

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, August 24, 2015

Present: Tom Friedlander, Chairman; Beth Armstrong, Vice-Chairman; Rob Elkind; Charlie Russo; Dave Henkels; Bruce Porter; Mark Sevier; Debbie Dineen, Coordinator

Minutes:

On a motion by R. Elkind; 2nd B. Porter, the Commission voted in favor of the approving the minutes of 6/23/2015 (Executive Session) as drafted. B. Armstrong and D. Henkels abstaining.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted in favor of the approving the minutes of 7/20/2015 as drafted. C. Russo abstaining.

Discussion: Violation Ticketing (Citation) Procedures

Chairman Friedlander informed the Commission that the two tickets for wetland violations under the town's wetland bylaw had been issued and one of the tickets has been paid to the Town Clerk. The other ticket still has several days before payment is due. He also advised the Commissioners that the tickets allow for the issuance of a Warning. R. Elkind stated that he felt the Warning feature was desirable as often times the violator is just not aware that they are committing a violation. C. Russo felt that a Warning should not be issued as the first action as it can seem unfriendly. He felt that the Warning could be used as a default if a first attempt for compliance is unsuccessful.

WPA & Bylaw Request for Determination of Applicability: 39 Woodmere Dr.

Present: Jason Tilley, applicant

Mr. Tilley presented plans for the replacement and enlargement on an existing deck. The deck is located on current lawn and landscaped area approximately 60'+- from bordering vegetated wetland.

On a motion by R. Elkind; 2nd B. Porter; the Commission voted unanimously in favor of issuing a negative Determination.

WPA & Bylaw Notice of Intent: 36 Bigelow Dr.; Jackson

Present: Matthew Jackson, homeowner

Mr. Jackson submitted a plan for patio reconstruction and lawn regrading in order to site a swing set in his backyard. All work will be on existing lawn, landscape, or patio area.

D. Dineen informed the Commission that the wetland resource areas include bordering vegetated wetland to the east and south, a perennial stream to the east, and a vernal pool to the southeast. The applicant is planning to install boulders at the existing limit of lawn and level a section of his current yard to provide a level area for the swing set. No disturbance will occur beyond the existing edge of lawn.

Mr. Jackson questioned if could use another method to stabilize the regraded area such as a short wooden retaining wall to contain the fill material. The Commission in favor of this as long as the material did not include any hazardous materials as a preservative.

On a motion by B. Armstrong; 2nd R. Elkind; the commission voted unanimously in favor of closing the hearing.

On a motion by C. Russo; 2nd D. Henkels; the Commission voted unanimously in favor of issuing the Order as discussing and permitting methods other than boulders, if desired, conditional upon the materials not containing any hazardous substances.

Sudbury Agricultural Fair

Chairman Friedlander suggested the Commission consider having a booth or table at the Sept. 12th Agricultural Fair to be held in the Town Center. Materials concerning wetlands and wetland permitting could be distributed along with information about the Commission's licensing of town fields for agricultural use. Information from last year's Sudbury Day could be used.

T. Friedlander, B. Armstrong, D. Henkels, and C. Russo agreed that they could man the booth.

Discussion and Vote: Enforcement Order - 0 Washington Drive

This discussion was continued from July 20, 2015 when the Commission voted to issue an Enforcement Order to the property owners for failure to meet the requirement and timeframes for revegetation planting and drainage swale construction/reconstruction as required in DEP file #301-1093. Since the July meeting a letter has been received from Attorney Richard Nylan on behalf of the property owners stating that plantings have been done and stone has been added to the drainage swale. The Commission noted that the type of plantings were unknown and the original construction of the swale has not been reviewed by an engineer to determine if it was constructed in accordance with the approved design plan. The letter does not request any action on the part of the Commission at this time.

Additional violation of Orders of Conditions DEP #01-623 (expired) and #301-1117 has occurred with the installation of a beaver deceiver at the pond outlet at an elevation in excess of the approved pond elevation set in DEP #301-623 and restated in #301-1117. The plan approved with DEP File #301-623 requires the applicant to maintain the pond at elevation 152.4 as shown on approved septic system plan entitled "Proposed Subsurface Sewage Disposal System, Washington Dr.; dated 9/21/1999 rev. through 11/15/1999 by Everett M. Brooks Co.". The current pond elevation is at 155'+-elevation as a result of a beaver deceiver installed by the applicant. By not maintaining the approved elevation and installing a beaver deceiver at a higher elevation, the pond level has risen and has created an open water body where there was shrub swamp and forested wetland in the south side of the pond. This has impacted abutting properties where an active cattle pasture is now partially underwater. This is a wetland alteration that was not approved under the WPA or the Sudbury Wetlands Bylaw, and is in conflict with the requirements of the Conservation Restriction.

