

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, March 21, 2016

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

Absent: Dave Henkels

Chairman Tom Friedlander called the Meeting to Order at 7:15am.

Minutes

On a motion by R. Elkind, B. Porter 2nd; the Commission voted unanimously in favor of approving the minutes of March 7, 2016 as drafted.

WPA & Bylaw Notice of Intent (cont.) 41 Oak Hill Rd.; A. Minihane, applicant

A continuation request was received 3/21/16 (emailed 6:30pm on Friday 3/18).

On a motion by C. Russo; 2nd B. Armstrong; the Commission voted unanimously in favor of continuing the hearing to April 4, 2016.

WPA & Bylaw Notice of Intent (cont.): violations in the SVT Memorial Forest, Sudbury Valley Trustees,

A continuation request was received 3/16/2016.

On a motion by R. Elkind; 2nd B. Porter; the Commission voted unanimously in favor of continuing the hearing to April 4, 2016.

Certificates of Compliance: 0 Washington Drive - DEP File #301-623, #301-1093, and #301-1117

WPA & Bylaw Request for Determination of Applicability: 0 Washington Dr. Mark Hollyer; After-the-fact fence installation

A continuation request was received 3/21/16 for both the Certificates of Compliance and the Request for Determination from Attorney Richard Nylén.

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted unanimously in favor of continuing the Certificates of Compliance and Request for Determination discussions to April 4, 2016.

WPA & Bylaw Notice of Intent: 25 Union Ave., violation corrections

Present: Chris Doty, JG Crowe Associates; Steven Turner, Gold Brick Development, applicant;

Mr. Doty presented plans that were submitted with the NOI to address the violations on the property. An Enforcement Order was issued by the Commission most recently in Feb. 2016. A previous violation was issued in 2012, which the owner stated he never received. A site visit was conducted by the Commission on Feb. 2. In attendance were T. Friedlander, D. Henkels, B. Porter, and D. Dineen. Violations found include clearing of vegetation around the building which is within the 100' upland resource area of bordering vegetated wetland (bvww), a vernal pool and, riverfront area; storage of pallets and other materials at the top of the slope to the bordering vegetated wetland; parking off the pavement within 100' of a stream; additional pavement of 260 sq. ft. +- was installed on the west side of the building; and installation of a gate and posts within 100' of the bordering vegetated wetland.

Mr. Doty stated that the streams on site were intermittent. D. Dineen advised the Commission that no information was submitted to document that the streams are intermittent under the

bylaw. Only the one stream on the south side of the building was dry on the Feb. 2, 2016 site inspection.

Erosion control of straw wattles will be installed. Pallets will be removed, and the reemergence of vegetation will be allowed to occur. Reseeding and reestablishment of turf will be accomplished where parking off the pavement has occurred. A small, shallow bio-retention-type basin will be constructed to capture 1.4" of runoff from the new pavement. No soil will be added under this basin.

S. Turner noted that the site has seen quite a bit of activity as it is leased to a roofing contractor who has been extremely busy due to the hailstorms. The gate was installed for security purposes.

D. Dineen presented a comparison of aerial photos (approx. 5 years old) and photos taken on 2/2/2016 show a clear enlargement of the cleared areas around the building. More clearing has occurred than simply keeping the fire access around the building open. This area has been enlarged significantly. It appears to be doubled in the area to the east of the building. The Commission discussed the revegetation plan for the clearing. Revegetation is likely to result in the proliferation of invasive plants as buckthorn is on site. A comprehensive planting restoration plan should be submitted for the areas illegally altered (pallet area and fire lane). A more permanent means of demarcating the limits of the fire access lane at its former extent should be proposed. Mr. Doty noted the Fire Dept. requires a minimum area for clearance around the building. D. Dineen suggested looking at the original site plan approvals to determine the extent of required clearance.

Turf areas are proposed to be reestablished. If turf means grass or sod, these areas should be stabilized with native grasses or plants. The applicant should look at the possibility of increasing the amount of runoff from paved areas that can be treated.

With the agreement of all parties, the hearing was continued to April 4, 2016.

26 Goodman Hill Rd.- Restoration Plan Review and Erosion Control approval

The Commission reviewed the Minglewood Design plan dated March 12, 2016 and Restoration Narrative date March 17, 2016.

On a motion by R. Elkind; 2nd M. Sevier; the Commission accepted the plans and activities outlined in the narrative subject to receipt of the performance bond required in the Sudbury Wetlands Administration Bylaw Order and the recording information for both Orders. Work as outlined may commence on site upon written acknowledgement by the Commission of receipt of these funds and recording information.

Violation Updates:

Lot 4 Anthony Dr. & Lot 5 Anthony Dr.

An update was received today from Renee McDonough of Goddard Consulting stating they are working with the applicant on resolving the issues at both of these parcels. If all work is to be reverted back to what was originally approved, this may create complications with building code. The builder is working with the building department in order to come up with the best solution.

