

SUDBURY CONSERVATION COMMISSION

Minutes of the Meeting Held WEDNESDAY, Feb. 10, 2016 (postponed from Feb. 8)

Present: Tom Friedlander, Chairman; Beth Armstrong, Vice-Chairman (6:40pm arrival); Bruce Porter; Mark Sevier; Dave Henkels; Debbie Dineen, Coordinator

Minutes

On a motion by B. Porter; 2nd D. Henkels; the Commission voted unanimously in favor of approving the minutes of Jan. 25, 2016 as drafted.

Scavenger Hunt

Commissioner Dave Henkels has offered to lead a scavenger hunt on the Davis Farm conservation land during February vacation week on Feb. 18th from 10 – 11:30am. Kids and adults will all be welcome. T. Friedlander offered to assist.

WPA & Bylaw Notice of Intent: 17 Lincoln Lane; Robert Hanig, applicant

Notice of Intent filed for driveway, patio and landscaping construction. Site inspection held Feb. 4, 2016. T. Friedlander; Beth Armstrong; D. Henkels; D. Dineen present

The applicant had requested continuation on Feb. 5 to Feb. 22 to address issues brought up on the site inspection.

On a motion by D. Henkels; 2nd M. Sevier; the Commission voted unanimously in favor of continuing the hearing to Feb. 22, 2016 contingent upon receipt of the revised plans by Tuesday, Feb. 16, 2016.

Violation Updates:

Present: Renee McDonough, Goddard Consulting

Lot 4 Anthony Drive:

D. Dineen summarized the outstanding issues. No monitoring reports have been received relative to the invasive plant species removal per the Order of Conditions. The large retaining wall is within 100' of wetland based on the recently submitted interim as-built plan. The grading is not as shown on the approved plan. The drainage swale on the side of the driveway does not appear to be in place. The drainage outfall on the lot was proposed outside of wetland jurisdiction but was installed within the upland resource area. This work can trigger a NOI to the Commission for subdivision road and drainage work.

R. McDonough agreed with the summary of the outstanding violations and stated that she has had conversations with the builder and site manager and is working on getting a Notice of Intent filed.

T. Friedlander noted that removal of the retaining wall may trigger a zoning violation due to the height of the building from the ground. B. Porter added that the work done without a permit was a blatant disregard for wetlands. The applicant had an approved order of Resource Area delineation so there is no excuse for not knowing where the wetland jurisdictional areas are on the site.

T. Friedlander stated that it was the Commission's preference to not ticket if the funds can be used for correction of the violations. M. Sevier added that tickets are used to get the attention of the violator. That seems to have happened in this case. D. Dineen noted that the owner has not contacted the Commission after receipt of the Enforcement order and the first ticket. Although they are working with Renee of Goddard Consulting, it is likely to have happened only because she contacted Renee

directly concerning the violation of her clients after failure to get a response from the property owner. D. Dineen further noted that it has been the policy of the Commission to ticket builders and developers as they should be aware of the laws under which they do business. Tickets are only used as a last resort when the violation appears to be done by a private homeowner who was not aware of the regulations. B. Armstrong reminded the Commission that an Enforcement Order has been issued and recorded for this lot to put buyers on notice.

Lot 5 Anthony Drive:

R. McDonough informed the Commission that the interim as-built plan shows the stone retaining wall and grading within 100' of wetlands. There was no wetland filing on this lot. She is working with the builder, Jim Fenton, and Donna, the property manager, to file a Notice of Intent for restoration of this area.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of issuing an Enforcement Order and a \$100 ticket on Lot 5.

WPA & Bylaw Abbreviated Notice of Resource Area Delineation: (cont.) 0 Willis Rd.

Present: Renee McDonough of Goddard Consulting

This hearing is for a review of the wetland delineation only. A revised plan was received dated Jan. 12, 2016 that showed the revised flagging based on a site inspection by the Commission's peer reviewer, Dave Burke, and Commissioners T. Friedlander and D. Henkels. Mr. Burke had not had an opportunity to field verify the changes as he only received the plan on Feb. 8.

Several abutters were present but they did not have any comments at this time.