M. Sevier noted that the Orders do not mention an elevation for the pond. D. Dineen explained that the pond elevation to be set was determined by a 1999 hydrology study which was submitted as part of the record for #301-623 and the approved elevation of 152.4' was shown as the elevation to be established on the plan referenced in the #301-623 Order. She provided a copy of the plan for the Commission to review.

(The discussion was suspended at this time and continued following the public hearing on 87 Cudworth Lane.)

Commissioners B. Armstrong and D. Henkels expressed concern that the Commission could be liable for not taking action on the violation as the violation is an unauthorized wetland alteration causing negative impacts to at least one abutting property. C. Russo noted that issuing the Enforcement Order will be perceived as escalating the situation. Commissioners agreed that escalating the situation is

necessary to achieve compliance as numerous discussions and meetings with the applicant have not yet done so. In June 2015 the property owner informed the Commission that he was going to have an engineer review the 1999 hydrology study and inform the Commission of the findings. We have not received any report on this review and the wetland alterations continue due to the elevated pond level.

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted unanimously in favor of issuing the Enforcement Order for DEP file #301-623 and #301-1117. M. Sevier abstaining.

Wetlands Protection Act (WPA) Abbreviated Notice of Resource Area Delineation:

Peter's Way (off Concord Rd.)

Wetlands Protection Act Request for Determination of Applicability:

Peter's Way (off Concord Rd.)

Present: Christopher Claussen, applicant; William Henchy, attorney for applicant; Diane Boretos, Call of the Wild habitat specialist

At the suggestion of the applicant, the Commission agreed to hear the RDA and ANRAD presentations concurrently.

Mr. Henchy presented a plan showing the wetland delineation for some of the wetland resource areas located on a parcel of land off Peter's Way. The Commission is being asked to concur with these resource areas only under the state Wetlands Protection Act and not under the local wetland bylaw. The future proposed development of the site by his client will be a Chapter 40B affordable housing development. Both an RDA and ANRAD was submitted to create a situation where work would proceed under the RDA if the ORAD is appealed. The regulations halt work under an appeal of an Order of Conditions, however they are silent as to whether or not work may proceed during an appeal of an ORAD.

Mr. Henchy stated that they are requesting concurrence with the wetland delineation for bordering vegetated wetland, bordering land subject to flooding, location of the top of bank of Mineway Brook, and a finding in favor of intermittent for Mineway Brook from Concord Road to top of bank flag #B23. They are not at this time requesting a ruling on whether or not Mineway Brook is intermittent or perennial from top of bank #B23 to the railroad culvert to the west. He noted that there are several intermittent streams not shown on the plan that enter Mineway Brook from the north/northeast of Mineway Brook, however these streams are not within the area of future proposed work and will not affect the delineation of the outermost point of wetland jurisdiction. The intent of his client is to presume that Mineway Brook is perennial from top of bank flag #B23 to the railroad culvert at this point and keep all alteration outside of 200' from the top of the bank of Mineway Brook westward of flag #B23. Any work in this area will require a new wetland filing.

Mr. Henchy, Ms. Boretos, and D. Dineen all were in agreement that from Mineway Brook top of bank flag #B23 toward Concord Rd. (east and upstream) there was not a continuous flow of water. From at or near top of bank flag #B23 (west and downstream) continuous flow was questionable with clear continuous flow observed at the railroad culvert over the past several months on the numerous occasions the site had been visited. D. Dineen explained that the upstream watershed of Mineway Brook encompassed .47 acres. This watershed contained 0% stratified drift up until approximately the point of top of bank flag #B23. At #B23 the surficial geology changed to 100% stratified drift. These are indicators used by DEP to determine perennial vs. intermittent flow in a stream.

D. Dineen stated that she was in agreement with the delineation of the top of bank flags as shown on the plans submitted. She also agreed that this top of bank delineation could be considered “mean annual high water” which is the point from which a 200’ riverfront area is measured. The river itself is defined as the area in which the fluvial processes occur. Mean annual high water (as defined by DEP and their use of “bankfull” definitions) is the area within which fluvial processes take place. If mean annual high water was outside the top of bank of the brook you would see a change in vegetation, scouring, deposits of stream bed materials, etc beyond the top of bank. None of those indicators were present.

