

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, May 16, 2016

Present: Tom Friedlander, Chairman; Beth Armstrong; Vice-Chairman; Mark Sevier; Dave Henkels; Rob Elkind; Bruce Porter; Charlie Russo (arrived at 6:35pm) Debbie Dineen, Coordinator;

Minutes

On a motion by D. Henkels; 2nd B. Armstrong the Commission voted unanimously in favor of approving the minutes of April 4, 2016. C. Russo; R. Elkind abstaining.

Discussion: Letter to ZBA re: Sudbury Station – ratify final document

T. Friedlander advised the Commission that the attorney for Sudbury Station had raised questions concerning the validity of the letter drafted by D. Dineen and C. Russo sent on behalf of the Commission to the Zoning Board of Appeals. He claimed the Commission did not vote to endorse the letter. Commissioners agreed that at the March 21, 2016 meeting they had provided direction to Mr. Russo and Ms. Dineen and had agreed unanimously that the final letter did not need to come back to a meeting for endorsement prior to submission to ZBA.

In light of the issues raised by the Sudbury Station attorney, the Commission voted unanimously to ratify the letter dated March 8, 2016 to ZBA. Motion by R. Elkind; 2nd B. Porter.

WPA & Bylaw Notice of Intent: Meadow Walk 526 and 528 Boston Post Rd., BPR Dev., Inc. applicant; grocery store, parking, drainage, utilities construction

Present: Steve Senna, National Development; Karen Staffier & Meredith Avery of VHB, Inc.

Ms. Staffier, engineer at VHB, Inc., presented the plans for the development of the grocery store phase of reconstruction at the former Raytheon site. The proposed project is the first phase of an overall project to redevelop a previously developed, 50- acre property by National Development and Avalon Bay. This Phase 1 covers approximately 8.5 acres in the south portion of the site and includes the demolition of some existing buildings and construction of a new 45,000 square foot grocery store with associated parking facilities, driveways, landscaping, utilities and stormwater management improvements. Demolition of Buildings 2, 3 and 4 has already had an Order of Conditions issued by the Commission. This Order was appealed and DEP issued a superseding Order allowing the demolition to go forward as planned. A MEPA Certificate has been issued for the property.

The project meets the criteria as a Redevelopment Project under the Mass. Stormwater Management Regulations and under the Sudbury Stormwater Management Bylaw. The property is nearly all previously developed and both the current Phase 1 and the Master Site Plan for the overall site development result in a decrease in impervious surfaces from existing conditions. There will be overall improvements to stormwater and improved recharge while taking into account the high groundwater elevation on the property and the limitations of the site being within a Zone II of municipal drinking water wells.

The roof runoff will be tied into the drainage system and infiltrated to extent possible. Infiltration will function correctly for roof runoff up to 80% of the time. Additional nutrient removal was considered, however alternatives reviewed, including bio-retention, are constrained by the high groundwater. Improvements are made where the site presented the ability to do so while the overall plan is a significant improvement over the current conditions. The proposed best management practices (bmps) replicate natural hydraulic conditions to the extent feasible. The area of high pollutant

load is the area that has the greatest phosphorous removal incorporated into the plans. Alternative treatments, such as porous pavement, are not the best treatment in areas of higher pollutant loading.

In response to questions from B. Porter and D. Henkels, Ms. Saffier explained that the roof runoff from Building 1 goes directly to Route 20; Building 2 goes directly to the wetland; and Building # goes to the detention pond. In the proposed plan, all runoff will be collected at the same point and treated before discharge. No credit is being taken for infiltration. This improves existing conditions by reducing peak flows and providing a level of infiltration. Steve Senna added that the impervious area decreases with each phase of the project.

In response to a question from C. Russo, wastewater flows will increase from 50gpd to 90gpd at a maximum flow. This assumes a worst case at full build-out. Commissioner Russo also questioned whether, given the narrow range of depth at which the isolator row would function properly, subsequent permits could/should be conditioned on proof of its proper placement/operation. Mr. Senna stressed that National Development wants all of its systems to operate properly and as designed.

