

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, September 9, 2013

Present: Beth Armstrong; Rob Elkind; Tom Friedlander; Greg Topham; Debbie Dineen,
Coordinator

Conservation Commission Reorganization

By a ballot vote, the Commission voted unanimously in favor of electing Greg Topham as Chairman and Beth Armstrong as Vice-Chairman. Although not present at the meeting, Sharon Rizzo, Acting Chairman, had previously indicated that she did not wish to continue as Chairman.

The Commission discussed the need for having official town identification when conducting site visits. Unless the Town Manager approves the use of metal badges, the Commission felt that a paper badge in a plastic holder such as the Coordinator has, could suffice.

WPA & Bylaw Notice of Intent: 807 Boston Post Rd.; Nancy Pinson

Present: David Burke, Wetland Specialist; Nancy Pinson

Mr. Burke presented a plan to correct a violation consisting of the removal of trees and other vegetation in upland resource area.

The subject property consists of a .77-acre lot currently developed as a single-family residential house. The three resource areas with jurisdiction on the subject property consist of bordering vegetated wetland, vernal pool, and adjacent upland resource area (AURA) under the local wetlands bylaw. The vernal pool has been studied but not certified. The Commission determined that the trees removed did not play a part in shading the vernal pool.

This project is designed to mitigate for the illegal removal of forty (40) mature trees within the adjacent upland resource areas by Reliable Property Management of Wayland MA. The Commission advised the property owner that they are responsible for obtaining permits, or ensuring that permits are obtained, for work on their property. If the trees were an immediate, documented threat, the Emergency Certification procedure was available.

This Notice of Intent proposes restoration of the site by restoration of forest floor organic material by spreading the wood chips on site to break down into organic material, and the planting of native shrubs, trees, and meadow. The Commission agreed that with suitable quantity, height, and spacing of new native plantings, the wetland and upland values and functions on the site should be restored. The Order will be *performance-based* with the goal of restoring these values and functions. As such, the Commission will retain the right to require additional plantings or other solutions, if necessary to restore these values and functions.

The Commission made no determination on the exact location of the wetland resource areas on this property as part of this filing.

Once established, the meadow shall be mowed once every two years or more often if needed to keep out woody growth. Revegetation shall be accomplished at the appropriate time of year for planting the native shrubs. The wood chips in the wetland basin will be removed and stockpiled for use after replanting. Any invasive plants recolonizing the disturbed areas of the property shall be removed. Any of these invasive plants that cannot be hand-pulled may be removed for the duration of this Order by the "cut & paint" method of herbicide application by an approved applicator.

The applicant shall have a knowledgeable Environmental Monitor (EM), approved by the Commission, on site during planting. This EM shall monitor the growth of the native plantings and the removal of the invasive plants for the duration of this Order. Quarterly written reports shall be submitted to the Commission, except when the site is frozen or snow-covered.

The meadow shall be allowed to reseed itself in order to facilitate establishment of full coverage. Over-seeding may be required after several growing seasons in order to achieve this coverage. After establishment, the meadow shall be mowed every two years to eliminate the growth of woody plants. It may be mowed more often, only if necessary to achieve the elimination of woody plants.

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted unanimously to close the hearing.

On a motion by G. Topham; 2nd T. Friedlander; the Commission voted unanimously to Issue the Order as discussed.

Order of Conditions: 182 Peakham Road Planting Plan for Violation Correction

Present: David Burke; Ed Friedlander

Mr. Burke explained that the landscaping firm hired to remove the invasive plants along the pond removed more than they should have. The unsupervised crew removed native vegetation that was to remain as well as some native plants that had recently been installed. The work was to be done under the supervision of the wetland specialist of record, Mr. Burke. Mr. Burke did the flagging which indicated plants to be cut and plants to remain. The landscape crew and property owner went ahead with the cutting without discussing the flagging with Mr. Burke or having him on site as was required during the cutting.