T. Friedlander and D. Dineen both checked with Mark Herweck, Building Inspector/Zoning Enforcement Agent. Mark Herweck has had no contact from Mr. Fenton relative to Lot 4 Anthony Dr. The Commission understands that compliance on Lot 4 may involve a zoning issue involving building height restrictions. Mr. Fenton did not show up for an initial meeting with Mark Herweck last month. The Commission has not received an NOI for Lot 5 which appears to have a simple solution for compliance.

Because it appears that steps are not being taken by the property owner to correct the violations on Lots 4 & 5, the Commission is requiring the NOIs to be submitted on or before Monday April 4 2016. The NOI must address restoration of both lots to comply with the plans approved by the Commission. If the NOIs are not received by this date (which is a generous extension of the initial 30 day deadline in the Enforcement Orders) the Commission will begin issuing citations daily at \$100 per offense. In addition, they will consult with Town Counsel as what other steps can be taken toward compliance.

The Commission understands that Ms. McDonough has been working diligently to move her client toward compliance. Unfortunately he has been unresponsive to date and the Commission must pursue all available methods toward compliance on these 2 properties

87 Cudworth CR update

The final CR is still being developed. The attorney is working with the state EOEEA to resolve the issue of proceeds distribution in the case of extinguishment.

Lot 56 Bigelow

This lot is under construction and the Order of Conditions has expired. The Order was a DEP Superseding Order and had the benefit of the Permit Extension Act of an additional 2 years in addition to the 3-year Order. D. Dineen has contacted DEP to advise them but has not heard back. The Commission could take enforcement action at this time as work is proceeding without a valid permit.

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

Conservation Land Signs: T. Friedlander informed the Commission that he and conservation staff are investigating new designs for signs for conservation lands to replace the existing signs which are severely in need of replacement. He is looking into the design and cost of the signs used by the Historic Districts Commission.

Eversource Transmission Project – update from 3/16 Open House

T. Friedlander, D. Henkels, B. Porter, M. Sevier, D. Dineen attended the Open House. The format was described by D. Henkels of more of a “job fair” and the Commissioners agreed. There was no opportunity for discussion in an open forum. It was just individual conversations with Eversource employees. It was extremely well-attended.

M. Sevier provided a very informative email to the Commission relative to the process. He summarized what he had learned from discussions at the open house in an email to the Commission as follows:

The proposed transmission line project originated from ISO-NE (Independent System Operators, the entity that manages generation and power flow on the NE electric grid) where Eversource (as the local transmission & distribution provider) is directed by the MA DPU to propose options that have the best 'score' (lowest impact on 3 scales), so Eversource doesn't have much of a stake in the eventual routing, aside from being able to earn 'return on equity' from the eventual project. Which is to say, if there is enough turnout and opposition at the DPU EFSB open meeting to the currently proposed routing, Eversource would follow whatever route the MA DPU EFSB directs them to follow; Eversource makes return on equity based on % of project costs, so the more the project costs, the larger the return to

shareholders (limited to about 10%). The proposed overhead route has a \$45M cost estimate, while the underground route is \$100M, so underground returns more than overhead; the same can be said for taking a longer and/or more expensive alternate route.

ISO-NE originated this project (along with about 40 others across the network) where the MA DPU is the eventual decision maker, taking into account the overall benefits vs local impacts. The estimated overall customer cost savings (about \$800M/yr due to providing improved distribution of lower cost electricity) from the ISO-NE transmission system upgrades vs the estimated \$1.5B construction cost in theory yields a 2 yr payback for ratepayers.

The Commission felt that perhaps a letter to the Siting Board at this time might be beneficial. Commissioners were all in agreement that a letter should be sent to the Siting Board. Len Simon suggested the Commission may want to wait until the Siting Board has the application in front of it.

Comment/Updates to ZBA: Sudbury Station & Avalon (Raytheon)

Sudbury Station

Commissioners thanked C. Russo for developing the comments to the ZBA on behalf of the Commission, as previously discussed using the letter sent to the Selectmen for consideration in their MassHousing letter as a basis. The comments included areas outside of the Commission's jurisdictional regulatory authority under the WPA. These were sent to the ZBA for their consideration as the 40b permitting authority under the local wetlands bylaw, as well as general environmental comments.

Meadow Walk Phase II Whole Foods

The coordinator informed the Commission that an NOI had been received today for the next phase of construction at the Raytheon redevelopment site at 526 and 528 Boston Post Road. This phase includes the construction of the Whole Foods grocery store and associated parking, drainage, and utilities. She noted that the DEP has not yet issued the superseding SOC on the appeal of the first phase Order and a MEPA Certificate has not been issued by the state. Therefore the Commission may be going into this phase without a basis for review. She has contacted DEP to discuss how to approach this issue and has contacted VHB, Inc.; the applicant's engineer for the project, to ask for a continuation of the 21 day time frame for opening the hearing. As the project involves stormwater design which is complicated by temporary and permanent stormwater changes on the site, she is recommending the Commission engage a stormwater peer reviewer for this next phase of the redevelopment.

