

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, July 11, 2016

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

Chairman Friedlander called the meeting to Order at 6:30pm and announced that the meeting was being recorded for Sudbury TV at the request of the Town Manager.

Minutes

On a motion by M. Sevier; 2nd R. Elkind; the Commission voted in favor of approving the Minutes of June 20, 2016 as corrected by M. Sevier and B. Armstrong. B. Armstrong abstaining.

WPA Notice of Intent: 0 Willis Rd.: new house construction

Present: Dan Wells of Goddard Consulting on behalf of the applicant; Dave Burke, Peer Review Consultant for SCC

Chairman Friedlander called the hearing to Order and read the Commission's process and procedures information for the attendees.

Mr. Wells presented a plan for new house construction at 0 Willis Road. An ORAD was issued by the SCC last fall to confirm the wetland resource areas locations and types on the site. The proposed disturbance is all within the 100' wetland buffer zone under WPA. The stream was determined to be intermittent with no riverfront area. Extensive bordering vegetated wetland is associated with the stream. The house is proposed as a 4-bedroom house. the driveway enters from Willis Road and a portion of the driveway crosses the septic leaching field. Modest lawn is proposed around the house. An erosion control barrier will be installed at the limit of work which is shown as approximately 10' off the bordering vegetated wetlands. Elevations range from 199' to 195' for an approximate 4' drop over the site development area.

D. Dineen stated that the filing is only under the state Wetlands Protection Act. In order for any development to proceed, should the applicant receive an Order of Conditions permitting construction, a wetlands filing under the Wetlands Administration bylaw and a subsequent Order approving the work will be required. Therefore, your review should be confined to how the proposed work in the buffer (100' from bw) may adversely impact the values and functions of the wetland area. The buffer zone is given no special protection under WPA in and of itself, but only it in its capacity to protect wetlands values.

Factors to consider when measuring the potential for adverse impacts to resource areas include the extent of the work, the proximity to the resource area, the need for erosion controls, and the measures employed to prevent adverse impacts to resource areas during and following the work. The Wetlands Protection Act prohibits any work that would destroy or impair any portion of a bordering vegetated wetland (with several exceptions). Although this project is not subject to WPA stormwater standards, no controls are offered that will prevent runoff from carrying pollutants from developed area (lawns, driveway, etc.) to the wetlands other than and erosion control barrier during construction. Post-construction runoff from the lawn could be a pollutant source especially where the extent of disturbance is only 10' off the bw in most areas of the site. At a

minimum, the project should have a clearly defined limit of lawn and the lawn should be minimized only to provide access around the structure. Temporary grading could accommodate the grading necessary for the septic system with the area to be maintained as a native species meadow. Patio should be permeable pavers. The driveway is pitched so there is overland flow of driveway runoff down a slope toward the wetland. Details of the retaining wall is necessary.

This project could be tightened up and post –construction stabilization measures and landscaping (native meadow, infiltration of driveway runoff, permeable patio, permanent delineation of edge of lawn/disturbance, no in-ground sprinklers, prohibition on use of fertilizers, pesticides, herbicides, etc. should be required at a minimum. These requirements will apply if you feel that they will result in no adverse impact to the wetland resource. If you still feel that the plan would adversely impact the wetland, you must deny the project.

R. Elkind stated that it would make sense for the applicant to file under the local bylaw at the same time as the WPA filing. D. Dineen stated that there is no requirement for the applicant to do so.

M. Sevier noted that prohibitions on fertilizers, pesticides, etc. will be difficult to enforce long-term. He felt that the project is far from what will pass muster. B. Armstrong added that just because the work is proposed in the buffer doesn't mean it is a good idea in a sensitive area.

C. Russo questioned if the applicant has offered a conservation restriction (CR) on the balance of this large lot. D. Dineen noted that most of the remainder of the lot is wetland. She added that unless work is in a riverfront area, which this project is not, mitigation is not required under the WPA. If the applicant agrees to place a CR on the undeveloped portions of the lot and an Order is issued approving the construction is appealed to DEP, DEP will not require the CR in their superseding Order.

