

**SUDBURY CONSERVATION COMMISSION**  
**Minutes of the Meeting Held Monday, September 28, 2015**

Present: Tom Friedlander, Chairman; M. Sevier; B. Porter; Dave Henkels; Charlie Russo; Debbie Dineen, Coordinator

**Bid Opening: RFP for Agricultural Field Licenses**

Landham Brook Marsh Field; Piper Field(s); and Carding Mill Field went out to bid for agricultural projects. No bids were received. The Commission will re-bid and submit additional publicity to the newspaper and town website to try to generate interest.

**WPA & Bylaw Request for Determination of Applicability: 41 Oak Hill (cont.)**

Request received 9/28 (written 9/26) to continue the meeting to Nov. 2, 2015.

**Landham Brook Marsh Trail Clearing**

C. Russo participated in the SVT-organized trail clearing work day. He thought the day was very successful with 12 people volunteering in the morning work session and 6 people in the afternoon session. He stated that most of the work involved trimming of branches and raking of the trail surface.

**Site Plan Comments to Planning Board: 275 Old Lancaster Rd.; cell tower installation**

The Commission reviewed the plan for the construction of a cell tower behind the DPW Building within the existing paved area associated with the DPW activities on the site. The plan submitted did not indicate if the wetland delineation shown on the plan was a new delineation or if it was taken from GIS mapping. The riverfront area associated with Hop brook is not shown on the plan. In any case, the Commission has not approved the wetland delineation, including the mean annual high water, and that will need to occur to determine if the project needs wetland permitting.

D. Dineen informed the Commission that a member of the Board of Health, acting independently as an abutting neighbor, expressed concern for the possible impacts to impacts to wildlife from the emissions from the tower. She was to forward studies indicating negative impacts from these emissions. No studies were received. The Commission felt that without extensive, proven information to the contrary, the Commission must presume no wildlife impacts from cell tower emissions.

**Land Stewardship: Tippling Rock Trail Relocation**

A recent survey by the Town resulted in confirmation that a small portion of a trail in the Tippling Rock Trail conservation land is located on private property. D. Henkels volunteered to close off the trail where it enters private land and relocate it and provide new signage on the town-owned land.

**Connect Carding Mill building to Sudbury Water District**

D. Dineen informed the Commission that a letter had been received from Sudbury Water District advising homeowners in the Dutton Road area that they could now connect to the SWD water main that was recently installed within Dutton Road. The Carding Mill Building, owned by the town as part of the surrounding conservation land is currently on a well that has had issues. The building is used currently for general town storage as it cannot be inhabited until the dam is reconstructed to meet minimum

state Office of Dam Safety requirements for habitation. She suggested, and the Commission agreed that the Town Facilities Director (Jim Kelly) be contacted for his opinion. She will report back on this matter.

#### **Performance Bond Release Vote: South Meadow Drive**

The Commission is holding an \$18,000+ bond plus interest. This has not been released as the OOC required the transfer of a 4+- acre parcel to conservation or Water District. This parcel is directly adjacent to Sudbury wells. This transfer was never completed. The parcel was taken by the Town for non-payment of back taxes, and even though the Commission wrote to the Tax Collector and Selectmen asking that the parcel be transferred to conservation, the parcel was sold at a tax title auction. The Town took the street as a public way (contrary to a recommendation by the Commission) so any issues with the detention basin are now in the hands of the town. The builder has no recourse to correct these actions of the Town.

On a motion by B. Porter; 2<sup>nd</sup> D. Henkels, the Commission voted unanimously in favor of asking the Treasurer to release the bond. M. Sevier abstaining.

#### **WPA & Bylaw Abbreviated Notice of Resource Area Delineation: 999 Concord Rd.**

With the concurrence of all parties, the hearing was continued without discussion to Oct. 19 to allow for peer review of the wetland line.

#### **Raytheon- Review Proposed Maintenance & Utility Work**

Material was received from Paul Finger Associates for a determination by the Commission if a formal wetlands filing is needed. Work involves minor utility relocation and pole installation within paved and/or disturbed areas on the Raytheon campus on Boston Post Road. The purpose of the work is to provide independent utilities to a small building on site that Raytheon is leasing back following the sale of the property. This utility work is exempt from the WPA. Under the bylaw the Commission may review this work to determine if it is exempt.

On a motion by M. Sevier; 2<sup>nd</sup> D. Henkels; the Commission voted unanimously in favor of approving the work as described in the letter from Paul Finger Associates dated Sept. 21, 2015 and shown on the plans entitled "Sudbury Temporary/Data Plan", "Sudbury Beltran Building Gas Line Plan", and "Sudbury Beltran Building Domestic Water Line Plan"; by Raytheon; all undated.