A large boulder has been placed in the pond for turtle basking and aerators have been installed to aid with water quality. Fifty new native plantings are proposed for the area along the bank of the pond. An additional 6' – 7' of crushed stone was approved, subject to receipt of a plan, between the driveway and the lawn to facilitate vehicle movement and prevent erosion.

On a motion by G. Topham; 2nd R. Elkind; the Commission voted unanimously in favor of accepting the restoration planting plan, and approving the crushed stone and the aerators.

WPA & Bylaw Notice of Intent: 67 Brewster Rd.; Stan Hargus, DNH Homes

Violation: Alteration of stream due to inadequate site stabilization & discussion of fine levy
Present: Stan Hargus; Steve Grande, attorney for Mr. Hargus; George Dimakarakos, and Ben Ewing of Stamski and McNary; numerous abutters

Chairman Topham called the hearing to Order and read the statement of procedures, conduct, and appeals. Because this site has been under construction for several years and the Commission now has had jurisdiction only since July due to a recent wetland alteration, he asked the Coordinator to begin with a history of the site as far as Stormwater permitting and compliance.

The Coordinator informed the Commission that clearing on the site began in 2010 without benefit of the necessary Stormwater Management Permit (SWMP) issued by the Planning Board. This permit was necessary due to the alteration of approximately 40,000 sq. ft. of land on 20% or greater slopes. The Planning Board's Stormwater Consultant conducted a technical peer review and found that work had begun prior to the issuance of the permit. She also noted that the Erosion and Sedimentation Control Plan submitted with the permit application was not being adhered to. She raised several issues regarding the design of the stormwater

controls being in fill and close to the septic leach field sands. Following further review, the permit was granted.

The site has never been properly stabilized. Numerous washouts of the slope have resulted in erosion of the slope and disposition of sediment on private property and with the public way. On July 23, 2013 a large sediment plume was discharged from the site and entered the catch basin in Brewster Road. Silt was then discharged from this drainage system into the wetland. Although the wetland is greater than 100' from the site, the Commission was able to take jurisdiction under the Wetlands Protection Act and local wetland bylaw once the wetland was altered. On July 24, 2013 the Commission issued a Notice of Violation and required the slopes to be stabilized with jute netting. Temporary sediment basins, as shown on the plan approved by the Planning Board, had not been created. The Coordinator requested they create the temporary sediment basins now adjacent to the intersection of the common drive and the private drive for collection of silt. Haybale check dams and silt fencing is not being monitored and repaired as needed. Numerous breaches have occurred which has shown that the existing erosion control methods are inadequate.

Chairman Topham explained that the Commission did not want to be in this position tonight to enforce requirements that should have been met over the past three years. The lack of follow-through by the applicant has shown a disregard for the seriousness of the Notice of Violation and the need to comply with the Planning Board's SWMB permit. He added that the abutters have been patient but have failed to get a resolution to the problems of runoff that are effecting their properties. He believes that the situation of temporary and permanent stabilization should be reviewed by an independent third party engineer. The soil types and proposed vegetation should be taken into account when determining if hydroseeding and a few plants will hold the slope long-term.

Mr. Dimakarakos stated that the Planning board mandated stabilization of the site by Sept. 15th. This involves loaming, seeding, jute netting, and drainage work. He agreed that the jute netting has not been installed correctly in the past. He has volumes of plans documenting what needs to be done to achieve stabilization. D. Dineen responded that documents themselves won't stabilize the site. The plans need to be followed and the stabilization measures need to be properly installed, monitored, and maintained. Mr. Dimakarakos stated that vegetation is the answer if the plan is followed. He believes that they are on the cusp of that happening, although not all parts of the site are jute-netted as yet.

Commissioner Elkind agreed with Chairman Topham that due to the number of slope failures in the past, it would make sense to have the plans reviewed by a third party. He suggested that review happen as soon as possible.

Commissioner Armstrong stated that she does not have any level of comfort that the plans will provide permanent stabilization or that the work needed to be done by Sept. 15th would be accomplished.