The Commission agreed that a peer reviewer should be contracted at this stage of the redevelopment.

WPA & Bylaw Notice of Intent (cont.): 168 Horse Pond Rd. violation corrections

Present: Rich Kirby, LEC Environmental; Annie Blank, applicant

Ms. Blank read a lengthy statement to the Commission stating why they need a large yard. The statement included their needs for space for kids and dogs. She claimed they did not know there was a stream in the backyard. The Commission noted that the fence was installed less than 10' off the stream so it was unlikely they were unaware of the wetland. The stream also shows on the maps on the town website. T. Friedlander stated that the Commission cannot take into account the homeowner's lack of knowledge of their property. The Commission must ensure compliance of the property with the wetland regulations. The homeowners were informed in December of 2014 of the violation by the Commission. D. Howell, acting conservation coordinator at the time, visited the site and saw tree

clearing within 100' of the stream and noted several other issues such as a horseshoe pit in the wetland. She stopped work at that time. Letters to that extent are in the file. It appears that some or all of the fence was installed after the stop work order.

A site inspection was held on March 15th. T. Friedlander, B. Porter, D. Henkels, D. Dineen, and R. Kirby were on site. R. Kirby stated that most of the property is in wetland jurisdictional areas. His clients wish to install two patios, remove 8 additional trees, remove the horseshoe pit from the wetland and restore the disturbed area of wetland. They have offered to move the fence further from the stream outside the wetland boundary.

Commissioners expressed concern that the new fence location remains in the wooded area in the regulatory adjacent upland resource area. On the site visit it was suggested that the fence be moved to the edge of lawn and the restoration area include the removal of invasive forsythia, buckthorn, and Japanese barberry in the area directly adjacent to the the proposed replanting restoration area. D. Dineen noted that leaving the invasive plants in place is likely to compromise the functions of the restoration area over time. R. Kirby stated that his clients are unwilling at this point to remove all the invasive plants, particularly the forsythia, as they were there when they bought the house.

D. Dineen suggested that the Commission separate the activities required for compliance from the new proposed activities. The hearing could be closed with an order issued that 1) approved the restoration replanting area as proposed; 2) required the removal of the invasive plant species; and 3) required the relocation of the fence to the edge of the lawn. The applicant could then file a new NOI for the proposed removal of the additional 8 trees and the construction of 2 patios. This way restoration activities could be separated from the mitigation activities. She did not see any mitigation proposed for the new work, nor did she feel that the wetland restoration area proposed as mitigation for the disturbed bordering vegetated wetland was enough to replace the wetland values and functions lost from the extensive tree removal that has already occurred and the request to keep the fence within the wooded area.

R. Elkind agreed that the fence should be moved to the edge of the lawn as that is where it would be approved if the homeowners had come in and obtained a permit prior to installation as required.

R. Kirby stated his clients might be willing to remove the invasive buckthorn and barberry, but not the forsythia.

T. Friedlander stated that the Commission needs to see a new restoration plan, including the relocation of the fence to the edge of the lawn. D. Dineen added that the restoration plan should include the removal of the non-native plants between the lawn and the wetland.

With the agreement of all parties, the hearing was continued to May 16, 2016.

Set April/May Meeting Schedule

Commissioners set a new meeting schedule to accommodate the Patriot's Day holiday and the Annual Town Meeting schedule. Upcoming Commission meetings will be held April 4; May 16, June 6, and June 20.

Discussion: Setting time limit parameters and presentation guidelines for applicant presentations

T. Friedlander suggested the Commission limit the time for presentations by applicants and their representatives to 10 minutes in most cases. This is in the interest of keeping to a realistic meeting

schedule and having applicants present only information relevant to the wetland issues. The Commission could decide if more time should be given when circumstances warrant such extension. B. Armstrong and R. Elkind agreed and felt the Commission needs to be diplomatic in their approach to time limits and recognize that not all situations can be properly vetted within the 10 minute allotment. Information presented should definitely be confined to relevant wetland issues. B. Porter noted that only pertinent information should be allowed to be discussed.

Commissioners agreed to limit the presentations to 10 minutes, except in circumstances that warrant the presentation of additional, relevant information.

Project Updates

Bruce Freeman Rail Trail (BFRT) Clearing: T. Friedlander advised the Commission that 3 letters had been received requesting the Commission take enforcement action against the Town for the clearing that has occurred on the proposed BFRT. This is not an item listed on the Commission's posted agenda so full discussion and any votes for action will be taken up at the next meeting on April 4 when the item can be posted on the agenda. D. Dineen asked the Commission to think about what form enforcement action might take. How are the wetland values and functions harmed, if at all, and how can they be replaced.

On a motion by R. Elkind; 2nd C. Russo; the Commission voted unanimously in favor of adjourning the meeting. 9:30pm.