The letter from wetland consultant Fred King and related emails were included as part of the record. He stated that the general overall development concept appears to meet the qualifications and minimum compliance Standards of the Local and State Stormwater Management Regulations. The Phase 1 project now before the Commission is consistent with that plan. He noted that the Commission must determine if applicant has designed the new and retrofitted stormwater to the maximum extent feasible. Commissioners were comfortable that the applicant has demonstrated that the maximum upgrades to stormwater are reflected in the plans.

On a motion by R. Elkind; B. Porter 2nd; the Commission voted unanimously to close the hearing. A draft OOC will be reviewed on June 6 for approval.

WPA & Bylaw Notice of Intent: Lot 4 Anthony Drive, Distinctive Acton Homes, Inc.

Present: Scott Goddard & Renee McDonough of Goddard Consulting; Jim Fenton, owner

Mr. Goddard presented a plan showing current conditions of a single-family house new construction. The applicant is seeking approval of work after-the-fact for site alterations not within the scope of the approved plan. The originally-approved work was permitted in DEP File #301-1154. Serious violations to grading and drainage have occurred.

The 100 adjacent upland resource area had extensive invasive species removal work done last fall. The original OOC dated 3/16/15 agreed to a one-time invasive species eradication effort. The Order also prohibited the use of herbicides or pesticides. This ISMP includes the use of glyphosate by the cut and paint method in year 2 if needed. The Coordinator could not find anything in the record showing that the Commission approved the Invasive Species Management Plan dated 3/31/15, which is contrary to the OOC wording. Spring and fall monitoring reports on the ISMP were to be submitted to the Commission. None have been received for last year. She recommended a full scale, detailed restoration plan be required for the entire backyard beyond the new limit of lawn (slightly reduced from previously approved plan) which should be the existing boulder line shown on the 4/4/16 Progress As-built plan. This plan should include a detailed species list with # of plants and show coverage at maturity. A planting timetable and requirements for monitoring should be included.

The new NOI has an overall reduction in the scope of work on the site. The driveway is further from the wetland and is 45 sq. ft. smaller. A previous graded slope now has a retaining wall as a more permanent limit of grading. Overall work is 5' further from the wetland and the lawn area is reduced by

786 sq. ft. Sixty native plants will be added to the in the AURA where the invasive plants have been removed. Boulders, now butted together, delineate the edge of lawn and residential use. D. Dineen questioned what will prevent homeowners from encroaching into this area after a COC is issued. She suggested a Conservation Restriction should be considered on the back of both Lots 4 & 5 and perhaps other adjacent areas. B. Armstrong agreed and noted that future encroachments have been seen regularly on other properties and this site has already had significant changes occur that were not permitted in the Order. M. Sevier questioned the cost to place a CR on a property. Mr. Goddard estimated it at \$5,000 - \$10,000. B. Porter added that he thought a Cr would be beneficial for both the wetland and future owner's information. S. Goddard suggested bounds could also work to inform future owners of the limits of residential use.

D. Henkels stated that he felt the changes in the plan were all good changes and benefitted the wetland. He questioned if some additional off-site improvements might be warranted for mitigation. S. Goddard noted that the additional 60 plants were further mitigation.

C. Russo felt that a future owner would want to cut in more lawn. He was also concerned about fire protection access around the house. He added that a Conservation Restriction is not punitive, especially in light of the fact that the Commission could require the removal of the retaining wall. Mr. Fenton stated he was opposed to placing a Cr on the property. He also noted some "bad trees" he would like to take down. He stated that he built the wall to meet zoning height restrictions.

R. Elkind stated that he was abstaining from the discussion as a Conservation Commission member but would like to speak on behalf of the neighborhood as an abutter. He explained that the property was being built on a hill at the top of a steep slope. The engineering of the site has completely changed the topography in the area. He expressed concern for future alterations of the backyard that could occur without the Commission knowing about them.