Commissioner Friedlander stated that if not for the fines levied by the Commission, he did not believe that any work would be done. He was not sure the consultant was necessary. He stated that the applicant should hold himself accountable, pay the fines, and permanently stabilize the slope.

Mr. Hargus stated that he feels the Commission's tenor is hostile and that he was his willfully negligent. He admitted he made mistakes but he believes he has done all he can do. D. Dineen replied that she believes he is mistaking hostility for frustration, because there was much

more Mr. Hargus could have and should have done, this included, at a minimum, meeting the requirements of his SWMP and SWPPP, which he has not done.

Chairman Topham, with the consent of all Commissioners present, advised Mr. Hargus and his Attorney that they may proceed at their own risk with the activities necessary to meet their obligations under the Planning Board's Sept. 15th mandate.

D. Dineen noted that in order to meet these obligations, the jute netting must be temporarily removed to allow for loaming, and final grading. Removing these stabilization measures may put the site, the wetland, and the applicant at risk. She suggesting requiring a sequencing plan for these activities to ensure stabilization is reinstated as soon as possible. The Commission agreed and requesting a sequencing/detailed phasing plan prior to any additional activity on site other than stabilization activities.

Pat Brown, Planning Board member, added that the Planning Board was also very disappointed with the lack of progress on site stabilization. The Planning Board had to give their OK in order for a Certificate of Occupancy to be issued. They hold a \$55,000 bond. No further decisions on this site will be made until their Oct. 9th meeting.

On a motion by G. Topham; 2nd B. Armstrong; the Commission voted unanimously in favor of ratifying the assessment of fines issued on Sept. 3, 2013 in the amount of \$8,200.

On a motion by G. Topham; 2nd R. Elkind; the Commission voted unanimously in favor of hiring a third party consultant to review the site conditions and the stabilization plan for comment and recommendation to the Commission, to be funded by the applicant under the Wetlands Protection Act statute permitting consultant fees to be paid by the applicant. Mr. Hargus agreed to pay for the consultant.

Mr. Hargus agreed to continue the hearing to Sept. 23, 2013 in order to hear from the Commission's consultant. He asked if he could install the irrigation system that is planned for the site.

Chairman Topham replied that all the Commission was approving under the Notice of Violation at this time is the minimum work necessary to meet the Planning Board's requirements by Sept. 15th, contingent upon receipt of an acceptable sequencing plan. That work does not include the irrigation system.

The Chairman opened up the hearing for questions or comments from the public, adding that the public will have another opportunity to comment at the hearing continuation on Sept. 23rd.

Tom Pullen, 63 Brewster Road abutter, informed the Commission that the original plan was to spray hydroseed of 6" – 8" of top soil and over the jute netting so the slope could remain protected. He added that the neighbors, the Planning Board, and the Conservation Commission are being ignored by the developer. The neighbors have contacted Mr. Hargus numerous times to discuss the situation and have never received a response. He felt that the Planning Board had created an artificial time frame of Sept. 15th – 6 days from now- for compliance. With all the issues on the site, it seems that it might be best to wait for a third party input as long as the site gets stabilized.

The Chairman thanked everyone for coming and for their patience and reminded all that the hearing was continued to Sept. 23, 2013.

WPA & Bylaw Notice of Intent: 27 Revolutionary Rd.; L. Sievers

Construction of 16' x 40' barn in outer riverfront area

At the request of the applicant and the applicant's consultant the hearing was continued without discussion until Sept. 23, 2013.

Conservation Commission Representative Appointments

The following Commissioners volunteered to be appointed as the Conservation Commission's representative to the following Committees:

- Beth Armstrong - Ponds & Waterways Committee
- Rob Elkind - Land Acquisition Review Committee
- Greg Topham - Sewer Committee
- Richard Bell - Community Preservation Committee (to serve as an Associate Member)

Northern Bank & Trust Co.; 430 Boston Post Rd.

The Conservation Commission briefly discussed the modifications to the plans for Northern Bank for comments to Board of Selectmen on revised plan. They are pleased to see that the septic system is being moved as far as possible from the wetland.

