

Sudbury Conservation Commission
Minutes of the Meeting held January 25, 2016

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

Minutes

On a motion by B. Armstrong; 2nd B. Porter; the Commission voted unanimously in favor of approving the minutes of Jan. 11, 2016 as drafted.

M. Sevier joined the meeting at this point. 6:35pm.

Discussion: Lots 4 & 5 Fairbank Rd. – alternative cold water fisheries protection

Present: Renee McDonough, Goddard Consulting; Beth Cosgrove, applicant

D. Dineen and Dave Henkels reported they had not been able to find a cold water fisheries expert to assist in developing a monitoring protocol. Based on the information that was obtained, proactive mitigation is better than monitoring and reactive corrections to a situation, particularly as it pertains to temperature increases in a stream. D. Dineen proposed that rather than monitoring long-term the Commission could consider requiring a planting plan to augment existing conditions along the stream bank. Stream modifications to enhance cold water fish habitat such as creating deep areas, adding riffles and pools, and providing some cover such as appropriately placed logs could be done to make the stream more resilient to negative changes in temperature. If feasible from an engineering standpoint, perhaps a second BMP such as a second infiltration basin at the low point on the driveway should be required. Monitoring would be done by the builder/developer just pre-and post-construction prior to issuance of the COC.

Commissioners agreed that this was the best approach for this project. Ms. Cosgrove concurred. A plan to enhance the stream habitat will be submitted to the Commission for review and approval.

Discussion: Acceptance of Public Ways: comments to Selectmen & Planning Board

D. Dineen informed the Commission that several street with outstanding Orders of Conditions are proposed for acceptance at the 2016 ATM. These include Arboretum Way, Trevor Way, and one other. Once these streets are accepted any issues outstanding in the OOC are the responsibility of the town. We should consider altering the Selectmen and Planning Board to this and letting them know what is outstanding.

Commissioners agreed and will send a letter to the Selectmen (copy to Planning Board) to inform them of the outstanding wetland Orders.

WPA Request for Determination of Applicability: Peter's Way Construction for Village @ Sudbury Station

Present: Christopher Claussen, applicant; William Henchy, attorney for applicant; Mike Sullivan, engineer for applicant; Diane Boretos, Call of the Wild Consultants for the applicant

Atty. Henchy presented a plan for the construction of the portion of the roadway within WPA jurisdiction to serve a Chapter 40B development. An ORAD was approved in the summer of 2015. Wetland resource areas include Mineway Brook, deemed intermittent in the area abutting the roadway, a small area of bordering vegetated wetland associated with Mineway Brook, and bordering land subject to flooding. No work will occur within WPA resource areas. Only work in the 100' buffer zone is proposed.

Atty. Henchy stated that the work proposed is an improvement over existing conditions as no stormwater will leave the right-of-way post-construction.

Engineer Michael Sullivan explained that the current conditions include a detention basin for runoff uphill of the gravel roadway. This basin was not sized for any particular storm event. The new road will be 34' wide at Concord road and 24' wide for the remainder of its length. There will be a variable grade transition with grade changes from 2' to 4'. Following some discussion and confusion, it was determined that the sidewalk will be located as shown on the plan on the east side of the roadway. Erosion control will be installed prior to any other work on the site. Two diversion berms will be installed as shown on the plan to divert water from the construction area during construction activities. Stone will be placed at the intersection with Concord road to help prevent tracking of material onto Concord Rd. A temporary siltation basin will be installed outside of wetland jurisdiction to capture runoff and sediment during construction of the roadway within the buffer zone. A 24" drain line will be installed in the roadway to capture runoff and direct it the sedimentation basin and ultimately direct to a stormwater management structure for treatment and infiltration. This structure and any outfalls from it will be located outside of WPA jurisdiction. A 400' long retaining wall on one side of the road and a 50' retaining wall will be constructed. These structures will enclose the construction area and ensure all runoff is diverted into the temporary sediment basin.