#### **Commonwealth of MA Executive Order #562: To Reduce Unnecessary Regulatory Burden**

On March 31, 2015 the Baker Administration announced Executive Order 562 To Reduce Unnecessary Regulatory Burden. This EO requires all government agencies to review all regulations and demonstrate that each one 1. Has a clearly identified need best addressed by the agency; 2. Cost of the regulation don't exceed the benefits; 3. Regulation doesn't exceed federal requirements or duplicate efforts; 4. There are no less restrictive alternatives; 5. The regs don't adversely affect MA competitiveness; 6. The agency has an established process and schedule for measuring the regulation's effectiveness; and 7, the regulation is time-limited or had a regular review. Each agency has to prepare a business/competitiveness impact statement for each regulation. Any regulation not meeting those standards will sunset on March 31, 2016. This includes the Wetlands Protection Act regulations.

Commissioners agreed that with the MA Association of Conservation Commissions that the loss of the Wetland Protection Act regulations would be a major step backwards for environmental

protection in the Commonwealth. They agreed to strongly support a constituency of environmental organizations in the state to oppose this EO. A standard letter in opposition will be sent.

Motion by D. Henkels; 2<sup>nd</sup> C. Russo. Unanimous in favor

**Status of Violations:**

44 Codman Drive

Although the property owner has been responsive, a solution has not been presented to eliminate the illegal trench draining water from a large lawn area to a vernal pool. The Commission will send a letter requesting removal of the ditch by Nov. 2, 2015.

24 Pelham Island Rd.

The homeowner has decided not to pursue expansion of his agricultural uses into what may be a wetland area due to financial reasons at this time. He proposes to restore the wetland area disturbed by the removal of the grape vines by planting native grasses in the disturbed area next spring. The Commission will visit the site following the spring growing season to determine if compliance and restoration has been achieved.

0 Washington Dr.

A meeting with Town Counsel and new Counsel for the Hollyers will be held on Sept. 30. It appears that the main issue is the pond elevation. Although the Order does not specifically state that the specific pond elevation to be achieved, the plan referenced in the Order shows a proposed pond elevation. Town Counsel noted that there is case law stating that proposed work on referenced plans is part of the Order and as such meeting those plan requirements must be accomplished before the issuance of Certificate of Compliance.

**WPA & Bylaw Notice of Intent: 443 Peakham Rd.; Marimon**

Present: Dan Wells of Goddard Consulting, LLC; Zenith Marimon

Mr. Wells presented plans to correct long-standing violations. A ticket was issued under the local wetland bylaw and it has been paid. The site contains a 100' upland resource area (AURA) associated with a vernal pool within a bordering vegetated wetland. The approximate area to be restored is shown on the plan. Mr. Marimon cleared and filled an area on his property that partially within the AURA. Some gullying of the filled area has occurred on the slope. The first step is to stabilize the material and to pull back the fill material 10' from the top of the slope. This area will be restored with native plantings and the rest will be lawn area. Arborvitae will be planted at the top of the slope and 6 oak trees will be planted on the slope.

T. Friedlander stating that asking for anything short of complete restoration is not acceptable to him. This violation has been on-going for several years. The applicant was contacted before the filling occurred to inform him of the wetlands on site. Prior, the realtor was contacted prior to the Marimon's purchase to explain that wetland jurisdictional areas covered part of the property. There are letters in the file confirming both of these attempts by the Commission to prevent the violation.

Mr. Marimon replied that the realtor never informed him that wetland jurisdictional areas were present on the site. He added that he has been dealing with personal issues and he flees, based on what he see on neighboring properties, that he has done nothing wrong.

C. Russo stated that he is usually sympathetic to residents and understands the need for having a lawn when there are young children. However, the Chairman is saying full restoration is needed and he agrees that the property should go back to the way it was before the violation.

B. Porter noted that there are no details of the planned restoration in the materials submitted.

D. Henkels questioned where the new lawn location is proposed. Mr. Wells stated that they will be restoring the slope and 10' back from the top of the slope. D. Dineen added that the project as currently proposed expands lawn within 100' of a vernal pool. This had never been permitted by the Commission. No mitigation is offered for the lawn expansion. B. Porter agreed and noted that the Commission must take future requests for lawn expansion near vernal pools on other properties into consideration. He doesn't see how the violation can be mitigated to result in no wetland harm except for full restoration. D. Henkels agreed with the need for full restoration and that the erosion and sedimentation issue is a problem and needs to be resolved right away.

