

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, August 11, 2014

Present: Tom Friedlander, Chairman; Charlie Russo; Rob Elkind; Mark Sevier; Bruce Porter; Debbie Dineen, Coordinator

No Public Comments on items not on the agenda.

The meeting was called to Order by Chairman Friedlander at 6:30pm. A quorum was present.

Commissioner Bruce Porter reported that the flooding at Duck Pond in Hop Brook has abated and the area is recovering nicely.

Minutes

June 30, 2014 - On a motion by R. Elkind; 2nd M. Sevier; the Commission voted unanimously in favor of accepting the June 30 2014 as edited by the coordinator and discussed at this meeting.

Feb., 24, 2014 - As there are no Commissioners now on the Commission who were present for the Feb. 24, 2014 meeting, current Commissioners agreed to publish the Feb. 24, 2014 Minutes as drafted.

May 12, 2014 - On a motion by R. Elkind; 2nd C. Russo; the Commission voted unanimously in favor of accepting the May 12, 2014 minutes as drafted. T. Friedlander abstaining.

June 16, 2014 - On a motion by C. Russo; 2nd B. Porter; the Commission voted unanimously in favor of accepting the June 16, 2014 minutes as drafted. M. Sevier abstaining.

July 14, 2014 - On a motion by C. Russo; 2nd R. Elkind; the Commission voted unanimously in favor of accepting the July 14, 2014 as drafted.

WPA & Bylaw Notice of Intent: DPW Roadway Maintenance Generic OOC

No applicant present

The Coordinator presented the Notice of Intent to permit the Sudbury DPW to conduct routine activities within wetland jurisdictional areas. Most towns issue "generic" OOCs for routine road & drainage maintenance. As this is a requirement for many towns under their EPA permit, and routine maintenance is defined, having the OOC available allows the DPW to respond to normal, but unforeseen maintenance as needed. This is proposed as a 5-year permit and is an update on the previous "generic" ooc.

The Sudbury Department of Public Works is responsible for ensuring all public roadways and associated drainage systems are maintained to function as originally designed. In addition, Sudbury's EPA Phase II MS4 permit requires review and upgrades to best management practices (bmps) on an on-going basis to improve the quality of stormwater runoff from public roadways in designated urban areas. Whereas most drainage is discharged ultimately to an area subject to protection under M.G.L. Chapter 131 s. 40 and/or an area subject the local Sudbury Wetlands Administration Bylaw, wetland

permitting is required for the on-going maintenance and improvements to bmps associated with public roadways.

This Notice of Intent seeks an Order of Conditions for all routine maintenance and upgrades to the public stormwater system. Sudbury does not have any combined sewer overflows (CSOs) so the system handles only stormwater runoff. Routine maintenance is defined as any maintenance work to keep a stormwater

management system functional and in good repair so that it may continue to operate as originally designed. Maintenance of a stormwater management system does not include work that:

- (a) reduces the capacity of the system to treat stormwater, provide recharge or attenuate peak flow;
- (b) increases the total and peak volume of the stormwater managed by the system;
- (c) directs additional stormwater discharges to the system; or
- (d) results in reduced use of above ground stormwater best management practices

Improvement of a stormwater management is considered any revisions that incorporate environmentally sensitive site design, including low impact development techniques to prevent the generation of stormwater and non-point source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat. Improvement can also include retrofitting existing drainage structures with bmps that reduce pollutants, incorporate forebays and/or check dams, and prevent erosion and sedimentation to the maximum extent practicable. "To the maximum extent practicable" means that:

- (1) Proponents of redevelopment projects have made all reasonable efforts to meet the applicable Standard;
- (2) They have made a complete evaluation of possible stormwater management measures including environmentally sensitive site design that minimizes land disturbance and impervious surfaces, low impact development techniques, and stormwater BMPs; and,
- (3) If not in full compliance with the applicable Standard, they are implementing the highest practicable level of stormwater management.

Although it is not possible to know 3 -5 years in advance of necessary routine maintenance and improvement activities, it is possible to designate categories of projects that meet the criteria listed above for maintenance and improvement. Sudbury's MS4 requirements have resulted in prioritization of these projects in urban areas of town. Known projects prioritized under MS4 are listed on the attached sheet. The Town has also prioritized several projects outside of MS4 urban areas where stormwater runoff may be entering Outstanding Resource Waters, cold water fisheries resources, or Zone II wellhead protection areas.