D. Dineen summarized Conservation Commission jurisdiction. The project is a Request for Determination of Applicability and is only under the WPA as it is associated with a Chapter 40b affordable housing development. As such, there is "buffer zone only, no upland resource area performance standards to meet per the local wetland bylaw. A site inspection was held Jan. 19. T. Friedlander, D. Henkels, D. Dineen present for SCC. Work is limited to roadway and drainage construction in the buffer of an intermittent stream and associated small area of bvw for a small portion of the roadway system off Concord Road to serve the proposed development. Because the stormwater treatment system and discharge is currently planned to be outside of wetland jurisdiction, review is confined to construction and use impacts from a 24' roadway located on already disturbed land with a gravel access roadway used for cemetery access for town service vehicles. Where the roadway meets Concord Road, it is widened to 34'. A small isolated bvw exists at this location and will be altered by the construction. This isolated bvw is not jurisdictional under the WPA. The drainage pipe is placed up to 12' below ground to achieve the required slope. Erosion control is shown on the plan. Should any components of this system ultimately be revised to be located within wetland jurisdiction, a new RDA/NOI will need to be filed.

The Commission's decision is for a "positive" or "negative" Determination; meaning positive or negative wetland impacts. If you feel that you need to place conditions on the project, you should find "positive" which will result in either 1) an appeal of this decision; or, 2) the filing of a Notice of Intent.

Resource area locations were previously approved under an ORAD in 2015. Alteration is at least 20' at the closest point to the bvw of the intermittent stream. Erosion control is shown on the plan to be approved. Protection of areas under the jurisdiction solely under the wetland bylaw will be handled by the Zoning Board of Appeals. The applicant is likely to request waivers of wetland bylaw performance standards. D. Dineen encouraged Commissioners to make their concerns know to ZBA at the time of their hearings on the project.

Diane Boretos explained that the project is located with a state natural Heritage and Endangered Species Priority Habitat Area. The NHESP has issued a letter indicating "n take" of the species will result from this project. This decision is conditional upon the project being constructed substantially within the limit of work in conformance with the preliminary plans submitted to MassHousing.

D. Dineen asked for clarification on the construction of the diversion berms. M. Sullivan explained that the berms will be 6" to 8" high, constructed of stone rip-rap, and have a filter fabric included to control sediments.

D. Henkels questioned what the ultimate discharge of the runoff from the site will be. Atty. Henchy stated that the runoff will be directed to stormwater management structures located outside of WPA wetland jurisdiction.

C. Russo suggested the Commission could deny the project based on lack of information. It could also deny based on alteration outside of wetland jurisdiction that could have a negative impact on wetland resource areas. Atty. Henchy responded that the Commission could 1) find that the project requires a Notice of Intent; or 2) find a negative Determination or negative Determination with conditions. The Commission cannot take jurisdiction based on an alteration of an area outside of jurisdiction where no impact has yet occurred to that resource area. That provision is only an "after-the-fact" provision.

C. Russo suggested the Commission hire a peer reviewer to review the proposed roadway work. He noted that the plan was very well thought out to avoid Conservation Commission involvement. He felt a Notice of Intent would be more appropriate in this situation. No motion was made to hire a peer reviewer and no motion was made for a positive Determination.

R. Elkind expressed concern for long-term roadway maintenance and the use and maintenance of the roadway and catch basins that could result in significant wetland impact. Atty. Henchy reviewed the fact that the roadway, including the drainage, is contained within the retaining walls and directed away from the wetlands. Catch basins will be fitted with deep sumps and grease/gas traps. These can be required in any Operation and Maintenance plan.

David Hornstein, 22 Candy Hill Road, questioned how snow removal might impact wetland areas with the sand and chemicals in the snow as the plowed snow is likely to overtop the retaining walls. D. Dineen noted that snow plowing issues are usually handled by placing perpetuity conditions on the project that permit only the use of non-sodium-based deicers such as calcium or magnesium-based products. She noted that it is not the practice of the Commission to include conditions in a negative Determination, however it is legal to do so. She added that a positive Determination, subsequent NOI and resulting Order could require these restrictions as well. In addition, the Commission can become involved in the ZBA process to encourage such type of conditions in the ZBA permit.

Joseph Sicree, 16 Candy Hill Road, expressed concern that the Town could be stuck with 400' of roadway of the project does not go forward. Atty. Henchy replied that if the 40B project does not get approved, the wetland bylaw would apply to any subsequent non-40B development on the site.