Mr. Fenton stated that Linda Hanson, Acting Coordinator at the time the order was issued, visited the site and approved the retaining wall. T. Friedlander replied that the site revisions were never brought before the Commission and would not have been looked at as a field change. Ms. Hanson did not have the authority to approve any changes.

M. Sevier stated that the only real issue now before the Commission appears to be whether or not to require a CR. D. Dineen suggested a Deed Restriction as this would put future homeowners on notice that there is a limit to what can be done in the rear of the house. She also suggested that before any further activity on the lot is accomplished, the applicant should be required to submit a letter from the Zoning Enforcement Agent indicating that the retaining wall has been approved per zoning and building requirements and was constructed to structural standards.

M. Sevier agreed that as long as the limit of lawn is documented in official documents he is OK with the changes.

R. Elkind, of Cedar Creek Road and speaking as an abutter, stated concerns that the past practice of this developer has shown that he cannot be relied on to follow the conditions of his permit.

D. Dineen recommended a revised ISMP be required in the new OOC and submitted for approval prior to any additional work on the site within wetland jurisdiction. She did not recommend issuing a COC on the original Order until all mitigation work is completed to the satisfaction of the Commission.

The Commission looked at how the wetland values and functions may be benefitted by additional restoration, upgrades, or other positive benefits vs. the wetland functions protected with the original plan.

On a motion by C. Russo; 2nd M. Sevier; the Commission voted 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 with the requirement for a new planting restoration plan, a new Invasive Species Management Plan, a Deed Restriction on the area below the boulders, and the review of the retaining wall by a structural engineer and subsequent approval by the Building Inspector/Zoning Enforcement Agent. R. Elkind abstaining.

WPA & Bylaw Notice of Intent: Lot 5 Anthony Drive, Distinctive Acton Homes, Inc.

Present: Scott Goddard & Renee McDonough of Goddard Consulting; Jim Fenton, owner
Mr. Goddard explained that the applicant had illegally encroached into the AURA and is seeking after-the-fact approval of site restoration. This restoration consisted of the relocation of the stone wall, the regrading of the AURA, and the planting of 21 high bush blueberry bushes.

D. Dineen advised Commissioners that the High bush blueberry (*Vaccinium corymbosum*) is native, however it likes moist, acidic soil (4.5 – 5.5 pH) that is well drained and high in organic matter. They are usually found near wetland margins. It is classified as FACW (facultative wetland plant). Lot 5 Anthony Drive is part of a former upland meadow. She questioned if High bush blueberry is the appropriate long-term restoration plant for this area. Details on the specific soils in this area should be submitted to the Commission along with as revised detailed restoration plan that includes more appropriate and more diverse species. The SWAB allows the Commission to require up to 3:1 restoration for illegally altered resource areas. The Commission may consider requiring the restoration area to encompass an additional area. The plan submitted does not indicate the limit of lawn. It is presumed that this limit is at the 100' AURA line. She suggested requiring additional planting just upslope of the 100 AURA to prevent encroachment over time and provide additional uptake from lawn runoff.

M. Sevier questioned if the stonewall could be continued to the property line. Mr. Goddard stated that the stonewall stopped due to the grades.

Mr. Goddard stated that the high bush blueberries were likely to be successful but the area could be augmented with other native plants as well. Ms. McDonough stated that the blueberries could be monitored for successful growth.

R. Elkind, abstaining as a Commissioner and speaking as an abutter stated his and his neighbor's opinion that the developer appears to have a very cavalier attitude toward the wetland laws and they are afraid that future violations will occur based on the extent of violations to date.

Mr. Fenton stated for the record that he does not want an Order of Conditions on this property.

The Commission informed him that an Order is required as he encroached into the upland resource area without a permit. Commissioners discussed some of the special conditions in the Order to include:

1. Monitoring and removal of invasive plants;
2. Augmenting the existing plants with more upland species of native plants;
3. Requirement for a new planting plan;
4. Timeframes for compliance in the Order.