Irina Dubinchik, abutter at 159 Willis Road, stated she is opposed to the development of this lot. She submitted materials dated July 10 for the Commission to review and consider. She questioned why so much time and effort is being spent on an undevelopable lot. She added that the lot is across the road to Poor Farm Meadow. She expressed concern that leaching from the septic system will pollute the stream. D. Dineen replied that the Board of Health and Title V regulations control issues associated with the effluent from septic systems. The Board of Health Director has not seen the plan yet for approval but his quick review indicated that the system meets the required setbacks under Title V and local BOH regulations for septic systems.

Vadim Gayshan, attorney for Irina Dubinchik, informed the Commission that endangered species were found on Marlboro Road in close proximity to this lot. He also noted that the stream was found to be a Type I intermittent stream which is treated as perennial in the wetlands bylaw.

Kelly Finn, 135 Marlboro Road, questioned what happened to the 2010 plan for this lot. D. Dineen replied that the applicant at that time withdrew the Notice of Intent due to the inability of the septic system to meet required Title V setbacks.

Andy Finn, 135 Marlboro Road, questioned the process for lot approval from this point forward. Chairman Friedlander explained that the Commission will either approve, approve with conditions, or deny. Anything issued by the Commission under the WPA can be appealed to DEP. R. Elkind added that the local wetlands bylaw requirements are more stringent than the DEP requirements under the WPA.

Unidentified abutter questioned what type of technology could be employed to prevent pollution of the wetlands. D. Dineen responded that up-to-date septic system design will be required by the Board of Health. Native plantings on the slope, reduction in lawn area, infiltration of runoff are all conditions that the Commission could consider to protect the wetlands. C. Russo added that a rain garden for runoff infiltration is another method that might be used.

All parties agreed to continue the hearing to August 8, 2016 at 6:30pm to allow the applicant time to revise the plan to address the issues discussed tonight.

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

Present: Dan Wells of Goddard Consulting for the applicant; Dave Burke, wetland delineation peer review consultant for the Commission

Mr. Wells stated that there was a site inspection several weeks ago with T. Friedlander, B. Armstrong, D. Dineen, Dave Burke and himself. Several changes made at site visit include: 1) extend bvw line near sphagnum ditch to northeast; 2) show extend of vernal pool within the bvw. The site is enormous with a tremendous amount of wetland. It is also a difficult orientation in the field. Several revisions were made to the plan as a result of this inspection. He presented the Commission with the final plan reflecting those changes made in the field. Plan is dated July 11, 2016. Dave Burke stated that he has reviewed these plans and concurs that they reflect the field changes as well as the changes Dave recommended in his June 29, 2016 report to the surveyors. Two areas meeting the criteria for vernal pool habitat was identified on the site. One pool contained direct vernal pool indicator and one meeting only the physical volume criteria under the local wetlands bylaw. He requested that the ORAD reflect the applicant's ability to overcome the presumption of vernal pool habitat in subsequent years when conditions are appropriate.

Dave Burke commended Mr. wells for a great job on a very difficult wetland delineation. D. Dineen thanked the applicant for her patience during this long process.

C. Russo noted that the site contains a significant amount of floodplain.

On a motion by R. Elkind; 2nd C. Russo; the Commission voted unanimously in favor of accepting the wetland delineation as shown on the revised plan dated July 11, 2016.

WPA & Bylaw Request for Determination of Applicability: 84 Old Lancaster Rd.

Present: Tracey Christopher

Mr. Christopher presented a plan showing a 4' 7" x 14' 5" kitchen addition on rear of house. on existing lawn within 100' of bvw. All work is on existing lawn. The wetlands consist of bordering vegetated wetland that may or may not come to within 100' of the proposed work.

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted unanimously in favor of a negative DOA.

WPA & Bylaw Request for Determination of Applicability: 77 Cedar Creek Rd.