B. Porter visited the site today and concurred that that there was no evidence of fluvial processes beyond the top of bank nor did he witness continuous flow upstream of flag#B23. He did witness continuous flow at the railroad culvert.

D. Dineen stated that she did not review each of the flags delineating bordering vegetated wetland in the field. She did observe many of the flags and the surrounding vegetation. She reviewed the field report and field data sheets submitted by Rich Kirby of LEC Environmental for the bordering vegetated wetland. She noted that the bordering vegetated wetland line appeared to be conservative as it used vegetation to heavily rely on the edge of this resource area. From her experience with previous filings for past Peter’s Way construction by the town and wetland projects on the abutting common driveway off Concord Road, she felt that if soils were used more extensively throughout the area that it was likely the edge of bordering vegetation would move further toward the brook. D. Boretos concurred that the wetland flagging was extremely conservative and actual wetland was less than shown on the plan.

C. Russo stated that he was nervous that future development of the site should be a slow and steady process. Mr. Henchy replied that that his client is doing just that by starting with wetland delineations and being as conservative as possible. R. Elkind questioned why the applicant would not just declare Mineway Brook perennial from top of bank flag #B23 to the railroad culvert as perennial. Mr. Henchy replied that if definitions of perennial in the DEP regulations are used as the sole indicator and information used to determine perennial vs. intermittent, the stream could be classified as intermittent at this time. He believes that direct observation should factor into the decisions and the direct observations indicate that somewhere between flag 3B23 and the railroad, the stream may become perennial. D. Dineen added that she would not be comfortable recommending the Commission accept the delineation of Mineway Brook as either perennial or intermittent from #B23 to downstream to the railroad culvert at this time. Although direct observations lean toward perennial, further study, including any impact from drawn down of water table due to agricultural wells, further investigation of watershed boundaries, etc. would need to be reviewed in detail before she could recommend a determination one way or another. As long as the applicant is presuming “worst-case” for the undetermined part of the stream for his planning purposes he can use these presumptions to achieve the goal of staying out of wetland resource areas.

The Chairman opened up the hearing to questions from those in attendance.

Mr. Parmenter, 29 Codman Drive, questioned if the agricultural field to the north was to be developed. Mr. Henchy stated that it was not.

Mr. Ewing of Codman Drive questioned why the Commission is not use peer reviewer as it has done in the past to review the wetland delineation. The Chairman responded that peer reviewers are used in some more difficult situations, generally when detailed soil investigations or very large parcels of

land are involved. In this case, the Coordinator was well qualified to provide her opinions and recommendations and the applicant was taking a conservative approach.

Len Simon, Meadowbrook Drive, questioned if the wetland delineation was shown up to the railroad bed. Mr. Henchy pointed out to Mr. Simon on the plan where the wetland flagging done up to the railroad culvert.

No further questions or comments were asked from those in attendance and the hearing on the ANRAD was closed.

On a motion by R. Elkind; 2nd B. Porter; the Commission voted in favor a finding a negative Determination under the WPA. No work is proposed under this Determination of Applicability. So long as no activity or work is proposed or undertaken within 100 feet of any wetland boundary as described in the RDA, or within 200 feet of the top of bank of Mineway Brook from Top of Bank Flag #23 (Sheet 4 of 4 on the Plans of Record) westward to the railroad embankment, no further filing under the Wetlands Act or Regulations is necessary. C. Russo opposed.

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted in favor of issuing a positive Determination on the wetland resource areas & buffer zone as shown on the plan entitled "Existing Conditions Plan of Peters Way & Peters Way Ext in Sudbury, Mass. by Sullivan, Connors and Associates," Sheets 1 - 4 inclusive; dated July 8, 2015 concurring that the wetland delineation is accurate for bordering vegetated wetlands; bordering land subject to flooding, and intermittent stream shown as Mineway Brook to the east and south (upstream) of Top of Bank flag #23 is intermittent. For any activity within 200' of the top of the bank of the brook between top of bank flag 23 and the railroad embankment, an NOI or ANRAD shall first be required. D. Henkels, C. Russo, opposed. M. Sevier abstaining.

