

INLAND WETLANDS & WATERCOURSES COMMISSION
TOWN OF VOLUNTOWN

June 2, 2016.

Members present were: Lester Davis, Andrew McLallen, John Moran, Dave Miner, alternate Tammy Daigneault. Wetland Agent Joe Theroux was also present. Chairman Tom Sweet and alternate Bob Panko were absent.

Audience: Attorney Heller, Robert Buckley, Philip Belisle, Rodney McLaren, Elaine and George Grandolfi, Scott and Eileen Gibson, Mr. and Mrs. Aarnio and Al Daigneault.

Tammy recused herself off the board at this time. John Moran, acting as chairman, opened the show cause hearing at 7:35 p.m. Attorney Heller introduced himself as Mr. Buckley's attorney. He thanked the commission for continuing this hearing the last two meetings as he was unable to attend. Attorney Heller proceeded by stating this is an alleged violation for pollution to Beach pond from discharge from a storm drain which is located on Buckley Drive which is a private road. Atty. Heller stated that he is familiar with erosion and drainage issues and he has been down to review the situation. He agrees that there is a problem with sediment going into the pond. However, he doesn't agree with the Board's determination that Mr. Buckley is in violation of the wetland regulations nor should he have been cited for this violation. It is clear that sediment is running off into the pond by way of the drainage pipe, but there is also sediment being introduced by other sources. Atty. Heller went on to say that Mr. Buckley is not conducting a regulated activity as defined by the regulations. The drainage system on the road was installed in 1964. The development of properties on the up gradient side of Buckley Drive. The properties on the right are significantly above grade and the ones on the left are at or below grade. The increase in sediment is the result of development of the up gradient properties and the manner in which they were developed. He introduced into record a series of pictures and plans and he described each one to the Board, focusing at one point on the Gibson property. One picture focused on a property that is under construction at this time near the low point in the road and there is channelization across from the property. Sediment fence has been installed and has not been maintained adequately. The purpose of this discussion is to show the Board that there are other issues that need to be addressed. In February, 2016, Atty. Heller informed the Board of a State Statute that was enacted two years ago, that allocates responsibility for the maintenance of a driveway among the users that have an easement to utilize the driveway. He gave a brief explanation of what the case law is concerning the duty to maintain that has been in existence going back a hundred years before the Statute was enacted, because it is applicable to this situation, even though it really has nothing to do with wetlands. On doing research in the Voluntown land records he has found that every property that abuts this road has a deeded easement meaning they have the right to pass and repass. Atty. Heller then proceeded to cite 4 cases that went before the courts. He went on further to say that he isn't saying that Mr. Buckley does not have a responsibility. He uses the road like the rest of the property owners and as such he bears responsibility for maintenance and repair of that right of way in proportion to his percentage use of the property, but no more. Atty. Heller feels the Board's order is in error in the fact that all of the property owners were not cited. And in particular the property owners who, as he mentioned earlier, are the cause of the situation. The drainage system has been in place since 1964 without issue. The properties that were developed within the last few years, based on the grade the driveways were installed, which were approved, he assumes, by some agency of the Town, are what are causing water during storm events to run down onto Buckley Drive with a lot of force causing erosion which is causing the sedimentation into the pond. Atty. Heller believes that there is a relatively simple and inexpensive