On a motion by M. Sevier and with the consent of the applicant's representative, Renee McDonough, the Commission continued the hearing to Feb. 22, 2016.

WPA & Bylaw Notice of Intent: 26 Goodman's Hill Rd.: R. McGinty Trustee

Present: Robert McGinty and Richard Curtin, Old South St. Realty Trust, property owners

The Notice of Intent was filed by the applicants for after-the-fact approval of grading, retaining wall construction, lawn, and irrigation components within the 100' upland resource area without a permit. Proposed mitigation consisted of the removal of a 24' x 24' foundation within the 100' upland resource area. This foundation was already removed without a permit as well.

Mr. Curtin explained that the property is a 6.7-acre lot with 80% of within a conservation restriction. The area developed was formerly a hillside meadow with an impervious foundation within 100' of the wetland. Water and electricity, now not functional, was previously run to the foundation by a former owner. Mr. Curtin explained that the encroachment into the 100' upland resource was the result of his subcontractor placing the erosion control in the wrong location. He did not see any harm in allowing the encroachments to remain as is in the upland resource.

The Commission had received a letter from abutter, Amber Fairbank, asking the Commission to require restoration of all wetland jurisdictional areas on this lot. She noted, and included an aerial photograph showing the foundation as having vegetation growing up through it. D. Dineen noted that if vegetation was growing up in the foundation, it was not impervious. Mr. McGinty stated that the foundation had broken-up asphalt and concrete within the walls.

D. Dineen recommended the applicants be required to restore all areas within wetland jurisdiction back to the former meadow with native grasses. The Order should require a comprehensive landscape and regrading plan. She advised the Commission that the applicants had obtained an Order

of Resource Area Delineation in May 2014 so they were well aware of the location of the 100' upland resource.

A review of the septic as-built plan indicated that the additional grading and lawn were added after the final Board of Health inspection. The plan submitted with the NOI shows these additional features. It was noticed on a site inspection that the retaining wall contained construction debris such as asphalt, roof paper, wire mesh, and general trash. Mr. Curtin said he has a video showing they removed the items from the wall. He did not submit the video to the Commission for the record.

M. Sevier suggested it might be possible to require only partial restoration. T. Friedlander, D. Henkels, B. Porter, and D. Dineen were on the site inspection. B. Porter felt that the majority of the disturbed upland resource should be restored. B. Armstrong felt that the Commission must consistently apply the wetland regulations. She asked the applicants if anything else was proposed for mitigation. Mr. Curtin replied that he felt restoration was "ridiculous" but he would remove the retaining walls and the grass. They did not offer any additional mitigation.

D. Henkels agreed with B. Armstrong that regulations must be applied consistently.

D. Dineen noted that the irrigation well, also installed without a permit within the upland resource area appeared to be set for future reactivation with a rubber pip out of the ground in the area of the pump.

M. Sevier suggested the applicants engage a wetland specialist to advise them on the regrading and restoration plan. He felt it would save time and costs overall. He added that if the applicant agrees to present a restoration plan, rather than the Commission dictating what the plan should be, he might be better off. The applicant did not request a continuation to present a restoration plan.

On a motion by B. Armstrong, 2nd B. Porter; the Commission voted unanimously in favor of closing the hearing. The Coordinator will prepare a draft order for review and vote at the Feb. 22, 2016 meeting.

Discussion: 4 Cail Farm Road Violations

Present: Antoine Galou, homeowner

Mr. Galou stated that he will remove the swing set from the meadow that is covered by a conservation restriction and will hire Goddard Consulting to assist him in preparing a plan to restore the meadow area. He would like to just let the area grow back naturally. T. Friedlander noted that if left to revegetate on its own, it is likely invasive plant species will colonize the area. D. Dineen noted that the fence generally marks the limit of lawn. Mr. Galou pointed out that the plan showing limit of eco-lawn appears to have a greater area of lawn than is actually on the property. He would like to determine where that limit of lawn. M. Sevier suggested contacting the landscaper who prepared the plan and requesting the CAD file so he could measure off the actual area. B. Armstrong felt this would clarify where the fence should be located and where the conservation restriction area begins.

