

**SUDBURY CONSERVATION COMMISSION**  
**Minutes of the Meeting Held Monday, February 10, 2014**

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

**WPA & Bylaw Notice of Intent; 2 Woodland Rd.**

Present: John Porter, applicant

Mr. Porter presented a plan for an addition on the rear of his house. All work will be on existing disturbed land in the area of lawn, patio, and landscaping. Three mature white pines must be removed. Two of these pines are compromised and removal was recommended by an arborist. The site has well-drained gravel soils. A dry well is proposed for infiltration of roof runoff from the addition. There will not be a full basement under the addition.

D. Dineen explained that the addition will be approximately 60'+- from a bordering vegetated wetland and intermittent stream. The area of the proposed addition is level, however the property slopes down to the wetland just beyond the current lawn and landscaped area. The undisturbed area on the slope is mature forested land. No erosion control is necessary. She noted that Mr. Porter will need ZBA approval because keeping the addition on existing lawn area and solving his interior space issues requires a side yard setback variance. She recommended approval.

On a motion by R. Elkind; 2<sup>nd</sup> T. Friedlander; the Commission voted unanimously to close the hearing.

On a motion by T. Friedlander; 2<sup>nd</sup> R. Elkind; the Commission voted unanimously to issue the Order as discussed.

**WPA & Bylaw Request for Determination: 64 Robert Best Road**

Present: Marc Ohler, applicant

Mr. Ohler presented a plan for a small 3' addition on the rear of his house to expand the kitchen and the installation of a stone and slate patio on existing lawn. The patio will construction will allow infiltration of runoff. The small addition will have a full basement.

D. Dineen explained that the project falls within the outer part of a 200' riverfront area. The property is level with a slight grade to the stream and associated wetland vegetation.

In response to her question, Mr. Ohler stated that the excavated fill for the basement will be used to backfill. Any leftover soil will be spread on the lawn to fill small low areas.

No erosion control appears necessary due to the level area and distance to the wetland.

On a motion by G. Topham; 2<sup>nd</sup> R. Elkind; the Commission voted unanimously in favor of a negative Determination.

### **Discussion: Arborteam Way Conservation Restriction**

Present: Beth Cosgrove; Frank Cutting; Jesse Johnson

Mr. Johnson presented a draft CR plan showing the CR line at the 75'+- setback from the bordering vegetated wetland (bvw). Lots 2 – 6 will have minor work within 75' of the bvw on average. Some lots may have slightly more of the 100' upland resource area protected, some may have slightly less. The CR is proposed for mitigation of work within wetland jurisdiction. This 7.5+- acres of CR area is in addition to the adjacent 10.5+- acres of CR required by the Planning Board as part of cluster subdivision approval.

A planting plan has been developed for each lot showing a cluster of shrubs and a tree at the CR line. The intent is to manage the CR area as it is in its current state of managed meadow. The area that is currently field will be mowed several times each year to keep out woody vegetation.

D. Dineen explained that the Commission does not usually permit work within 100' of a wetland resource area for new construction. This site is unusual in that the lot locations and areas were approved almost a decade ago and the streets have been constructed. The CR approach makes sense in that it abuts another required CR area and a large area under an agricultural restriction. This area in turn is adjacent to protected state and federal conservation land.

D. Dineen questioned why the CR line was not extended onto Lots 9 and 10. It appears that at least Lot 10 will be designed with work in wetland jurisdiction. Mr. Johnson stated that due to limited location for the house on Lot 9, no

restrictions were placed on this property. G. Topham noted that Lot 9 abuts a vernal pool area and would be one of the more important lots to restrict some undisturbed treed area. It appears that the CR could encompass the tree line in the rear of the lot. Mr. Johnson and his clients agreed to look at extending the CR line on Lot 9 and to bring back a revised plan.

D. Dineen explained that the applicant will be submitting Requests for Determinations (RDA) for Lots 2 – 6. Notices of Intent (NOI) will later be submitted for Lots 9 and 10. The mitigation for the plans to be submitted is the up-front recording of the CR. This will avoid the need to file an NOI on all lots. The plans of the individual lots should show the CR line as reviewed and discussed this evening.

