

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, April 4, 2016

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

Absent: Charles Russo; Rob Elkind

Minutes

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of approving the Minutes of March 21, 2016 as drafted.

Request for Beekeeping at Lincoln Meadows Conservation Land/Community Gardens

A request was received from Andrew Cole asking for approval to locate two bee hives at the Lincoln Meadows conservation land.

On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of approving the request, not charging any fees and requiring removal of the hives if they are not active.

Certificate of Compliance: DEP File #301-1105 Tall Pine Drive

The Commission conducted a site inspection of both Tall Pine Drive and the Dudley Brook Preserve development on April 1, 2016 with Bert Corey of Schofield Brothers, Inc. Present were T. Friedlander; B. Armstrong; D. Henkels; and D. Dineen. The as-built plan for Tall Pine Drive has been received and all work was done in accordance with the approved plan. This was verified at the site inspection.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of issuing the COC for Tall Pine Drive.

The as-built plan for Dudley Brook Preserve has not yet been received. The as-built plan is needed before a COC can be issued, however an inspection of the property indicated that the project appears to be in substantial compliance with the Order and it is anticipated that a COC will issue upon receipt and review of the as-built plans.

WPA & Bylaw ANRAD (cont.): 999 Concord Rd.; P. Duggan, applicant

Request for continuation received 3/31/16. The on-site wetland peer review has begun, however the check for the peer review escrow funds has been returned by the bank. On site was halted until the funds are received and successfully deposited.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of continuing the hearing to May 16, 2016 conditional upon receipt of the funds in a timely manner.

Certificate of Compliance: SWAB File #301-0000 133 Goodman's Hill Rd.

This project was for the removal of white pine trees within 100' of an intermittent stream and the replanting of native shrubs in the area of pine removal. An as-built sketch has been received and it shows all replanting has been done appropriately.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of issuing the COC under the local wetlands bylaw (SWAB).

WPA & Bylaw Request for Determination: 9 Southwest Cir., J. Bleuer

No applicant present or represented. The project involves the construction of a small shed within the riverfront area overlapping two perennial streams. Chairman Friedlander was on site with the property owner. The shed will be placed in small clearing on a bed of landscape gravel. The gravel has already been placed on the site.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of issuing a negative Determination.

Certificates of Compliance/ Duplicate Orders for Recording

67 Powder Mill Road has an old Order for house construction DEP File #301-344 and a subsequent Order for landscaping work, DEP File #301-849. The Order for 301-849 presumed the conditions in the Order #301-344 were met for house construction in 1992. The current condition of the property appears to comply with the old #301-344 Order for house location and limits of disturbance. Therefore, a duplicate Order for recording of #301-849 should be issued to get the perpetuity conditions on the record, and a COC should be issued for #301-344.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of issuing the duplicate Order #30-1849 and the COC for #301-344

115 Powers Rd.: The Commission signed a duplicate COC for recording

WPA & Bylaw Request for Determination: 150 Wayside Inn Rd., brush clearing

Present: Ted Jandl; Renee McDonough

Mr. Jandl is the new owner of the property. It is just under 10 acres and is the site of the former Wayside Inn Boy's School and a subsequent smaller house. Currently, there is no structure on the lot.

Mr. Jandl is starting the process of planning a redevelopment of the site. He would like to clear a significant amount of brush in the front of the site so he can uncover the old gardens on the property to see what he has. Most of the site has been grown over by invasive plants. He would like to manage this vegetation specifically in the area outside the tree line.

Ms. McDonough informed the Commission that the site has four separate wetland areas associated with it. She showed a plan of a new wetland delineation by Goddard Consulting. D. Dineen noted that there is a wetland delineation from several years ago that is still valid. For the purposes of the brush clearing only, the commission could permit it based on older, approved delineation. If the Commission uses the new plan, they will need to confirm the new wetland flagging through an NRAD before permitting the clearing.

M. Sevier questioned the long-term plans for a new structure and gardens. He felt that the area of brush clearing was not well-defined. Mr. Jandl presented a red-lined plan showing the extent of the area in which he would be clearing.