Due to the increase in width of the private, paved access road, an alternatives analysis and mitigation will still be required for this activity in the inner riparian area of the riverfront.

Right of First Refusal to Purchase: Lot B Concord Rd. (next to #233)

The Commission discussed the Town's first option to purchase a 2.2-acre lot on Concord Road in the Sudbury Town Center Historic District for \$325,000 for comments to Board of Selectmen.

The cost to exercise this option is relatively the same as the cost to the Town for the recent purchase of 15 Hudson Road. 15 Hudson Road was purchased to expand our park system in the Town Center, remove an eye-sore, and hold the land for further municipal use, especially drainage needs, in the future. The purchase of Lot B can also expand our Town Center park system, and potentially prevent a future eyesore, while preserving the last undeveloped lot in the core area of the Center. Grinnell Park and Heritage Park are located less than 1,000 ft. north of Lot B. Our walkway system, historic stone walls, and mature roadside trees extend to Lot B.

Lot B is currently a meadow that slopes slightly down to a forested wetland toward the west. Several large mature trees that were part of its former agricultural use as a tree farm remain within the meadow. Removal or relocation of several of these planted trees will produce an open, sunny meadow where granite benches and a mowed path during the growing season will welcome residents and visitors with little maintenance on the part of the Town.

Conversely, development of this lot will require the placement of the house and septic system near the street due to the permanent protection of the wetland area in the rear of the lot in a conservation restriction. No meadow will remain.

Lot B is listed on Sudbury's Open Space and Recreation Plan under lands of 61A interest. Chapter. 61 recognizes the special roles some lands play in protecting history, natural resources, and agriculture as having benefits beyond those associated with private land ownership. Property that qualifies for Chapter 61 tax treatment has some degree of public benefit that

warrants special consideration for preservation in the form of tax breaks and right of first refusal for public purchase to protect those special attributes.

The Conservation Commission is not just about wetlands regulation. The Commission was established for the promotion and development of the natural resources and for the protection of watershed resources. After careful consideration of the role this 2.2 –acre property in the overall character and quality of life in Sudbury, the Commission strongly encourages the Board of Selectmen to exercise the town’s right of first refusal for the purchase and protection of Lot B Concord Road for public open space, park, and historic purposes. This is a one-time only opportunity at a reasonable cost that will yield priceless long-term benefits for future Sudbury Citizens.

Several unidentified members of the public were present to support the Town purchase of this land. In addition, three emails in support of this purchase were received prior to the meeting.

The Commission voted unanimously in favor of recommending that the Selectmen exercise this option on a motion by G. Topham; 2nd R. Elkind.

WPA & Bylaw Notice of Violation: 17 Lincoln Lane, William Churchill

The Coordinator informed the Commission of an on-going violation involving the installation of a boardwalk in a floodplain and bordering vegetated wetland of the Sudbury River. When Mr. Churchill received his Certificate of Compliance for house construction on the lot in November 2007, he was advised that the boardwalk must be removed as it was not permitted as part of Order of Conditions #301-936, or any other Order on the property. The Order permitted him to maintain an existing footpath in the location shown on the approved plan. He agreed to remove the boardwalk in a timely manner.

A realtor listing the property came into the office to ask about the wetland issues and informed the Coordinator that the boardwalk was in place. The Coordinator recommended issuing an immediate NOV requiring an NOI to be submitted detailing how the boardwalk will be removed and the area restored. The NOV will also alert other brokers and buyers that the boardwalk cannot remain.

On a motion by G. Topham; 2nd B. Armstrong; the Commission voted unanimously in favor of issuing the NOV as discussed.

Minutes:

On a motion by R. Elkind; 2nd B. Armstrong; the Commission voted to accept the Minutes of **7/1/13, 7/22/13, 7/29/13** as drafted. G. Topham and T. Friedlander abstained from the vote as they were not appointed members to the Commission at the time of these meetings.