Present: Addison Grimes

Mr. Grimes presented a plan for patio construction on existing lawn within 100' of bordering vegetated wetland. It was confirmed that the patio will be built to infiltrate runoff. The patio will be wooden decking with concrete footings.

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

WPA & Bylaw Notice of Intent: Nashawtuc Country Club: Tree Removal violation correction

Present: Michael Toohill, wetland scientist; Troy, Nashawtuc Greens Manager

Mr. Toohill presented plans for comprehensive restoration for mitigation of wetland violations from late last Fall. Several meetings had been held with T. Friedlander and D. Dineen to view the site and go over draft restoration plans.

Two areas within the upland resource area had been altered as part of golf course maintenance. The first area is on the west side of Concord Road along Cold Brook and its associated bordering vegetated wetland. The area of involvement is approximately 2300 sq. ft. The second area is located on the east side of Concord Road along the Sudbury River. This area involved approximately 3600 sq. ft. of alteration. With the exception of several mature trees, most of the plants removed were invasive species such as buckthorn. The plans include restoration with the installation of native species of shrubs and seed mixes. The east area will have addition invasive plants removed prior to native species installation. The replanting will take place in September for optimal successful establishment of the new vegetation.

On a motion by R. Elkind; 2nd M. Sevier; the Commission voted unanimously in favor of closing the hearing. A draft Order will be reviewed and voted at the Aug. 8 meeting. Order to include: 1) timeframes for replanting; 2) monitoring requirements; 3) 90% establishment of new vegetation for COC.

Review for Approval:

25 Union Ave., Revised planting plan & grape vine removal

Present: Steve Turner

Mr. Turner reviewed the revised plans with the Commission. He also requested a change in the requirements of the Order to eliminate the shrub and seed mix plantings as Concord grape vines have overrun the area. He is seeking approval to mow the grass area around the building regularly to provide access and to mow the area of grape vines at least annually.

Discussion continued for further clarification of the request. M. Sevier stated that the requirement in the Order was to maintain a 16' width grass strip for access and restore the next approximately 20' width with native meadow mix and trees. He didn't believe it was, or should be, the intent that the area proposed for planted restoration be mowed. D. Dineen agreed and recommended substituting grape vines for the meadow mix and shrubs, but confining mowing to the 16' wide strip directly adjacent to the building.

Commissioners wanted to see the width of the area approved for mowing shown on the final plan. Mr. Turner agreed to have the plan revised to show the area approved for mowing.

168 Horse Pond Rd.; Revised Fence and Replanting Plans

The Commission reviewed the revised plans for fencing and native shrub restoration. The plans reflected the requirements in the Order and the revised plans were accepted.

Request from New England Wildflower Society for Seed Collection

Present: Laney Widener

Ms. Widener requested permission to collect plant seeds on three parcels of land, one Sudbury conservation land and two general town land for developing a Native Seed Bank. Parcels K10-0041 (conservation), parcels L08-0002 and L08-0013 (Selectmen). The purpose is to collect native seeds for a program called Seeds of Success which uses the seeds for replanting native areas that were destroyed by fire, flood, dam removal projects, etc. They are focusing now on providing seeds for the Hurricane

Sandy restoration and for the future. Most seeds will be used in the southern and mid-Atlantic region to recreate shrubs and wetland areas. Donators can request the use of their seeds back for their own projects.

They will collect seeds in areas of populations of over 10,000 seeds. Only 20% of the available seeds will be collected from these areas. Seeds are stored in Whately MA at a nursery with humidity and temperature control in a large freezer. The hope the seeds remain viable for many years. They have already received permission from SVT and GMNWR for seed collection on their lands.

M. Sevier questioned the success rate of the seeds in the wild. they did not have this information as of yet. C. Russo questioned if there would be any collection in drinking water supply areas. They were not sure. D. Dineen added that it will be very important that vegetation is not impacted especially in drinking water supply areas.

