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Front Page

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Falmouth- Penzance Owner Fills 10,000 Square Feet Of Wetlands: ConCom Will Address Violation

By LAURA M. RECKFORD

In what may be one of the most egregious wetlands violations the Falmouth Conservation Commission has seen in recent years, a Penzance Point property owner filled approximately 10,000 square feet of wetlands on his property, ignoring a conservation restriction and permit conditions.

Members of the conservation commission discussed the issue Wednesday night, trying to determine whether to require the property owner to restore the wetlands that were destroyed, or to allow him to build new wetlands of approximately the same size elsewhere on the property.

Some see the issue as a pivotal one for the commission, as the board charged with protecting the town's wetlands has been seeing more and more violations of wetlands bylaws, largely involving cutting and clearing.

How the commission handles circumstances where property owners do illegal work and ask for permission after the fact will also be closely watched by some, including several commissioners who feel that the board should require restoration on principle, if nothing else.



Ariel View of Property

Raising the ante in this case is the fact that the violator, Peter M. Nicholas of Boston and Falmouth, has offered to pay the town \$400,000 if they will allow him to make amends by creating a wetland on a different part of his property.

Mr. Nicholas, 64, is co-founder and chairman of Boston Scientific, a medical device company. His wife, Ruth Virginia Nicholas, is one of the daughters of the late Josiah K. Lilly III, the Falmouth philanthropist who gave Beebe Woods to the town, among many other charitable donations.

Mr. Nicholas purchased both East Marine and Falmouth Harbor Marine in 2003. He owns several other properties along Falmouth Inner Harbor. The 3.9-acre property on Penzance Point is assessed at \$8.7 million, according to town records.

Conservation commission staff discovered the violation to the wetlands last spring when they were on Penzance Point visiting a different site. A conservation agent saw truckloads of sod being delivered to the Nicholas property and knew that no request for work had been filed.

Further investigation revealed the scope of the violation, which included issues going back to a previous owner of the property, Thomas J. Hynes Jr. Mr. Hynes had received permission to build a sea wall on the property, and one requirement was to place some of the wetlands on the property under a conservation restriction.

Conservation department staffers checked with the Barnstable County Registry of Deeds and found that the conservation restriction was never filed. Engineer Michael McGrath, representing Mr. Nicholas, said the restriction was held by Salt Pond Areas Bird Sanctuaries Inc.

John F. Austen III, former president of Salt Pond, said he was not aware that Salt Pond had ever been approached about a conservation restriction on the property. Part of the area filled was land that was supposed to be put under the conservation restriction.

A team of five people representing Mr. Nicholas appeared before the ConCom Wednesday night to explain what they called "the preferred plan," in which new wetlands would be created in a different location on the property.

The presentation was a response to a commission decision on August 31, which asked that the property be restored.

Conservation Administrator Jennifer L. McKay said that the commission staff's recommendation was complete restoration of the wetland.

She pointed out that the applicant's plan put the wetlands closer to a neighbor's property, which would make more of his

property subject to commission purview.

But several commissioners found the applicant's "preferred proposal" interesting, particularly the offer to donate \$400,000 for wetlands restoration in another part of town.

Commissioner Eric M. McLaughlin said, "I'm in favor of tackling projects head-on, resolving them and moving forward." He said he believed the applicant's plan was doable and the mitigation funds could benefit the town. Commissioners Elizabeth H. Gladfelter and Courtney F. Bird Jr. also said they believed that having the option to restore other wetlands in town was appealing and a creative way to handle the issue.

But commissioner Linda A. Deegan said she found the wetlands violations to be "an extremely egregious violation of public trust."

"This person knew exactly what he was doing," she said.

She pointed out that the violation is subject to a \$25,000 per day fine, if the commission chooses to go that route.

"It is within our power to assess a rather substantial fine that could go with this project," she said.

Commissioners Karen A. Wilson and Edward H. Schmitt agreed with Ms. Deegan.

Ms. Wilson said that for the "preferred" plan to be considered, it would have to include a larger buffer.

Commission Chairman Brian D. Grozier asked Mr. McGrath if he could include a 50-foot buffer on his plan, but Mr. McGrath said he would have to check with his client. The 50-foot buffer would eliminate most of the lawn that was installed over the filled wetlands, Ms. McKay said.

In line with their policy of holding responsible the landscapers who do work that violates the wetlands act, the commissioners asked for the name of the contractor. The response was that the contractor had moved to an island off the coast of Australia and could not be located.

The commission continued the hearing for one week.

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