On a motion by B. Armstrong, 2nd R. Elkind 2nd; the Commission voted in favor of issuing a order of Resource Area Delineation stating that the resource areas are accurate for the wetland resource areas & buffer zone as shown on the plan entitled "Existing Conditions Plan of Peters Way & Peters Way Ext in Sudbury, Mass. by Sullivan, Connors and Associates," Sheets 1 - 4 inclusive; dated July 8, 2015 concurring that the wetland delineation is accurate for bordering vegetated wetlands; bordering land subject to flooding, and intermittent stream shown as Mineway Brook to the east and south (upstream) of Top of Bank flag #23 is intermittent. For any activity within 200' of the top of the bank of the brook between top of bank flag 23 and the railroad embankment, an NOI or ANRAD shall first be required. D. Henkels opposed. C. Russo, M. Sevier abstaining.

WPA & Bylaw Request for Determination of Applicability: 88 Warren Rd.

Present: Vito Colonna of Sullivan, Connors; homeowners

Mr. Colonna presented a plan for a septic repair of an existing septic system that failed a recent Title V inspection. The new system has slightly greater separation to ground water and is located as far horizontally as possible from the wetlands. No expansion of the capacity of the system is proposed.

On a motion by D. Henkels; 2nd C. Russo; the Commission voted unanimously for a negative Determination and made note that there was no determination of the wetland boundaries approved for the scope of the septic repair project.

WPA Request for Determination of Applicability: Landham Brook Marsh

Conservation Commission, applicant; Dan Stimson, Sudbury Valley Trustees

D. Dineen presented the Request for Determination for the construction of one trail that will begin at the proposed parking area on Landham Road, use the existing cart road to cross the perennial stream, and continue through the property to provide a direct trail linkage to the Sudbury Valley Trustees Lyons Cutler Reservation via an existing footbridge over a second perennial stream. A trail not to exceed 5' wide will be constructed in the location as shown in red as Trail "A" on the plan submitted.

SVT will be constructing the trail in order to have a pedestrian trail to from Lyons Cutler to the new parking area on Landham Road. SVT's Lyons Cutler area currently does not have adequate parking available.

According to the plan submitted by SVT, all work will be located outside of any wetland resources except for the riverfront area and the adjacent upland resource area/buffer. D. Henkels noted that D. Dineen had previously questioned why a portion of Trail A did not make use of a portion of an existing cart road. D. Stimson stated that the cart road was now overgrown and he felt that there would be less wetland impact with the trail location he had shown on the map. D. Dineen added that the Town and SVT would like to open this main trail to the public this fall. Trail A as shown could be cleared for this grand opening and if a better route is found in the future, it could always be rerouted. The SVT map shows trail B and C. These are not being proposed for construction at this time. More investigation into the appropriate route for additional trails that will have the least environmental impact needs to be accomplished. Sensitive wildlife habitat, including several vernal pools exist in the area of proposed trails B and C.

On a motion by R. Elkind; 2nd C. Russo; the Commission voted unanimously in favor of issuing a negative Determination for the construction of Trail A shown on the map provided with the filing.

Landham Brook Marsh stewardship responsibilities

The Commission discussed the future plans for the former agricultural field located within the Landham Brook Marsh conservation land. They determined that agricultural use of field should be continued.

The Coordinator will prepare a Request for Proposals to be reviewed by Town Counsel and C. Russo. Once approved the RFP will be published.

WPA & Bylaw Notice of Intent: 87 Cudworth Ln., Violation correction, mitigation & patio construction

Following a site visit this afternoon attended by T. Friedlander, D. Henkels, B. Porter, and D. Dineen, the applicant has requested a continuation until Sept. 14, 2015.

Request for Certificate of Compliance: #301-558; 87 Cudworth Lane

The COC was requested for a 1997 Order that approved the lot development. The current status of the property is that the current status of the lot is not in accordance with the plan approved under Order #301-558. Lawn is located beyond the approved limits. A bridge and retaining wall has been constructed within the detention basin, and a native planting plan had not been implemented.

On a motion by R. Elkind; 2nd D. Henkels; the Commission voted unanimously in favor of denying the issuance of a Certificate of Compliance as the property currently does not comply with the approved plan of record.

WPA & Bylaw Request for Determination of Applicability: 159 Concord Rd., Removal of trees

Present: Neri Donalds

Ms. Donalds requested the Commission approve the removal of 21 trees from 159 Concord Road to remove a danger and establish lawn. Ms. Donalds explained the drainage issues from the church parking lot across the street has caused erosion problems at 159 Concord Road. The driveway has been washed out several times and the trees have been impacted.