On a motion by C. Russo; 2nd R. Elkind; the Commission ONLY granted permission to collect seeds from K10-0041, the Wash Brook parcel. They granted permission to collect seeds from L08-0013 (wet area adjacent to Feeley Field) and L08-0002 (Raymond Reservation) ONLY to the extent that the collection requires activity in jurisdictional wetland resource areas. Final permission for the collection of seeds in these two parcels will require the permission of the parcel owner. A report will be provided to the Commission at the end of the collection period. The report will include the sighting of any native plant species encountered in the field. Unanimous in favor.

Requests for Certificate of Compliance:

77 Hudson Rd., Police Station

D. Dineen reported that the as-built plan has been received. she has discussed the final project with Facilities Director Jim Kelly, and done a walk-through of the site. The detention basin was constructed substantially in compliance with the approved plan and is functionally properly. The project only involved drainage within the Commission's jurisdiction.

On a motion by C. Russo; 2nd B. Armstrong; the Commission voted unanimously in favor of issuing the COC.

807 Boston Post Road; Restoration plantings

D. Dineen and Wetland Specialist Dave Burke visited the site on July 8. The meadow was very well established and the site was stable. Photos were taken for the file. The new owner requested approval for the removal of two trees. Only one tagged ash tree could be found on the inspection. This tree was leaning over the garage and causing roof damage.

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted unanimously in favor of issuing the COC and permitting the removal of the one tree over the garage.

24 Run Brook Circle

D. Dineen reported that the area of pool removal was stable and it appeared that the Order was adhered to for the scope of permitted work.

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

Lot 15A Greystone Lane

This is a file from several decades ago. The work involved grading in a portion of the buffer zone. The site is stable.

On a motion by R. Elkind; 2nd M. Sevier; the Commission voted unanimously in favor of issuing the COC.

Notice of Violation Status: 443 Peakham Rd:

T. Friedlander stated that the Commission had previously granted an extension of time to complete the restoration plan from early spring to June 29, 2016. As of today, little progress has been made. He asked if the Commission wished to take further enforcement action at this time.

D. Dineen suggested that forcing the replanting of the area now did not seem like a viable solution. With a declared drought and very restrictive watering ban in effect, the plants would likely not survive. She recommended an extension of time for the replanting to Sept. 1, 2016. Commissioners agreed and granted the extension, however fines will begin on Sept. 2, 2016 on a daily basis if the replanting is not completed by this generous additional extension of time.

Recording of Enforcement Orders/Notices of Violation: Re: Town Counsel Memo

Commissioners discussed Town Counsel's memo stating her opinion that the Commission should not record Enforcement Orders. D. Dineen noted that the memo did not address Notices of Violation under the wetlands bylaw and the bylaw explicitly states the NOVs should be recorded. This bylaw was approved by prior Town Counsel and the Attorney General. She has requested, but not yet received, clarification from Town Counsel.

B. Armstrong agrees that recording the EO is staining the title, however it is an effective tool for enforcing the WPA. She questioned what alternative the Commission to obtain compliance.

T. Friedlander added that the Commission's policy is to record the EO only in cases where the property is known to be changing hands or the owner is not responsive to other requests for compliance. C. Russo stated that he sees no reason to change the current practice at this time. B. Armstrong would like follow-through from Town Counsel.

Tree Cutting Agricultural Exemption: Town Counsel Memo

T. Friedlander explained that Town Counsel's memo in response to the Commission request for clarification of the agricultural exemption for tree removal did not answer the questions asked. The question asked if, under the local bylaw, homeowners cutting trees on their own property, for their own use as firewood, chips, etc., are exempt under the bylaw. The bylaw wording exempts properties "presently & primarily" in agricultural use. A residential lot would not have these criteria in place. Further clarification from Town Counsel is being sought.

C. Russo question if the DCR interpretation of the agricultural exemption in the WPA is new. D. Dineen replied that the wording in the WPA has been the same for decades, however it appears DCR has only recently made an effort to publicize the exemption.