On a motion by B. Armstrong; 2nd C. Russo; the Commission voted unanimously in favor of closing the hearing. R. Elkind abstaining.

On a motion by B. Armstrong; 2nd B. Porter; the Commission voted unanimously in favor of issuing the Order as discussed. R. Elkind abstaining.

WPA & Bylaw Notice of Intent: 72 Wagonwheel Rd.; house addition; Linda Miller

On a motion by C. Russo; 2nd D. Henkels; the Commission voted unanimously to approve continuation of the hearing to June 6 in allow the applicant to incorporate suggestions made at the site visit for mitigation into the plan.

WPA & Bylaw Request for Determination of Applicability: Brues Woods (off Concord Rd.); SVT bridge reconstruction

Present: Lucas Allen, Eagle Scout candidate from Troop 61

Mr. Allen presented a plan to reconstruct an existing bridge in the SVT Brues Woods land. Minor expansion of the length of the bridge that will benefit wetland by moving the end further from the bank of the Bridge Brook. The current bridge is sinking and titling. Non-CCA pressure treated wood will be used. Most construction will be done off site. The old bridge will be pried apart and properly disposed of off -site.

D. Dineen recommended a negative Determination. She visited the site and observed that scouring of the bank of the stream has occurred and has undermined the bank section supporting the ends of the bridge.

On a motion by C. Russo; 2nd D. henkels; the Commission voted unanimously in favor of a negative Determination.

WPA & Bylaw Request for Determination of Applicability: 50 Stubtoe Ln., driveway & shed reconstruction

Present: Pam & Fred Chan, property owners

Ms. Chan presented a plan for a driveway turning radius enlargement for better alignment with minor increase in pavement and slight widening. Work is approximately 40' from the pond and bordering vegetated wetland. The area is a level area of residential lawn. Removal of an 8' x 8' shed and reconstruction of slightly larger 8' x 10' shed is proposed. One tree needs to be removed for the driveway widening. Another tree at the edge of the pond is leaning severely toward the house. She would like to remove this tree as well. She presented photographs of the tree.

D. Dineen suggested the driveway be crowned to shed water off to the side into the lawn area as the site has very sandy soils according to the soils maps of the area.

In response to R. Elkind, the shed is built up on a wooden platform off the ground.

On a motion by D. Henkels; 2nd R. Elkind; the Commission voted unanimously in favor of a negative Determination.

WPA & Bylaw Notice of Intent (cont): 168 Horse Pond Rd., Mr. & Mrs. Blank

Present: Rich Kirby of LEC Environmental; Andrew Blank

Mr. Kirby presented revised plans for the correction and mitigation of violations. The plans include removal of invasive plants and the planting of some native plants. The fence is to be moved farther from the wetland but not to the edge of lawn. The additional area proposed for native species is on the house/lawn side of the fence. Eighteen additional native shrubs and 7 sapling trees will be

planted. The request for tree removal has been reduced to only one additional tree beyond those already cut without a permit. This tree is located within the lawn area.

The Commission expressed concern that this restoration area will be more of a residential use area (including within the area fenced for dogs) than an area contiguous with the wetland and the stream corridor. Placing the fence where proposed cuts off access to the native plants for most mammals and reduces its value for wildlife habitat. The Blanks do not want to move the fence to the edge of the lawn as they do not like the aesthetics of this placement. Mr. Kirby suggested permanent markers could be placed at the edge of the lawn for long-term limits. C. Russo thought the idea of lawn markers was good. R. Elkind felt that the fence should separate the residential area from the natural area. To preserve the functions and keep a distance from the stream. D. Dineen noted the fence location should be permitted as it would be if the applicant was coming in without the violation and the fence had not already been installed. She noted that a fence approximately 16' - 20' off the stream would not likely have been permitted. Commissioners agreed that the fence should be further from the stream.

Discussion was suspended to allow the applicant to discuss these concerns with the property owner.