Debriefing on Peter's Way RDA vote process

Chairman Friedlander stated that Conservation Commissioners should be voting on sound regulatory process and personal feelings about the development cannot enter into consideration. He would like to discuss how these types of discussion are handled in the future.

B. Armstrong wondered if Commissioners had confusion about the role of the Commission in 40B developments where the review is strictly limited to meeting the performance standards of the Wetlands Protection Act. She added that the Commissioners need to ask questions if they are confused on jurisdiction and pay close attention to the limits of that jurisdiction.

D. Henkels agreed but as a Commission member he felt that any impact within jurisdiction should be taken into account. He stated he was concerned about downstream impacts to wetlands from the roadway.

D. Dineen explained that all jurisdiction under the local Wetlands Bylaw is handled by the Zoning Board of Appeals. The Commission may attend the ZBA hearings and submit written comment as well to voice concerns and help ZBA understand the local impacts to wetlands.

B. Porter stated he abstained because he saw no clear path to accepting or rejecting the plan submitted. D. Dineen stated that if more information was needed, or clarification of any matter was an issue, the Commission could have taken another vote to find for a positive Determination which would have required a Notice of intent. An NPOI would have more detailed and comprehensive information. She added that the applicant could appeal a positive Determination to DEP.

B. Armstrong felt a negative Determination was the right decision and, as an attorney, she has to respect the limited jurisdiction offered by the WPA.

David Hornstein, Candy Hill Rd., suggested that the developers before the Commission this evening were held to a higher standard than the Sudbury Station developers. He agreed that the Commission should not exceed its authority but should exercise its power to the extent possible. He did not feel the Commission used a "fine-toothed comb" in reviewing the plans. M/ Sevier stated that Mr. Hornstein would need to be on the Commission to understand the subtleties in the regulations and the limits of jurisdiction under the WPA. T. Friedlander added that Mr. Hornstein can appeal, as part of a ten-citizen group, the decision of DEP as it will be issuing the superseding Determination.

87 Cudworth Lane: Review Conservation Restriction & Invasive Species Management Plan

D. Dineen reported that the revised CR has not yet been received. It was due 1/25/16 after 2 week extension. She suggest another extension to March 7th as she believes the issue holding it up involves the distribution of proceeds should the CR be extinguished. Commissioners agreed to this extension.

Violation Status:

168 Horse Pond Rd.: No NOI has been received yet. This violation was first discovered last spring. A ticket for issued last month. R. Kirby of LEC Environmental is working on the NOI. It was to be submitted for a Feb. meeting.

12 Evergreen Rd.: Clearing of trees occurred in the area around the house on this odd-shaped lot. A small amount of clearing was done in the outer riparian area. It is likely that the homeowner was not aware of this jurisdiction as there is lawn and landscaping between the area of tree removal and Dudley Brook from an abutting property. Commissioners agreed that a letter should be sent to the homeowner advising them of the jurisdictional wetlands on their property.

85 Ford Rd.: The certified letter and ticket sent to the tree company was returned as unclaimed. T. Friedlander suggested the homeowners be notified by letter.

25 Union Ave.: A site inspection on Feb. 2 requested by the owner resulted in the Commission viewing several violations on the property. Clearing of vegetation with 100' of wetlands; storage of pallets on the top of the bank to the wetland; gate installation next to the brook; and the paving of area within the riverfront area were observed. B. Porter, D. henkels, D. Dineen, and T. Friedlander were on site.

On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of ratifying the ticket issued Feb. 2. On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of issuing and Enforcement Order and recording a copy of this EO at the Registry of Deeds.

MA DOT Pantry Brook fencing and beaver dam removal

T. Friedlander informed the Commission that the Commission will be discussing some consequences of beaver dam removal at the Pantry Brook trestle bridge at the Feb. 22 meeting. An RDA filed by MA DOT will be heard on March 7.

ZBA hearings scheduled:

Chairman Friedlander informed the Commission that the ZBA will open their hearing for Sudbury Station on Feb. 22. The ZBA hearing for Avalon (Raytheon) is scheduled to begin on March 7. Commissioners discussed possibly moving the Commission hearings after March 7 to Wednesday nights to allow Commissioners to attend the ZBA hearings.

On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of adjourning the meeting at 8:50pm.