

Sudbury Conservation Commission

Minutes of the Meeting held January 28, 2008

Present: Ted Pickering, Vice-Chairman; Richard Bell; Parker Coddington; John Sklenak; Chris McClure; Debbie Dineen, Coordinator; Victoria Parsons, Technical Assistant

WPA & Bylaw Notice of Intent: 18 Arrowhead Rd.

No applicant or abutters present

The Coordinator presented the plan for the repair of a failed septic system. The new leach field is in the location of the current leach field and is located as far as possible from the wetland at the 50' Title V setback line. The site has wetlands on 3 sides and no other options.

The Commissioners voted unanimously in favor of closing the hearing and issuing the standard septic repair Order of Conditions.

WPA & Bylaw Notice of Intent: Nashawtuc Country Club, Concord Rd.; Herbicide Application to Ponds

Present: Lee Lyman; Ron Wheaton; Dan McConnell

Mr. Lyman explained that the Notice of Intent is similar to the NOIs for an Order to apply herbicides to the Nashawtuc ponds in the same way they have been doing for the past 9 years to 3 ponds in Sudbury. There are three ponds in need of treatment. The 16th hole pond is hydrologically connected to the Sudbury River. They need to treat for Curleyleaf pondweed which is a non native invasive caused by migrating by waterfowl. They also need to treat for algae, duckweed, and cattails. Diquat dibromide, glyphosate, fluridone, and chelated copper will be used. They have received a DEP file number and the Natural Heritage and Endangered Species Program at Fish & Wildlife has stated that the 2 identified state-listed species will not be affected by the treatments.

The Coordinator informed the Commission that the species in the area are American Bittern and a Bulrush plant. The NHESP stated that neither one are likely to occur in or use the gold course ponds.

Mr. Lyman stated that 2 of the ponds, #6 and #17 hole ponds have an impermeable bottom barrier. They were lined with clay 12-20 years ago when they were built. Following further discussion and questions from T. Pickering, Mr. Lyman clarified that the pond liners were not installed. The clay was the remaining material at the pond bottoms once excavation was completed.

R. Bell questioned the source of water for the #6 and #17 ponds. Mr. Lyman replied that it was rain water runoff and irrigation.

J. Sklenak questioned what plans will be put in place to prevent the weeds from coming back. Mr. Lyman stated they already have a requirement for 6' vegetative buffer and no fertilizers within 10' of the pond edges. Mr. Sklenak responded that the current restrictions so not appear to be effective if the chemical treatments are planned for at twice per year. Mr. Lyman stated that larger buffers will impact on the golf activities.

Responding to P. Coddington, Mr. Lyman stated that testing for phosphorus & nitrogen in the ponds has not been done recently.

T. Pickering questioned that alternatives to chemicals need to be tried. Mr. Lyman explained that benthic barriers only help get rid of rooted plants. In the past they have tried hand harvesting and manipulating water levels. The ponds are too small for weed harvesters and hand harvesting duckweed and algae is not possible. He felt other alternatives were too disruptive to the golf course activities. Mr. Lyman believes that the only feasible alternative is allowing nature to alter ponds in a negative way by eutrophication. He felt this would not be of benefit to the fish in the ponds. He added that the ponds have more of a weed problem than an algae problem. The Commission questioned the use of aeration for weed control. Mr. Lyman said he would look into aeration for ponds #6 and #17, however he believes #16 is too shallow for an aerator and the linear form is not conducive to aeration.

The Coordinator questioned the filing of the project as a Limited Project under 10.53 (4). She noted that there should be an overall wildlife management plan stating how the use of chemicals will benefit the habitat; what species will be benefitted, what the overall goal of the habitat enhancement is, and how achievement of the goal will be measured. Mr. Lyman stated that the goal is to provide fish habitat by removal of plants, thereby allowing more dissolved oxygen in the water. The Coordinator noted that if chemicals are applied and the plants die back, the biomass in the ponds will increase and reduce the amount of dissolved oxygen over time. Mr. Lyman stated they have no intent to remove the dead plants and the plants will not make an appreciable difference in dissolved oxygen. The Coordinator pointed out studies, and product labels, that state the opposite.

P. Coddington questioned if alteration of the pH might be a suitable alternative. Mr. Lyman replied that it is not feasible as it will not have a negative effect vegetative pond growth but will negatively affect amphibians. He added that fish & amphibians will prosper under the proposed program of chemical treatment. He added that their plan only puts back what was originally there.

T. Pickering clarified that lack of oxygen in the water is what the program is managing for. D. Dineen stated that a management plan explaining what species are currently using the ponds, what are the current conditions, how will the habitat be managed and for which species. A general statement that claims to increase dissolved oxygen is not a management plan with specific goals to achieve. There needs to be an assessment of the before and after impacts of the plan as well as the impact on all plant and animal species, including fish. She added that another alternative to consider might be removal of the flashboards and other man-made constrictions to pond #16 system and return the pond to its free flowing state. This will return the ponds to their original state as a stream. Mr. Lyman believes that will result in fish kill.

D. Dineen noted that it appears a new culvert and pipe outfall was installed behind the new building. After further discussion and clarification of the location, Mr. Lyman stated that outfall is in Concord.