The Commission voted unanimously in favor of a negative Determination conditional on no clearing of non-invasive plants over 6" in diameter.

WPA & Bylaw Notice of Intent (cont.): 25 Union Ave., Steven Turner

Request for continuation received 3/31/16. On a motion by D. Henkels; 2nd B. Armstrong; the Commission voted to continue to May 16, 2016. D. Dineen noted that the additional information will need to be received at least 4 business days prior to this continuation.

Violations Updates:

Present: Renee McDonough, Goddard Consulting

Lot 4 Anthony Dr.

On behalf of her clients, Ms. McDonough wanted to present a request for an amendment to the existing Order of Conditions for Lot 4. Her client did not authorize her to submit a new NOI. Chairman Friedlander stated that an amendment to the Order was unacceptable as the NOV/EO required the submission of a new NOI.

Lot 5 Anthony Dr.

Ms. McDonough stated that her clients have pulled back the fill and stonewall and revegetated the upland resource area disturbed without a permit. High brush blueberry plants were planted for restoration. D. Dineen noted that the restoration work was a continuation of the violation as it was not permitted under the EO. In addition, the site is a sunny site with sandy soils and she questioned the viability high bush blueberries which are a facultative wetland plant.

Chairman Friedlander stated that the EO had been ignored on both lots and action was taken without a permit.

D. Henkels moved to issue daily fines of \$100 per lot until the appropriate filings have been submitted. B. Armstrong 2nd; unanimous in favor with M. Sevier abstaining.

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

Present: Amy Minihane; Renee McDonough of Goddard Consulting

Revised plans had been received by the Commission showing new species of plants in the planting plan and showing the addition of some infiltration of runoff. Surface runoff in the front of the house will now be infiltrated by a trench at the foundation. A small stone infiltration area was added in the rear of the house. Plantings on the side of the house and off the end of the driveway were added. D. Dineen noted that the plant species in the final plans are acceptable.

On a motion by D. Henkels; 2nd M. Sevier; the Commission voted unanimously in favor of closing the hearing.

On a motion by D. Henkels; 2nd M. Sevier; the Commission voted unanimously in favor of issuing the Order as discussed.

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

Sudbury Valley Trustees, applicant; review of restoration plans by P. Garner

Present: Lisa Vernegard, SVT; Pat Garner, consultant for SVT

The Commission reviewed additional information submitted by Mr. Garner for restoration work. This included seeding, coir logs, and reestablishing former grades in several wetland areas that have been altered by use of the land. L. Vernegard added that additional signage requiring dogs to be leashed, closing some trails to horses, fencing, and more patrols and public education will help with long-term issues.

D. Dineen noted that these methods have been tried previous and were not sustainable in the long-term. She suggested expanding and enlarging the width of the boardwalk over Hop Brook as well. The current narrow boards do not allow a person and dog to walk side-by-side. L. Vernegard stated that is not part of their current plan.

T. Friedlander questioned the uses of horses on the site. L. Vernegard added that the fencing proposed for the Cranberry Brook crossing will channel all users to a bridge that will be widened and have better access ramps for the horses. This work is subject to approval by Kinder Morgan at an April 15th meeting. Kinder Morgan has an easement on the property for the gas pipeline.

Dorothy Bisson, Dutton Road, asked if the bridge will be the same design at the bridge in the Hop Brook conservation land as this design works well for the horses. Ms. Vernegard confirmed it will be.

Kirsten Roopenian, Harness Lane, asked that SVT work with the horse community to restore the use of the SVT bridge over Hop Brook behind the GFWC headquarters.

On a motion by M. Sevier; 2nd D. Henkels; the Commission voted unanimously to close the hearing.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of issuing the Order as discussed including a condition to require new plans for Cranberry Brook crossing if Kinder Morgan does not approve the current proposal.