R. Elkind stated that if the goal of tree removal is ultimately lawn expansion, that is not a viable reason to remove the trees. B. Armstrong and B. Porter both noted that the plan submitted was not at all clear as to the location and distance of the trees relative to the wetland. It was also difficult to tell on the plan which trees the arborist felt were immediate dangers. M. Sevier stated that removal of trees that are real threats to safety is good, but lawn expansion near wetlands is not good.

A letter from a certified arborist was submitted detailing the condition of the 21 trees. The arborist indicated that some of the trees were an imminent danger and some of the trees may be a danger in the future.

B. Armstrong and R. Elkind agreed that the arborist was unclear in his letter, particularly concerning the large groupings of ash trees. D. Dineen noted that if trees that are now compromised due to strangulation by invasive vines are removed and the vines are not removed, these vines will eventually find their way to the remaining trees and kill them as well. Any plan for tree removal should also have a plan for invasive vine removal and replanting. The proposed replanting of 3 rhododendrons and 2 birches on the northern property line is not enough mitigation for the removal of 21 mature trees.

T. Friedlander suggested Ms. Donalds consider phasing the project with the trees that the arborist stated were immediate safety issues removed now. M. Sevier stated that a planting plan and invasive plant management plan could be developed for the removal of the remaining trees at a later date.

On a motion by D. Henkels; 2nd B. Armstrong; the Commission voted unanimously in favor of issuing a negative Determination for the removal of the eight trees noted by the arborist as trees #1, 2, 3, 17, 18, 19, 20 and 21 and an immediate threat could be removed from the site immediately.

Discussion Land Stewardship Priorities & Considerations

Chairman Friedlander informed that Commission that he a D. Dineen attended a seminar by the Ecological Landscape Association in late July that discussed chemical-free strategies for invasive plant removal. One of the methods to remove invasive plants was through the use of goats. They do not remove herbaceous plants, thereby not creating an erosion issue on slopes. Their digestive systems alter the seeds they eat so that they are unable to germinate.

D. Dineen noted that goats could be expensive as they are \$600/week for the goats within a small area with an additional charge each time the fence needs to be relocated to another area. In addition, there would need to be a responsible party to water and feed the goats available at least daily for the duration. She thought the poison ivy and buckthorn infestation in the Piper Farm field could benefit from goats.

Discussion: Use of tick and mosquito sprays near wetlands

The Commission agreed to reactivate the Mosquito Subcommittee to look at possible regulation revisions to the wetlands bylaw to be voted later in public hearing to address the increasing use of mosquito and tick sprays in town. Although the companies advertise the product is all natural, a closer

look at the ingredients indicates that is not always the case. D. Henkels noted that the installation of more bat boxes could help the situation. The subcommittee will investigate further and report back at a later meeting.

Discussion of Public Outreach

A recent Fair at the Wayside Inn might have been an opportunity to provide additional public outreach on wetland, conservation, and agricultural issues. Another event is scheduled as an Agricultural Fair for Sept. 12th in the Town Center. The Commission agreed that participation in this event could be a good opportunity to provide more information to the public on what the Commission does and how it can help residents. T. Friedlander, B. Armstrong, D. Henkels, and C. Russo agreed to share manning of a booth at this event.

Violations Update and Action:

807 Boston Post Rd. – The Coordinator reported that a current report was recently received indicating that the replanting had been done and appears successful. She will set up a site inspection and inform the Commission.

Certificates of Compliance:

15 Thoreau Way; Payne – The Coordinator has conducted a site inspection, a report has been received from Bert Corey of Schofield Brothers, the work was done in accordance with the approved plan and the site is fully stabilized.

On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of issuing the COC.

Old County Rd. Sidewalk – The work has been completed in accordance with the approved plan.

On a motion by D. Henkels; 2nd C. Russo; the Commission voted unanimously in favor of issuing the COC.

301-935 Villages at Old County Rd (2nd OOC)- The Coordinator advised the Commission that the project was subject to two Orders of Conditions. The latter Order, #301-1063, had a COC issued at the last meeting. Subsequently, the prior Order was discovered as still outstanding. As #301-1063 superseded #301-935, #301-935 has been complied with.

On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of issuing the COC.

On a motion by R. Elkind; 2nd C. Russo; the Commission voted unanimously in favor of adjourning the meeting. 9:20pm.