parcel #50-0-04), Montague, owner: Falls Farm LLC

The Conservation Agent discusses a synopsis (timeline) of the possible violations including public complaints, site visits, meeting dates, communications, Mass DEP conclusions/ recommendations and emergency actions resulting from sediment erosion. *The timeline is entered into the minutes.*

The aerial map shows three parcels owned by James Arcoleo: a hose was put down and water was discharged into a wetland resource area. Also presented is photo documentation of the site manager working within a wetlands resource area. This work (possibly dredging) was not submitted to the Conservation Commission. The Agent sent an email to Diane McClennan to stop work immediately. McClellan responded that she was contacted by DEP and she ordered her workers to stop until a plan was submitted to the Conservation Commission.

The Agent states that the Conservation Commission is fully engaged to address this issue. There was a formal request (July 8, 2024) for DEP to take over the case.

The Agent recommends that the Conservation Commission issues an enforcement order to cease and desist all activities within the jurisdiction of the Mass Wetland Protection Act and any further submissions be conducted through Mass DEP Administrative Consent Order.

Sean Werle asks if we're "giving up the Conservation Commission's ability to act if nothing happens at DEP."

M. Fairbrother responds that he believes that in the case of a DEP failure the Conservation Commission would "get back into it."

The Agent responds that despite earnest efforts made by the Montague Conservation Commission to

bring these parcels back into compliance, James Arcoleo/Falls Farms continue to perform unpermitted work within wetland resources and buffer zone. The Agent recommends the Commission to request MassDEP to formally take over this matter in its entirety. Cites that MassDEP have more resources than the Commission to deal with such complex matters; they have the ability to impose civil penalties of up to \$25,000 per violation per day if the owner fails to comply with the MassDEP issued Unilateral Administrative Order, and MassDEP have legal counsel and an enforcement team.

Amanda Smith from BSC Group confirms that “you be giving up the power...you will not be able to go after them (Falls Farm) if DEP settles the matter. “She states DEP is willing and able to take over the matter.

Justin Fermann notes that because the wetlands have already been changed that “forensics of the wetland delineation” is beyond the ability beyond the Commission.

M. Reckard remarks that she is in favor of handing this matter to DEP because two municipalities are involved. DEP will provide consistency.

Jennifer Unkles of the Sunderland Conservation Commission reports that they unanimously voted to give the case to DEP for similar reasons. Falls Farm will continue to be on upcoming Sunderland Conservation Commission meeting agendas for the purpose of public comments.

Ariel Elan comments not audible. The Agent does a test with another microphone.

Ariel Elan (Capital Improvements Committee) works with DEP quite a bit; when it comes to sewage discharge, they are very absolute and tough. She thinks they will take the same attitude with this issue. She wants the Town of Montague to stay engaged and communicate about remedies that will be applied since we are currently using Town (DPW) resources. She’s like the Town to retain the right to handle a problem if the DEP does not.

The Agent and Mark Fairbrother submitted a formal request to the DEP. The DEP did not ask for this case. If the DEP takes this case over formally, there will be no further updates from them. The Conservation Commission and members of the public can submit comments/observation through the Conservation Agent. She does not know the process for taking back the Falls Farm case if the DEP fails to act.

Amanda Smith makes the caveat that the DEP might be open to updates and communication regarding the street projects because it is a direct Town interest.

The Agent asks the Commission to issue a cease and desist.

D. Francis asks if this order includes growing crops. The Agent answers “No. Just the Wetlands Resource Area/Buffer Zone.”

MOTION by S. Werle to issue an enforcement order to cease-and-desist work in Wetland Resource Areas/Buffer Zones at Old Sunderland Road (Parcels #50-0-18), owner: James Arcoleo; Old Sunderland Road (Parcel #50-0-05), owner: Falls Farm LLC; and Meadow Road (Parcel #50-0-04), Montague, owner: Falls Farm LLC. Seconded by M. Reckard. VOTE: Mark Fairbrother (AYE), Toby Carter (AYE), Donna Francis (AYE), Margaux Reckard (AYE), Al Averill (AYE), Justin Fermann (AYE), Sean Werle (AYE). MOTION PASSES (7-0) 7:09PM

MOTION by M. Reckard to formally request that the DEP take over Old Sunderland Road (Parcels #50-0-18), owner: James Arcoleo; Old Sunderland Road (Parcel #50-0-05), owner: Falls Farm LLC; and Meadow Road (Parcel #50-0-04), Montague, owner: Falls Farm LLC. Seconded by D. Francis. Mark Fairbrother (AYE), Toby Carter (AYE), Donna Francis (AYE), Margaux Reckard (AYE), Al Averill (AYE), Justin Fermann (AYE), Sean Werle (AYE). MOTION PASSES (7-0) 7:14pm.

General discussion with Diane McClellan about the deadline of the Falls Farm NOI since the Conservation Commission voted to hand it over to DEP.

M. Reckard and M. Fairbrother think it is a good idea to extend the Falls Farm deadline until August 8, 2024 (next meeting) and DEP is officially in charge of the case.

MOTION by M. Reckard to extend the filing date of the Falls Farm NOI until August 8, 2024. Seconded by S. Werle.

The Agent does not recommend this motion, citing that it is a waste of money, and the DEP might require a process “similar by distinctly different.” She sees this as a matter for DEP.

A. Smith agrees that hiring a consultant to build out a plan without knowing what DEP will require is a waste of resources.

T. Carter asks if the Commission needs to vote to remove the NOI.

M. Fairbrother reiterates firmly that he wants to push the Falls Farm NOI deadline to August 8, 2024. In the very unlikely scenario that the DEP declines the case the Conservation Commission can still require the NOI from Falls Farm.

VOTE: Mark Fairbrother (AYE), Toby Carter (AYE), Donna Francis (AYE), Margaux Reckard (AYE), Al Averill (AYE), Justin Fermann (AYE), Sean Werle (AYE). MOTION PASSES (7-0) 7:25pm.

ADJOURN:

MOTION by D. Francis to ADJOURN. VOTE PASSES UNANAMOUS (7-0). 7:26pm