T. Pickering summarized that there is a disagreement on the WPA provisions for a limited project and that the wildlife habitat enhancement plan needs to address overall habitat and goals. In addition, aeration should be investigated.

Mr. Lyman suggested the Commission issue an Order of Conditions requiring this information. They could also require sampling for total phosphorous 3 times/year; information on the ½ life of diquat & copper; and a wildlife study. A baseline for water testing for phosphorous & diquat; sediment testing for copper and algaecides, and a need scope for the wildlife habitat assessment could be included in the OOC. He noted that Weston required this testing.

With the agreement of all parties the hearing was continued to 2/25/08 @ 7:00pm.

WPA & Bylaw Notice of Intent: 61 Mossman Rd., Brian Kennedy

Present: Brian Kennedy

Mr. Kennedy presented his plan to remove an existing deck and install a new, larger deck in the rear of his house. The Coordinator informed the Commission that there is a current violation on the site with lawn encroachment into the wetland. She noted that this was a condition of the site when Mr. Kennedy purchased the property. The former owner was informed and had agreed to discontinue maintenance of the lawn area in the wetland. That has not occurred with the current owner. She reminded the Commission that the local Wetlands Bylaw does not permit the issuance of a permit for new work on a site with an existing violation.

Following further discussion and keeping in mind that the current owner was not aware of the requirements to not maintain lawn in a portion of the back yard, J. Sklenak moved for a negative DOA contingent upon the area of lawn in the wetland being allowed to naturally revegetate. Second by T. Pickering, unanimous in favor.

Discussion: Right to Farm ByLaw

Present: Laura McCarthy Abrams

Ms. Abrams explained that the purpose of the Bylaw was to put newcomers on notice that agriculture happens in Sudbury and the farmers have rights to continue to operate their farms. Farming is not always pretty, but it provides necessary products and keeps land open.

The Coordinator noted that the Commission has always supported agriculture in town and that agriculture is one of the interests of the local Wetlands Bylaw. She questioned the intent of the Right to Farm Bylaw. As currently written, it appears to exclude farming activities from review under the local Wetlands Bylaw. It could be interpreted as being exempt from the Wetlands Bylaw as it states local zoning bylaws apply. The Wetlands Bylaw is not a zoning bylaw. Mr. Abrams stated that it was not the intent to exempt farming from the local Wetlands Bylaw. She will discuss this with Town Counsel.

P. Coddington moved to support the Right to Farm Bylaw contingent on confirmation that the wording does not exempt farmers from the Wetlands Bylaw. Second by R. Bell; unanimous in favor.

Notice of Violations: 38 Haynes Rd.

The Coordinator informed the Commission that the Order of Conditions has expired for 38 Haynes Road without any attempt at correction of the violations on site. Any work to bring the property into compliance must now be approved and accomplished under a new permit. She recommended the issuance of the NOV inform the property owners of this requirement and set a deadline for submission of the new NOI and subsequent restoration.

The Commission was in unanimous agreement to issue the NOV.

WPA & Bylaw Request for Determination of Applicability: Shaw's Plaza, Boston Post Rd.

Present: Mike Dougherty; Greg Drake

Mr. Dougherty presented a plan to remove all vegetation from the small section of wetland area which currently serves as a detention basin for runoff from much of the drainage system at Shaw's Plaza.

The Coordinator explained that approximately a decade ago the drainage system was upgraded to add oil & grease separators, new closed piping, grease & gas traps, and dump sumps to separate the drainage system from groundwater infiltration. The Commission at the time wanted to have another level of treatment to further avoid wetland pollution and permitted the discharge of the upgraded effluent into the small linear section of wetland located between Boston Post Road and the parking lot. A containment berm was construction to slow the detention time in the basin to allow for additional settling of particulates and great pollution uptake. Since the creation of this detention basin the area has become overgrown with non-native invasive species. It is not suitable wildlife habitat due to its locations between two heavily used paved areas. To prevent the continued regrowth of invasive plants, she recommend complete clearing of the wetland to remove the seed stock and replanting with a native grass mix. The Operation & Maintenance plan will be revised to maintain this area regularly to remove invasive plants and woody vegetation to optimize stormwater detention. The project did not need to file under the WPA as maintenance of a detention basin is exempt. The filing under the local bylaw is due to the fact that it was originally a wetland which was converted to a detention basin.

Commissioners confirmed that all excavated material will be removed to a dump truck and properly disposed of off-site.

T. Pickering moved for a negative DOA. J. Sklenak 2nd ; unanimous in favor

Recommendation for Filling Commission Vacancy

Present: Ethan Jessup

Mr. Jessup has been attending Conservation Commission meetings regularly for the past several months. He has been a practicing environmental attorney for over five years with experience dealing with state environmental regulations. Mr. Jessup will be a valuable contributor to the Commission and to the Town.

The open position on the Commission has been posted on the website for quite awhile. The Commission received only two inquiries and applications. One applicant has not been back to a Commission meeting or contacted the Commission since November 2007. Mr. Jessup has had a sustained interest, as well as a background which will benefit the Commission's decision making.

R. Bell moved that Ethan Jessup be recommended to Selectmen for appointment to the Commission. J. Sklenak 2nd; unanimous in favor

The meeting adjourned at 9:35pm.