In all situations, erosion and sedimentation control shall be in place prior to any activity on site, and, where appropriate, an Operation & Maintenance Plan shall be developed for continuing maintenance. In most cases of roadway and drainage maintenance projects, the Generic Order of Conditions will become the basis for the O & M Plan.

On a motion by C. Russo; 2nd R. Elkind; the Commission voted unanimously in favor of closing the hearing.

On a motion by R. Elkind; 2nd C. Russo; the Commission voted unanimously in favor of issuing the Order as drafted.

WPA & Bylaw Notice of Intent: Rt. 20 Gas Line installation at Hop Brook; National Grid

Present: Dan Cretu, National Grid; Christopher Wagner, VHB, Inc.

Commissioners Russo and Sevier recused themselves from participating in the meeting for this hearing as Mr. Russo works for VHB, Inc. and Mr. Sevier works for National Grid.

Mr. Wagner presented a basic NOI for work within inner riparian, floodplain, and upland resource area/buffer of perennial stream. Work involves the installation of shutoff valves and connections on existing gas pipes on either side of Hop Brook at Route 20. A total of 330 sq. ft. of area will be disturbed for the work. All work is on existing disturbed area within the road. No work will occur in the stream. This is a *limited project* under 10.53 (3) (d).

A steel plate will be installed over any open trench at the close of each work day, as needed. Work will take 2 – 4 weeks with work beginning in September 2014 and ending in mid-November 2014. The pipe conduit is 4' in diameter in the road and 6" diameter on the bridge over Hop Brook. The 4' steel plate in the roadway is being replaced with a 6" plastic pipe conduit to meet the 6" steel pipe within the bridge span.

D. Dineen questioned if any work might compromise the already degraded condition of the bridge over Hop Brook. Mr. Cretu stated that the work was revised to eliminate any work within the bridge itself.

On a motion by R. Elkind; 2nd B. Porter; the Commission voted unanimously in favor of closing the hearing. On a motion B. Porter; 2nd R. Elkind; the Commission voted unanimously in favor of issuing OOC as discussed.

Public Hearing to Revise Sudbury Wetlands Administration Bylaw Regulations: Requirement for Electronic Submission of all Documents

The Commission reviewed suggested wording which is very similar to the wording used by the Planning Board:

All application materials shall be submitted to the Commission in a searchable electronic format (e.g., pdf or Adobe) via email, or on a portable electronic storage device, or to a central cloud repository on the web, both initial application and all appended materials, including plans, forms and memorandum. Approved, as-built plans, and conservation restriction plans shall be submitted as both a PDF and in a format compatible with AutoCAD 2010, and ESRI ArcGIS 10.2.1, or an updated version currently in use by the Town. One signed, original hardcopy of all wetland filings shall be submitted in addition to the electronic documentation.

On a motion by M. Sevier; 2nd Bruce Porter; the Commission voted unanimously in favor of adoption of above language.

Discussion: Site Walks Coordination – Entering Private Property

Commissioners requested clarification on when they can enter private property and for what purposes. The Coordinator presented the following:

This is what is in the wetlands regulations:

“The conservation commission, its members and agents, and Department employees may enter upon privately owned land for the purpose of performing their duties under M.G.L. c. 131, § 40, subject to constitutional limitations.”

There seems to be several tiers in enforcement. One is when you suspect there might be a violation. The issue is the definition of constitutional limitation, which is constantly evolving based on court decisions. The Fourth Amendment of the U.S. Constitution provides:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

This means you need to have a judge issue a warrant and the Police deliver the warrant. You need probable cause. The Courts have generally accepted that inspections as part of an administrative process to enforce regulatory programs can fall under the Fourth Amendments’ requirements. However, you may be able to secure visual access to the property from an abutting property where you can secure access.

What is clear is that once an Order is issued you may enter private property to ascertain compliance with that Order while it is in effect. A courtesy phone call is protocol for the Commission.