The discussion resumed and Mr. Kirby offered a compromise with the fence 16' off the stream at the closest point. Commissioners discussed moving the fence further from the stream. D. Dineen suggested a location for the fence and drew a red line on the plan. This moved the fence further from the stream but allowed for more residential use area on the sides of the house further from the stream. This will bring the fence to within 7' of the edge of lawn at the point where the stream comes closest to the house. B. Porter would like to see the fence at the edge of lawn and not incorporate the residential use into the restoration area.

On a motion by C. Russo; 2nd R. Elkind; the Commission voted unanimously in favor of closing the hearing.

On a motion by C. Russo; 2nd R. Elkind; the Commission voted unanimously in favor of issuing an Order of Conditions that will require the fence moved up at least to the line drawn by D. Dineen and other mitigation as discussed during the hearing.

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

On a motion by C. Russo; 2nd D. Henkels; the Commission voted to approve the request to continue to June 6, 2016.

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

Present: Chris Doty of J Crowe Associates; Steven Turner, property owner; Brian McNamara

A Restoration Plan was received 5/11/16 after the final date to submit additional hearing information. The Chairman allowed the review of the plan to proceed. The revision includes doubling the size of the bio-retention area; showing the area of planting restoration on the plan; and, indicating species of plants that will survive in the site-specific soil conditions.

D. Dineen stated that the Assistant Fire Chief informed her that there is no requirement for a fire lane around this building. He stated that only enough room for firemen to pull a hose around the structure is needed. Her review of the site plan approval file and decision by the Selectmen does not indicate the need for a fire lane or any clearing around the building.

D. Henkels noted that one of the streams was shown on the plan as intermittent but no documentation showing it dry for any period of time was received. The Order can address the fact the intermittent/perennial has not been established for this site.

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

On a motion by R. Elkind; 2nd B. Porter; the Commission voted unanimously in favor of issued the Order as discussed.

Vote: Issuance of Enforcement Order/Notice of Violation 56 Cudworth Lane

D. Dineen informed the Commission that an old OOC has requested a COC. The owner lives out of state and is moving toward selling the property. The lawn has been expanded approximately double the original approved lawn area. This lot was subject to an EO/NOV under a previous owner. A previous restoration plan was approved but work never occurred or new owner again expanded lawn.

On a motion by D. Henkels; 2nd R. Elkind; the Commission voted unanimously in favor of issuing an EO/NOV.

Review for Possible Action: Eversource Tower Reconstruction: south of Boston Post Rd.

Present: Denise Bartone; Joanne O'Leary, both of Eversource

Eversource has notified the Commission that it plans to remove three transmission towers just south of its substation on Rt. 20. These are wooden towers that will be replaced with steel. The tower base is relocated by 6' to accommodate the new design. Eversource is claiming a wetland exemption from filing by calling this a maintenance project. Towers #104, #105 and #109 off Stock Farm Road will be replaced and slightly relocated. All work is within the buffer/upland resource area. No work will occur in a wetland. All disturbance within wetland jurisdiction except the tower base is temporary for access only. Minor grading, erosion control, and drilling will occur for installation and access activities.

D. Dineen stated that the issue before the Commission is to determine if they agree that the scope of work falls within the maintenance exemption for utilities under the WPA. No one had a concern that the work may not fall under maintenance. C. Russo felt that there could be value in reviewing a plan showing the limits of work. D. Henkels noted that the overall disturbance could be reduced as the steel towers do not need guy wires for support.

On a motion by R. Elkind; 2nd B. Porter; the Commission agreed to accept the scope of work as outlined by Eversource as an exempted activity under utility maintenance.

Certificates of Compliance:

67 Brewster Rd.

This was an Order where the Commission took after-the-fact jurisdiction of any area outside of wetland jurisdiction following a major release of soil down a hillside and into street catch basins discharging into wetlands. Site stabilization and drainage was installed. An as-built plan was provided and three years of monitoring have not indicated any issues.

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

Dudley Brook Preserve COC (voted 5/9/16)

The Commission signed the COC for Dudley Brook Preserve.

The Commission voted unanimously in favor of adjourning the meeting. 9:35pm.