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

Present: Atty. Richard Nylén; Mark Hollyer, Robin Hollyer

Atty. Nylén briefly outlined the history of the permitting on this property. He stated that the two main remaining issues appear to be an approximate 600 sq. ft. encroachment into the required conservation restriction area and the issue of the pond elevation. He noted that the spillway was set at elevation 152.4' per the Orders. T. Friedlander stated that it is not just the Order but the Order in conjunction with the approved plans that governs the permitted work and how compliance will be judged. T. Friedlander added that it is actually the beaver deceiver/water regulation pipe that governs the pond level currently, not the spillway. The Order required a maximum pond elevation as well as a spillway elevation. The pond elevation was set on the approved plans and shown as "proposed pond elevation". The spillway elevation was set in the Order as the elevation was determined during the hearing process.

Atty. Nylén stated there is no evidence the Hollyers installed a beaver deceiver. He stated there is a pipe on top of the dam but that it is not a "beaver deceiver".

R. Hollyer left the meeting at this point.

T. Friedlander stated that there has been no proof submitted that the water quality swale adjacent to the driveway was constructed in accordance with the approved plans. Atty. Nylén replied that photos were submitted showing it properly functioning in the rain. T. Friedlander noted that the Order required an as-built plan signed and stamped by a registered engineer and that plan should include the swale as-built. He added that there are major issues that have not been complied with on this property.

Atty. Nylén asked if the Commission would consider approving a reduction in the area to be placed into the conservation restriction. Chairman Friedlander replied that many compromises have already been made on this site. These include after-the-fact permitting of house location and grading closer to the wetland. The Commission must maintain the integrity of the wetland process and respect

the decision of former Commissioners and the time they spent on previous Orders. He summarized the three major outstanding issues: 1) conservation restriction area; pond level; and, 3) as-built/engineering report on the water quality swale.

Vice-Chairman B. Armstrong questioned what the purpose of the pipe was on top of the beaver dam if it is not a “beaver deceiver”. M. Hollyer replied that it regulates the pond water level. B. Armstrong added that it is impossible to state that what is on the plan is not part of the Order. She added that it is clearly evident that the pipe at the higher elevation than the spillway is dramatically altering the wetlands.

M. Sevier questioned if the decision to issue Certificates of Compliances are “all or nothing”. T. Friedlander replied that either they comply or they do not comply. In this case they do not comply.

On a motion by B. Porter; 2nd B. Armstrong; the Commission voted in favor of denying the issuance of the COC for the reasons discussed for #301-623. In favor B. Armstrong, T. Friedlander, B. Porter. Opposed D. Henkels. M. Sevier abstaining

On a motion by B. Armstrong; 2nd B. Porter; the Commission voted in favor of denying the issuance of the COC for the reasons discussed for #301-1093. In favor B. Armstrong, T. Friedlander, B. Porter. Opposed D. Henkels. M. Sevier abstaining

On a motion by B. Armstrong; 2nd B. Porter; the Commission voted in favor of denying the issuance of the COC for the reasons discussed for #301-1117. In favor B. Armstrong, T. Friedlander, B. Porter. Opposed D. Henkels. M. Sevier abstaining

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

Atty. Nylen requested the Commission permit an 80' long fence within 100' of wetlands at the edge of the driveway. He noted that the fence is an exempt activity under the WPA as long as it does not impede wildlife movement.

D. Dineen noted that part of the fence is located within the conservation restriction area as required in the three current orders of Conditions. The CR language does not permit fencing. To allow this fence as proposed would effectively be allowing a reduced CR area.

B. Armstrong stated that the CR area should remain as was originally proposed in the original Order as the CR was intended to be mitigation for lot construction. M. Sevier made a statement that he saw no solution to the outstanding issues. B. Armstrong replied that the solution is for the attorney to educate his clients that they must comply with the orders. Atty. Nylen stated his client is questioning what harm has been done to the wetlands and that his client was asking for relief of some of the items in the Orders.

D. Dineen informed the Commission that the matter in front of them is a Request for Determination. As such, the vote is either “negative” or “positive”. Atty. Nylen suggested that the Commission vote “negative” on the fence for the area outside of the CR.