Commissioners all agreed that this was a good approach to take for this particular subdivision where the lot lines and roadways are already in place. The CR offers meaningful additional protection of high quality open space areas to be maintained generally in their current state.

The RDA for Lots 2 – 6 will be submitted shortly to be heard on the Feb. 27<sup>th</sup> agenda. The Sudbury DPW will be submitting the NOI for redesign of the drainage outfall from Maynard Road.

### **WPA & Bylaw Notice of Intent (cont.) 67 Brewster Road**

Present: Stan Hargus; Ben Ewing

The hearing was continued to allow the Commission time to have the wetland peer reviewer, Fred King, examine the revised drainage plan for the sloped front yard of the house. The plan by Mr. Ewing initially had the drainage discharging partially down the slope. Due to the grade, Mr. King preferred to see the drainage swale extended to tie into another drainage swale along the driveway. The revised plan showed this extension and tie-in.

Although Mr. King was unable to be present this evening, the plan revised the drainage in accordance with his recommendations.

Mr. King had previously questioned the extent of wetland resource area off the end of the cul-de-sac as flagged by Dave Crossman of B & C Associates. Mr. King believes there is definitely a wetland that is jurisdictional under the local wetlands bylaw. It is also likely, based on previous soil testing done several years

ago on the site, that the wetland is jurisdictional under the WPA. The Commission is recognizing that a resource areas exists for the 67 Brewster Road filing, however no determination is being made at this time on the specifics of that resource.

Mr. Hargus stated that he still has planting and irrigation to install for the homeowners. The Commission questioned if irrigation on the slope could add to stabilization concerns in the future. The Coordinator stated that the Order of Conditions (OOC) can require monitoring, however, if the site is stable, the Commission does not have jurisdiction to prohibit in-ground irrigation. The Commission was involved only after-the-fact on this lot as all activity is outside wetland jurisdiction. When the numerous breaches of the unstabilized slope resulted in wetland alteration from excessive sedimentation, the Commission took jurisdiction over the erosion issues on the site. That is as far as they can go with involvement unless there is another failure of the slope and additional actions are necessary to avoid further wetland alteration.

On a motion by G. Topham; 2<sup>nd</sup> T. Friedlander; the Commission voted unanimously in favor of closing the hearing.

On a motion by G. Topham; 2<sup>nd</sup> R. Elkind; the Commission voted unanimously in favor of issuing of the OOC as discussed during the hearings.

### **WPA & Bylaw Notice of Intent (cont.) 77 Hudson Rd., Proposed Police Station**

At the request of the applicant, the hearing was continued without discussion to Thursday, Feb. 13<sup>th</sup>.

### **Request for Amendment of Order of Conditions: Memorial Forest Burn**

Sudbury Valley Trustees

Present: Laura Mattei; Libby Herland, USFW; Tim Simmons NHESP

Ms. Mattei of SVT had submitted a written request to the Commission to amend the OOC to allow a spring burn of approximately 7 acres in Sudbury at the SVT Memorial Forest. The Order was conditioned to allow only a fall burn. AT the time of the public hearing, it was presented as a fall burn project in order to reduce risk to wildlife during the breeding season.

D. Dineen explained the actions the Commission could take. 1) Look at the amendment as de minimus and approve as a “field” change; 2) deny the amendment; 3) require a public hearing to discuss the merits of the change.

Chairman Topham invited Ms. Mattei to explain the reason for the amendment request. Ms. Mattei stated that the plan was to burn last fall (2013), however the necessary conditions for the burn never came together. They would now like to try for a spring burn. Because conditions may not be favorable in the next 2 fall seasons, they would like the ability to have additional days for the proper conditions. Allowing a spring burn would give them more opportunity.

D. Dineen noted that during the hearing on the OOC, it was stated that the fall burn was proposed in order to reduce the risk of animal mortality from a burn during the breeding season. She suggested that if the issue was one of needing more opportunities for favorable conditions, the Commission could consider extending the OOC for another 2 years at this time. That would give them the additional two opportunities to burn while still reducing the risk to breeding animals.