Mr. Hornstein questioned the construction of the retaining walls. D. Dineen replied that the walls would need to be designed by a structural engineer if they are over 6' or 8' tall. The Commission reviews the disturbance from the walls and the wall placement, not the structural details of the construction. The walls are shown within the limits of disturbance that is contained within the erosion control. There is a sequencing plan for timing of elements to prevent erosion.

Commission Vice-Chairman, B. Armstrong, stated that there is big difference in project review under the WPA vs. under the wetlands bylaw. She acknowledged that this is not a popular project but project popularity cannot be taken into account by the Commission. She said the snow removal issue was a legitimate concern raised by Mr. Hornstein and can be taken into account through the permit process and during construction.

D. Henkels noted concern for the impact on the surrounding environment from this proposed development.

C. Russo started that he would be comfortable with more details and an alternatives analysis. D. Dineen noted that under the WPA an alternatives analysis is only required for work in riverfront area.

There is no riverfront area in the location of the work proposed under this wetland filing and the wetlands bylaw requirement for an alternatives analysis cannot be applied to this Chapter 40B project.

R. Elkind stated that he did not feel the Commission has the jurisdiction necessary to protect the wetlands associated with this project. Chairman Friedlander agreed but stated that the Commission has to follow the rules and regulations that are in force for review. B. Armstrong added that she sees Chapter 40B developments as a loophole in the law that the state should address, but until it does, the Commission has to abide by what it can do by statute.

B. Armstrong motioned for a negative Determination of Applicability with the condition for receipt for review and approval of a snow removal plan. M. Sevier 2nd; 3 in favor (Friedlander, Armstrong, Sevier) 3 opposed (D. Henkels, R. Elkind, C. Russo); B. Porter abstaining.

Atty. Henchy stated that the vote was essentially one of “no action” by the Commission. He would have preferred a cooperative and collaborative process.

D. Dineen questioned the Commissioners who were opposed as to what questions they feel were unanswered and suggested a continuation or positive Determination might unable answers to these questions to be provided. Commissioners decided to allow the no vote outcome to stand by taking no further action.

Discussion: 3 Cail Farm Rd., Fico; remaining items for Certificate of Compliance

Present: Joe and Maureen Fico

The homeowners are looking for COC. They have several outstanding items they would like to present their proposal for resolution to the Commission. The OOC required the annual mowing of what was a field area in the rear of their lot. This was not done and the area grew up to be almost 100% dense buckthorn with a few dogwoods on the perimeter. This area has been mowed and the homeowners, as required by their OOC, are looking to install the required physical barrier between the lawn and the meadow. This barrier must allow for the annual mowing. A split rail fence is proposed.

D. Dineen noted that although the invasive buckthorn has been mowed down once, it will return in the next growing season. Annual mowing will not necessarily maintain the area as the intended meadow. The Ficos asked if they could just mow the area annually and keep it in its current, mowed state.

B. Armstrong asked what it would take to restore the area to a functioning meadow. Renee McDonough of Goddard Consulting offered some advice for meadow restoration. Work included rototilling to below grade and replanting with native seeds. The scope of work was more than the Ficos wished to take on at this point. D. Dineen suggested more aggressive mowing for several years to curtail regrowth of the buckthorn.

The Ficos and the Commission agreed to at least monthly mowing during the growing season.

Discussion: 36 Willis Rd., Certificate of Compliance Requirements; Doreen Rao

Present: Doreen Rao

A site inspection was held on 1/21 with Tom, Dave, Debbie, and Doreen Rao. Home built in 1998. Evidence of much work by homeowners to eradicate invasive plant species. Restoration to the meadow does not appear to be practical at this point and the native species of shrubs and trees now present serve to help to protect and shade the vernal pool on the immediately adjacent SVT land. In a written statement. Dan Wells of Goddard Consulting noted that the vernal pool will do better in a wetter environment with trees and shrubs rather than open meadow.

D. Dineen recommended not requiring the berm at the edge of the CR area as this will trap water runoff intended for the vernal pool. Commissioners agreed. D. Rao agreed to plants blueberry shrubs in the area of the CR encroached on by lawn and to continue to remove invasive plants. The CR document will be forthcoming.