On a motion by M. Sevier; 2nd D. Henkels, the Commission voted a positive Determination for all sections of the fence within the CR. The section of fence located outside the CR may remain. Motion passed with B. Armstrong opposed.

T. Friedlander stated that until the applicant wants to work with the Commission on compliance with the outstanding items, there is no point in having any further meetings on these issues.

Discussion: Septic System Variance: DEP file #301-1149; Lots 4/5 Fairbank Rd.

The Conservation Commission discussed the requests for Board of Health variances for the above lot septic design. A review of all the plans submitted to the Conservation Commission under the Wetland Notice of Intent showed a 4-bedroom septic system. The notes regarding the necessary variances were not shown on the plans submitted to Conservation. In addition, at no point in any discussions or public hearings on the development of these lots did the applicant or her engineer disclose that the septic system as shown on the plans submitted to ConCom required any variances. We only became aware of the need for variances when the Coordinator and Board of Health Director had a discussion on the permit status of this project.

Under the Wetlands Protection Act, if a septic system design meets Title V or more stringent local Board of Health requirements, the Act gives a presumption that the wetland values and functions are protected based on the design. With this presumption in place, the Commission can then only look at potential construction impacts such as erosion and sedimentation controls when permitting compliant systems.

In the case of Lots 4/5 Fairbank, the Commission reviewed the project as though it had the presumption of protection under the WPA. By failure to disclose the need for variances for the system shown on the plans, the applicant misled the Commission in their decision process. This may be cause for the Commission to revoke the Order of Conditions. The Commission agreed to discuss this issue at the May 16 meeting.

Lots 4/5 Fairbank has the septic system located in the riverfront area of Run Brook. Run Brook is a perennial cold water fisheries stream that supports brook trout and other cold water fish species. This has been confirmed by the State Fish & Wildlife fish biologists. Reducing the offset to groundwater and reducing the leaching capability will also reduce the ability of the soil to filter pollutants, pathogens, nitrates and phosphates from the septic effluent. This could result in degradation of water quality in the stream.

Commissioner Porter felt strongly that the BOH should not grant any variances on this project for offset to groundwater and leaching capacity due to the sensitive nature of the adjacent wetlands. Other Commissioners were very troubled by the fact that the variances were not disclosed at the time of the Commission hearings. They were not sure of the BOH's criteria for variances and whether or not they involved the same issues that would concern the Commission.

Bruce Freeman Rail Trail: Discussion of vegetation clearing and response to letters

received requesting enforcement action

Discussion and action on this item was postponed to May 16 to allow for input from the DEP site inspection scheduled for tomorrow.

Land Gift Parcel F05-0519 Intervale Rd.

Commissioners discussed an offer to gift a parcel of land to the town for conservation purposes. It is parcel F05-0519 on Intervale Road. The parcel is mostly wetland and contains very steep slopes. Back taxes amount to approximately \$4550 as of March 23, 2016.

The Commission was interested the parcel as conservation land as it is adjacent to other land which protects Willis Pond. However, the back taxes should be paid before the gift is considered.

Review Town Warrant for any Conservation Commission positions/speaker on Articles

It was decided not to post any SCC meetings during Town Meeting and not take any SCC positions on any of the articles on the Warrant this year.

Request for Board of Health to post signs at conservation lands warning of ticks

Commissioners reviewed the new signs from the Public Health Nurse for posting at conservation land entrances warning users of tick dangers. Commissioners agree that the signs should be posted.

National Grid Gas Line Replacement: Mossman & Willis Roads

The Commission was notified by National Grid that they plan to upgrade gas mains in Mossman and Willis Roads. All work will be within existing pavement areas. The Commission had no issue with the scope of work and agreed that it qualified for an exemption for utility upgrades but not expansion.

Gov. Baker Bills re: Wetland Fee Changes - review for comment

Commissioners agreed that the proposed Bill that would directly take the wetland fees from Conservation Commissions should be opposed. They will follow and support MACC in opposing this Bill.

On a motion by D. Henkels; 2nd M. Sevier; the Commission voted unanimously in favor of adjourning the meeting. 9:40pm.