“A Final Order may be enforced by either the conservation commission or the Department regardless of which is the issuing authority. The members, officers, employees and agents of the conservation commission and the Department may enter upon privately owned land for the purpose of performing their duties under M.G.L. c. 131, § 40 and 310 CMR 10.00 (when an OOC has been issued).”

In summary, if you suspect a violation you may not enter private property without permission or a warrant served by the Police. Often violations can be viewed from abutting property where you can secure permission.

Discussion: Land Stewardship Subcommittee:

Chairman Friedlander noted that general maintenance, including trail clearing, is done by volunteers. There is not prioritizing or scheduling of this work at present. He and his wife maintain much of King Philip, Piper Farm, and Libby land. He would like to see if the use of CPA funds could help with conservation land maintenance. He thought several properties, such as King Philip Woods, could be a good match for CPA funds due to its historical and open space components.

D. Dineen and C. Russo thought that a more comprehensive approach to all properties should be undertaken before applying for funding for one property. D. Dineen thought that a full inventory of stewardship tasks across all properties that can then be prioritized would be the best way to request CPA funding over multiple years. C. Russo suggested developing a matrix in *Excel* of land features and needs. Dineen thought the 2 overriding needs to be considered are natural resource protection and public enjoyment.

The first task will be to develop a list of the 13 major properties and draft criteria on which to rank the land stewardship needed on each. Commissioners acknowledged that this criteria would be subjective. From this matrix, a 2015 Comprehensive Land Stewardship Plan would be developed. Public input is necessary. B. Porter noted that the matrix should include property boundary encroachments. Dineen and Russo will begin working on a draft matrix to be developed further by the Commission, with public input, over the winter

T. Friedlander encouraged Commissioners to look at other ways of engaging the public. Regular newspaper articles, visibility at the 375th Anniversary event on Sept. 6th, co-sponsoring an environmental speaker series, etc. are all ways the Commission can become more of an environmental resource to the residents of town. B. Porter and C. Russo felt they may have time to participate in the Sept. 6th event by manning the booth. Staff Kirsten Roopenian and Debbie Dineen are working on material for the booth. Commissioners must see if they can commit to booth coverage to see if it is possible to man for the full day. Kirsten will email an hourly calendar to all to commit to times.

FY 2015 MACC Membership Dues

The Commission has received the invoice for FY 2015 membership to MA Associations of Conservation Commissions. Dues due in the past several years have been in the \$800 range and with mostly experienced Commissioners and staff, the Commission has not kept up with its MACC membership in recent years. However, with most commissioners having served less than one year, the fundamental training provided by MACC workshops could be very valuable.

Pros of Membership:

If most Commissioners will take advantage of workshops and conferences, this can result in a decent savings. It also supports MACC and will give you email access to Forums, latest news, and early registration.

Membership Cons:

\$800 is a large chunk of the budget and if not everyone takes advantage of the educational opportunities, it could be more cost effective to pay the higher non-member registration fees at workshops and conferences. However, no access to Forums, early registrations, and breaking news.

Funding:

Dues can be paid from wetland fees. This may reduce our ability to pay extra staff or more importantly, legal and wetland consultants.

On a motion by T. Friedlander; 2nd R. Elkind; the Commission voted unanimously to rejoin MACC for FY 2015.

58 Ford Rd. – Report of Wetland Violation

Commissioner Russo met with the property owner at 58 Ford Rd. over the weekend to discuss the playhouse in the rear of the main house. Property owner Norm Frigon explained that the playhouse had been on the property for a while and was just moved further from deck to allow better observing and monitoring of play from the deck. The structure is an impermanent playhouse. Norm said he'd had it in the backyard for a while, but recently dragged it farther from the house. No slab, no foundation, fairly small footprint. He simply dragged the thing from one part of his lawn to another. C. Russo did not think this was violation that was necessary to regulate. Commissioners agreed. No enforcement action will be taken.



379 Concord Rd. – Issuance of Certificate of Compliance

Commissioner Sevier reported that he had visited 379 Concord Rd. The slope is fully revegetated and a COC can be issued (previously conditional vote on issuance).

145 Lincoln Rd., Cummings

C. Russo will inspect the vegetation restoration area to be sure it meets the minimum requirements. Garage construction may begin once he has made this determination. No COC is being issued at this time.

The meeting adjourned at approximately 8:40pm.