Miscellaneous Wetland Items:

Bruce Freeman Rail Trail: Vote: Peer Reviewer for ANRAD filing

T. Friedlander advised the Commissioners that at the Community Meeting on the BFRT, VHB has indicated that an ANRAD would be filed for a July 11 hearing. Nothing has been received and no update provided to the Commission by VHB. In anticipation of receiving the ANRAD shortly and to help

expedite the process, he requested the Commission approve the contracting of a peer reviewer for the wetland delineation at this time. D, Dineen added that this is a 4-mile linear project with wetlands on both sides of the rail bed in many areas of the route. She recommended Wetland Specialist David Burke as he is very good with wetland delineation and tends to charge less than other peer reviewers.

The Commission approved contracting with Dave Burke for this wetland delineation peer review.

Avalon Bay Development 526/528 Boston Post Rd.: Comments to ZBA

The Commission declined comment to ZBA at this point. The wetland filing has not been received and the comments to ZBA would be wetland-related. It would be best if the Commission has the details on the wetland issues before providing comments.

Discussion/Decision: SVT Proposal for Solar Blanket Removal in small area of wet meadow

Commissioners decided to invite SVT representatives in to the next meeting to discuss this issue in person.

47 Fairbank Rd.; Invasive Species Removal Status update

D. Dineen reported that a good attempt has been made to eradicate invasive plants from the upland resource area on this lot, however invasive plants remain on site. Replanting was only marginally successful due to the installation of some of the plants in the wrong soil locations. This work was required as part of a negative Determination for the expansion of the house and landscaping into the upland resource area, however, because these were not conditions outlined in an Order, there is no detail on the expectations of the Commission at the conclusion of the project. she recommended accepting the work that has been done to date and in the future, requiring a Notice of Intent for projects with a similar scope of work.

General Miscellaneous:

Pending House Bills:

Bill H717 intends to limit the use of Glyphosate by utility companies in areas within, on or above a federally designated sole source aquifer.

Bill H4357 intends to amend Mass. General Law by striking out a paragraph and inserting language designed to protect municipalities and abutters from maximum impact due to utilities siting's within a community

On a motion by C. Russo; 2nd R. Elkind; the Commission voted unanimously in favor of supporting both Bills and sending a letter of endorsement to our Legislators.

FY2017 MACC Dues

On a motion by B. Armstrong; 2nd R. Elkind; the Commission voted unanimously of remaining a member of MACC for FY17 and to authorize payment of the FY17 dues at a cost of approximately \$800.

Participation in SVT Facebook Desert Area website

Commissioners discussed participating in the new SVT Desert Area Facebook page. They agreed that it was OK to include the Hop Brook conservation land but they did not want any responsibility for maintaining the page. R. Elkind did not want participation if any personal information, including names

of Commissioners were included. He has issues with clearances he requires for work. D. Dineen did not want the locations of any found state-listed species posted to Facebook. This is a signal to collectors where to find these rare animals. As rules and regulations vary by property ownership within the broader region involved, if rules and regulations are posted, they should include the regulations for each individual parcel.

Commissioners agreed to participate with the discussed restrictions.

Commissioner Updates on Activities/Meetings Attended

T. Friedlander informed the Commissioners that he, Beth Armstrong, and Debbie Dineen attended a workshop at state Fish & Wildlife headquarters in Westborough on June 22. the workshop focused on the new Conservation Restriction model by EOEEA. Speakers included Bob O'Connor and the new EOEEA CR reviewer, Atty. Martha Reichert. It was very informative as far as application of Article 97 of the MA Constitution and the extinguishment clause in CRs.

Meeting Schedule

The Commission established the following meeting schedule for the remainder for 2016.

Aug. 8

Sept. 12

Sept. 26

Oct. 17

Nov. 7

Nov. 21

December tbd

Additional meetings may need to added to meet wetland filing deadlines.

On a motion by R. Elkind; 2nd M. Sevier; the meeting adjourned at 9:15pm.