T. Simmons stated that there was no increase risk to mortality between spring and fall burning. He believes that the outcome of better habitat will outweigh the risks. Libby Herland noted that the USFW has conducted spring burns. The Commission expressed concern that this was not the same as the information presented in the original hearing.

Chairman Topham questioned if any other factors are involved in the change of seasons. Getting no response, he questioned when the grant funding for the project will expire. Ms. Mattei stated that the funds will expire on June 30, 2014, however she is waiting to hear if she will get an extension from the funding source. G. Topham stated that expiring funding is not a reason for the Commission to consider allowing the burn at time when there is risk of additional mortality. He recommended that the Commission require a public hearing where the applicant can bring in information to show that the mortality risk will not increase with a spring burn, or other information that shows the risk/reward.

Commissioners Topham and Armstrong concurred. B. Armstrong felt that not enough information was presented to allow the Commission to properly assess the consequences of a spring burn. Chairman Topham was fine with

offering a 2 year extension to the OOC, however he was struggling with the unknowns of the seasonal change. Commissioners Friedlander and Elkind did not think a public hearing was necessary and the seasonal change could be addressed with a vote to amend. Tied vote. A hearing was tentatively scheduled for March 10.

### **WPA & Bylaw Certificates of Compliance**

#### **33 Maynard Rd.**

A site inspection was done in November by D. Dineen and David Burke. The wetland restoration area is thriving with over 90% wetland species colonizing the previously filled area. A written report was received this winter from Mr. Burke requesting the COC.

On a motion by G. Topham; 2<sup>nd</sup> B. Armstrong; the Commission voted unanimously in favor of issuing the COC.

#### **29 Hudson Rd.**

The Coordinator explained that property has two Orders of Conditions on it at this time for two separate and conflicting developments. The open Order for the construction of 29 Sudbury is the active Order and is not ready for release. The older Order was for the construction of a 40B affordable condo development. This development never started and the applicant of the old Order has sold the property. The old Order was a superseding Order issued by DEP. The Coordinator will check with DEP to see if they want be the issuing authority or if the COC for “work never commenced” should be issued by the SCC.

On a motion by G. Topham; 2<sup>nd</sup> B. Armstrong; the Commission voted unanimously in favor of issuing the COC if appropriate to do so.

### **Minutes**

On a motion by G. Topham; 2<sup>nd</sup> T. Friedlander; the Commission voted unanimously in favor of accepting the Minutes of both the regular session and the Executive Session of the meeting of January 27, 2014.

By roll vote; yea Topham; Armstrong; Elkind; Friedlander; the Commission voted unanimously to enter into Executive Session for the purpose of discussing the

current plan for the DEP adjudicatory Settlement Agreement for Johnson Farm. The Chairman stated that the discussion in public session could have a negative impact on the Town's position in the Settlement discussions.

The Commission will not be returning to regular session following the close of the Executive Session.

### **Executive Session**

The Coordinator informed the Commission that they had been requested by DEP Counsel, Elizabeth Kimball, to agree that the DEP would be the official reviewing body for the revised plans. This is in accordance with DEP Policy 91-1. The Coordinator provided a copy of this policy to the Commission. 91-1 states that revised plans submitted as part of an adjudicatory hearing did not need to go back to the Commission provided the Commission agrees to allow the review as part of the adjudicatory proceedings *and* that the Commission agrees that the project as revised has less wetland impact.

The Coordinator stated that the project as revised and if accepted by DEP will be resubmitted to the Zoning Board of Appeals for a public hearing.

Commissioners agreed that the project as revised has less wetland impact. B. Armstrong noted that the revised plans show the changes the Commission had requested in its Order. Commissioners agreed that DEP could be the reviewing body of the revised plans as part of the adjudicatory process contingent upon the revised plans being further revised and included in the final Settlement Agreement to include the changes identified by the Commission at the January 27, 2014 Executive Session meeting.

Executive Session adjourned by roll call vote at approximately 9:20pm.