solution to this problem. The erosion is confined to the westerly shoulder to the road. Installing a liner with a stone ditch, with probably 6 to 8 inch rip rap installed which will prevent the erosion of the unstable soils, and dissipate energy flowing through the stone and any residual sediment that gets in will be trapped in the stone. It would take care of about 90% of the problem. Lester stated that short term it would be a good fix but the basin still needs to be maintained. Joe asked Atty. Heller if it was rip rap with check dams or rip rap all the way. Atty. Heller stated it would be all the way up to the basin outlets. Joe asked him if they have consulted with an engineer and he stated that Mr. Buckley had and had gotten an estimate of \$15,000 for the design, and he felt putting money into what is an obvious fix is money better spent than on engineers and lawyers. Joe stated that the issue he has by the Town's standpoint and the wetland's commission making a ruling and being responsible he would want to see a professional review, at whatever level, to either confirm or deny that this is a good fix. The two main things to stop erosion is slow the flow and trap sediment. This will do that but he is not an engineer. Atty. Heller stated that the reason for the liner is try to keep the sediment under and water on top. Joe agreed. Dave asked about the sediment that is already in the pond. Atty. Heller stated that he saw what was in there and it appeared to him to be a small amount. Elaine Grandolfi stated that she helped smooth that out over the last couple of weeks. Joe stated that in his opinion to remove the sediment in the pond already would create more of a disturbance even when the water level is down. Tammy Daigneault addressed the board stating that she lives across the street from the basin and she wanted it on record that she and her husband have helped maintain the road, such as plowing, cleaning the catch basin, since they moved there. She had pictures of the sediment in front of the catch basin which was covered with leaves. If the catch basin is not cleaned out the volume of water that goes in there shoots right out and goes into the pond. Mr. Grandolfi stated that we have had engineers tell us that the two catch basins at the bottom of the hill are undersized for the volume of water coming down the hill. Rodney McLaren stated his property has a pipe under his driveway that water goes in. Water going by blocks up the 12 or 14 inch pipe in his driveway and it builds up, goes around and washes out the front. Atty. Heller stated that they cited someone conducting a regulated activity. The problem is not caused by Mr. Buckley. The only thing changed since the road was built is the development of the up gradient properties. He introduced another map from the Town's land records. The map showed Buckley Drive and the up gradient properties most of them have frontage out to Route 165, and yet they were developed with driveways down to Buckley Drive and it was not their only means of ingress and egress. In doing so they have a responsibility to insure that the development occurred in the manner that did not result in this problem. He also stated that the board should not have cited Mr. Buckley for a violation that is really not his responsibility and is not caused by the maintenance of condition or lack of action that he has taken in regard to his property which is a fee ownership in the road subject to 12 or 13 easements. Particularly in the properties that could have been developed in such a way which would not have resulted in the steep driveways down to Buckley Drive resulting in the discharge of storm water and the energy that is creating the problem. This is a community issue and should be resolved by the community as a whole. Dave stated that the board made the decision to cite Mr. Buckley as owner of the road and if Mr. Buckley wanted to, he could go after the other property owners. This had already been discussed. John asked for a motion to close the show cause hearing. Lester made a motion to close the show cause hearing, Dave seconded the motion, all were in favor. The hearing was closed at 8:35 p.m.

John opened the regular meeting at 8:36 p.m.

The approval of the minutes from May 5, 2016 were tabled until the next regular meeting.

Old Business: Public Works Garage. CLA was supposed to bring back the modified plans that should show upgrading the e and s measures at the bottom of the steep slope with staked hay bales, and the

board had questions on the membrane for the salt shed that will eventually be built. Joe has not received the modified plans. Approval was given based on the revisions when they come in. Joe will give them a call.

Correspondence: Joe received a letter from Norm Miller at DOT concerning a section of Route 165 by the Firehouse. They are proposing installing 600 feet of drainage pipe on the south side of 165 between house numbers 221 & 227. The work will be done in late summer when it is dry. The ditch is a safety risk and a maintenance problem. That would reduce the risk of accidents and having to continually clean it out. In the letter, Norm states that they have a continuous permit with DEEP to do this type of work. Joe read the entire letter to the board. Also, Joe received a letter from FEMA. They are revising their flood maps. The board will have a chance to review the maps on June 15, 2016 at 9:30 p.m. in Charlestown, RI.

Agent's Report: None.

Joe would like to receive input from the Town Attorney. He wants an engineering opinion. Lester believes the fix needs to be more extensive than what Atty. Heller suggested. John stated that the board has waited many months for Mr. Buckley to present the board with an engineered plan. Joe stated to the audience that engineered system installed on the Gibson property is doing what it is supposed to. There is no system that could be designed for any of the properties on the up gradient side of the road to prevent water from discharging.

Attorney Carey entered the meeting at 8:45 p.m. Joe brought him up to date. Atty. Carey informed the board that there should be no more discussion on this since the hearing was closed. He suggested having a special meeting after he has had a chance to go over everything that took place at this meeting. It was agreed to have a special meeting on June 23rd at 7:30 p.m.

Lester made a motion to adjourn the meeting, Dave seconded the meeting, all in favor. The meeting was adjourned at 8:51 p.m.

Respectfully Submitted:

John Moran, Acting Chairman