Commissioners agreed to allow the shrubs and trees that are native to remain in the CR/meadow area. Ms. Rao agreed to replant the small area of lawn encroachment into the CR with high bush blueberries. The bounds for the CR have already been installed.

Violation Updates:

1. Lot 4 Anthony Drive

Present: Renee McDonough, Goddard Consulting

Foundation plan showed that the house was located correctly. A quick measurement (Tom, Dave, Debbie on 1/19) showed that the wall was inside the upland resource area. It measured approximately 98', however this was an uphill measurement so the actual distance to the wetland would be less. There has been no response to the EO/NOV. (And no response to enforcement action by the Building Inspector). Violations included failure to record the OOC at the Registry and failure to maintain erosion control. EC has not been corrected on site. Ms. McDonough suggested the site could benefit from a requirement for on-going construction monitoring.

On a motion by D. Henkels; 2nd B. Armstrong; the commission voted unanimously in favor of issuing a ticket under the bylaw for the violations. They also signed a duplicate Enforcement Order for recording at the Registry of Deeds to alert any buyers of issues pertaining to lot permitting.

2. Lot 5 Anthony Drive

Access to this property to measure distance to wetland was not available as there is not an Outstanding OOC giving the Commission the legal mechanism to do so. No response to EO/NOV has been received. The Commission agreed to see if there is a response to the ticket for Lot 4 and issuing ticket for Lot 5 on 2/8 if no response by that time.

3. 168 Horse Pond Rd.

This was an on-going violation that was brought to the Commission's attention last spring. No NOI has been received after 10 months. LEC Environmental has indicated a NOI would be submitted for a February hearing. Nothing has been received to date and the hearing of Feb. is already closed. The violation consists of alteration in bvw and riverfront.

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted unanimously in favor of issuing a ticket under the wetland bylaw.

4. 36 Wright Rd.

A site visit was held on 1/21 by Tom, Dave, Debbie, and Greg Sawin. The purpose was to meet with the homeowner on site to determine what made sense for the extent of landscape debris removal. Homeowner agreed to remove all loose debris (branches, landscape debris, stone, concrete, etc. The area that has already composted appeared to be before his purchase and removal of this underlying debris will cause the slope to be destabilized. Homeowner was told he could place a contained compost pile in a cleared area within wetland jurisdiction but well outside of bvw.

On a motion by B. Armstrong; 2nd D. henkels, the Commission unanimously voted to ratify the recommendations of Commissioners who were on site.

Discussion: SVT Memorial Forest Violation response

The Commission received a response to their violation letter requesting an NOI be submitted. The reply seemed to imply they will not be filing an NOI. A decision should be made to determine if the

NOI should be required and if any other issues, such as allowing the disturbed areas to revegetate naturally is acceptable to the Commission.

Commissioners agreed to meet with SVT and other stakeholders in the decision, such as the horseback riders at nearby stables, to discuss a solution that will benefit everyone while protecting wetlands.

Signatures:

1. Duplicate original OOC: 32 DeMarco Dr.
2. 2015 Annual Report

Were signed by the Commission members.

Project Updates: Updates of on-going projects by Commissioners & Staff

- Walk scheduling to maximize participation

Chairman Friedlander noted that most Commissioners are not attending any scheduled site inspections, nor are they suggesting any alternate times/dates that might be more acceptable. He requested that they respond to site visit requests in the future.

- Videotaping Conservation Commission meetings

A request had been received from Selectmen Simon asking that the Commission videotape their meetings. The DPW facility is not readily equipped for videotaping. The local cable channel would have to be notified well in advance of each meeting and they would have to send a single camera and microphone to the meeting. Moving the meeting locations to the lower Town Hall or Flynn Building would involve the transport of large amounts of materials and competing for meeting time/date with other boards. The Commission must react immediately to post meetings with a maximum of 21 days to hold a hearing by statute. The time it could take to determine what rooms might be available is likely to result in missed deadlines.

As there have been no requests from the public for videotaping Conservation Commission meetings, the Commission will continue to meet at DPW.

Eversource Vegetation Clearing on ROW

The Commission agreed to send a letter to Eversource expressing concern for the scope of work in the wetland areas and suggesting a joint site inspection.

On a motion by R. Elkind; 2nd B. Armstrong, the meeting was unanimously adjourned at 9:00pm.