D. Dineen suggested that the Commission needs further information to assess full restoration of wetland values and functions. The needed information includes a detailed grading and planting plan showing full restoration of the herbaceous, sapling, and canopy layer. A construction sequencing and erosion control plan is also needed. These plans should be comprehensive enough to enable the Commission to assess full restoration of wetland function and value. Mitigation should not be necessary due to the size of the lot provided full restoration of the disturbed jurisdictional area is accomplished. Full restoration of previous grades on the site may not be necessary if the drainage patterns are not altered by the final grading.

In written recommendations to the Commission, D. Dineen suggested the Commission consider the following conditions for the Order:

- deadlines for completion of milestones in the restoration process;
- on-site survey of the 100' buffer to be sure 100% of the disturbed area in the buffer is restored;
- site stabilization before plantings take effect; and
- removal of invasive as they occur; etc.

All parties agreed to continue the hearing to Oct. 19<sup>th</sup> at 7:20pm.

C. Russo left the meeting at this point.

### **Certificates of Compliance:**

#### **336 Hudson Rd.; Jaber**

D. Henkels and B. Porter will visit the site before the next meeting.

#### **79 Jarman Rd.**

D. Dineen reported that the Town Engineer reviewed the site and the as-built plans. Although the full amount of compensatory flood storage was not achieved, more than enough flood storage volume was created to provide compensatory storage as required in the wetlands regulations.

On a motion by D. Henkels; 2<sup>nd</sup> M. Sevier, the Commission voted unanimously in favor of issuing the COC. B. Porter abstaining.

#### **MA Federation Women's Clubs water connection, Dutton Rd.**

This is a filing from well over a decade ago when the Women's Federation connected their Dutton Rd. headquarters to the original Sudbury Water District water main in Dutton Rd. All work was

done in accordance with the approved plan.

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

999 Concord Rd. (duplicate original #301-674)

The Commission signed the duplicate original of the COC.

**Duplicate Order of Conditions: 25 Singletary lane**

The Coordinator reported that the new owners of this property would like to begin the process for obtaining a COC. The builder, David Howe, never recorded the Order so he would like a duplicate original to record at the Registry of Deeds as required.

The Commission signed the duplicate OOC.

**WPA & Bylaw Notice of Intent: 87 Cudworth Ln (cont.)**

Present: Dan Wells; Mr. Vick, homeowner

Mr. Wells presented a plan showing the proposed Conservation Restriction being offered as mitigation for expansion of lawn, patio, and house addition within 100' of the new wetland delineation which includes the detention basin. This basin was designed before Nov, 18, 1996 but it was unclear if it was constructed on or after November 18, 1996. D. Dineen noted that from aerial photos in the early 1990s, the basin was clearly under construction before 1995. Mr. Wells had agreed to indicate the new edge of wetland and resulting upland resource area on the plan. The revised plan reflects this new line.

The conservation restriction will begin at the base of the detention basin and encompass the undisturbed area in the rear of the property totaling over 3 acres.

Mr. Wells stated that he would like to bring the property into compliance with the original plans for the development of the lot and house construction, receive approval for the new proposed work, offer a conservation restriction for mitigation of the new work, and remove the bridge and retaining wall within the detention basin that are an impediment to the maintenance by the Town of this basin.

Town Engineer, Bill Place, has requested the Commission not make a final decision on the permitting of additional activities on this lot until he can review the spillway functioning to determine if the basin should be enlarged or not. If the basin needs to be enlarged, it may impact the plan for the site as significant excavation will be needed. A red-line plan done by Mr. Place was reviewed.

D. Dineen noted that additional items are needed for the Commission's review. This include: 1) addressing infiltration of runoff from the new house addition and patio; 2) specifics of the patio design; and, 3) stabilization measures for the area of the basin where the retaining wall is to be removed.

Mr. Wells requested a continuation to Oct. 19<sup>th</sup>. D. Dineen noted that the hearing may need to be continued to Nov. 2 if there is a question of a quorum under the Mullin Rule. One of the 4 Commissioners participating in the hearing tonight will not be available on Oct. 19<sup>th</sup>. She will check the Mullin Rule requirements and consult with Town Counsel as needed. It may not be enough to review the notes and materials of the meeting and sign and affidavit.

All parties agreed to a continuation to Oct. 19<sup>th</sup>, if possible to achieve the required quorum or Commissioners, or to Nov. 2 if needed to meet these requirements.

On a motion by M. Sevier; 2<sup>nd</sup> D. Henkels; the meeting was adjourned at 8:30pm.