

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, Feb. 6, 2017

Present: Tom Friedlander, Chairman; Beth Armstrong, Vice-Chairman; Mark Sevier; Dave Henkels; Kasey Rogers (6:35pm arrival); Bruce Porter (6:37pm arrival); Charlie Russo (6:40 arrival); Debbie Dineen, Coordinator

Minutes:

On a motion by D. Henkels; 2nd M. Sevier; the Commission voted unanimously in favor of approving the minutes of Jan. 23, 2017 as drafted.

WPA & Bylaw Notice of Intent: Lot 56 (#47) Bigelow Drive

Present: Scott Goddard; Dr. Ed Chiang; Steve Poole; Jayabal Shanamugan V

Mr. Goddard explained that the NOI was filed to request after-the-fact approval of existing violations and proposed new activities. The additional activities include additional fill in the bordering vegetated wetland for a total of 246 sq. of new or unauthorized wetland fill associated with the driveway. A site walk was held with Gary Bogue of DEP before this NOI was filed with the Commission. Mr. Bogue was ok with all changes to the existing approved plan but wanted the NOI filed with the SCC for the additional proposed 108 sq. ft. of wetland fill. The retaining wall was located in accordance with the approved plan. The house location was angled slightly differently from the approved plan, which resulted in one garage bay being inaccessible. Mitigation is proposed in the form of more robust restoration plantings in five zones. Wetland replication of 632 sq. ft. at 2:1 is offered.

Engineer Steve Poole stated that the garage bay is almost impossible to get a 16' vehicle in and out and was difficult even on the previously- approved plan. The new wetland fill will allow a car to back out 30'. Responding to the Commission, he stated that amount could be reduced to 24' to back out. He added that the house location was twisted to allow the septic setback without the need to construct a second foundation wall in the rear of the house.

C. Russo questioned why the garage could not be changed instead of the driveway to prevent further wetland alteration. Mr. Shanamugan replied that there is not enough room to turn a car.

D. Dineen confirmed that the unauthorized revisions were made to the plan to prevent the additional cost of having to construct a second foundation wall.

B. Porter stated that an additional garage bay could possibly be constructed on the side of the house if the setback issues could be addressed. T. Friedlander noted that an additional car could be stored on the paved area on the side of the house.

B. Armstrong stated that it looked like a car could turn after clearing the garage doors. D. Dineen noted that replacement of the two garage doors with one larger door might give more maneuvering room. She added that there appear to be alternatives other than additional wetland fill.

D. Henkels stated that the area proposed for mitigation in the new NOI included areas that were to be restored as part of the original, expired Order. Any area that was previously to be restored cannot be considered new mitigation for the additional alterations of resource areas.

C. Russo noted that the current situation appears to be the result of design and engineering mistakes. He suggested tilting/angling the garage to correct errors that resulted in wetland alteration as the solution. He also stated that much of the mitigation offered was not valid as it was already a requirement. He suggested looking at costs of other options. D. Henkels stated that cost is not a Conservation Commission issue.

D. Dineen had a foundation plan from the Building Department that was dated Dec. 2015. This showed

that the builder was aware at that time of the issues with the house location. The builder, Mr. Senecal, came to the Commission in March 2016 when it was discovered that the original DEP Order had expired and requested approval to stabilize the area with sod. When she requested an interim as-built plan prior to the permanent sod installation, Mr. Senecal stated on the record that he was confident the site was completely in accordance with the approved plan. Yet the record shows the foundation location and the grade elevations were known to him at this time to be incorrect.

M. Sevier questioned if the driveway was built in accordance with the approved plan and if it is wider than necessary. D. Henkels noted that the driveway was not crowned as was proposed. Mr. Poole stated that it is almost impossible to crown a driveway. M. Sevier suggested a compromise could be reached. B. Armstrong stated that a reasonable solution is to allow the least amount of wetland alteration that will allow a car to get in and out of the garage. She did not believe the present plan was reasonable.

D. Henkels noted that with the current NOI proposal, the wetland would have three alterations; the original approved 220 sq. ft. for the bordering vegetated wetland crossing, the additional 156 sq. ft. of current unauthorized fill, and the proposed new 108 sq. ft. of new bvw fill to accommodate garage access after the house location was illegally revised.

K. Rogers felt there might be more flexibility with one large garage door.

T. Friedlander stated that the Commission has identified possible alternatives to more wetland fill and it is the applicant's responsibility to revise the plans and address the mitigation issue.

D. Dineen advised the Commission that the Commissioners who issued the original Order were very concerned about loss of upland habitat for the three vernal pools in very close proximity to the house. The Commissioners at that time waived the requirement for wetland replication, as retention of upland habitat was so important. The applicant should discuss further waiving of any new proposed wetland replication.

With the agreement of the applicant to continue, a motion was made by D. Henkels; 2nd K. Rogers; to continue the hearing to Feb. 27, 2017. Unanimous in favor.

WPA & Bylaw ANRAD Nashawtuc Country Club, Concord Rd. wetland delineation only

To allow additional time for the on-site wetland delineation review with soils data by the Commission's peer review consultant, and with approval of the applicant's representative, the Commission voted unanimously to continue the hearing to February 27, 2017.

WPA & Bylaw Notice of Intent: Nobscot Boy Scout Reservation, Knox Trail Council BSA

Present: Chris Lucas; James ; Dale ;

Mr. presented a plan for trail maintenance on 2.7 miles of trails in the Nobscot Boy Scout Reservation in Sudbury and Framingham. Trail width currently varies from 8.5' to 11'. Concurrent NOIs have been filed in both towns. The plan is to regrade, remove ruts, and add 6" – 12" of stone where needed. The National Guard is donating the labor for this project. They will work from May to November on weekends only and for a two-week period in June. Approximately 120 people will be working on this project on site. A maximum of 10 – 20 cu. yds. of material will be on the site at any one time. An excavator, a roller, and affront end loader will be the equipment used.

Mr. Lucas explained that wetland jurisdictional areas on site within areas of work proposed under this NOI consist of bordering vegetated wetland, bank, land under waterbodies, 4 streams that are likely intermittent, isolated land subject to flooding, and vernal pool and adjacent upland resource area (under the local Sudbury wetland bylaw). The wetland, including intermittent or perennial status of streams, as delineated on the plans submitted with this NOI were not confirmed by the Sudbury Conservation Commission on the Feb. 2, 2017 site inspection. All disturbance is being contained within existing trail

layouts. The applicant continues to work with Natural Heritage and Endangered Species Program for work in MESA jurisdiction. The Order can require review, approval, and incorporation into an amended Order of any NHESP MESA requirements placed on the project after the issuance of this Order. The Commission can be notified prior to any sweeps being done for wildlife in the work sections.

All work is confined to existing trails except for staging areas that will be located outside wetland jurisdiction and outside of the conservation restriction. No trails will be widened and no culverts will be replaced as part of this project. Resurfacing of the two parking lots is also part of this NOI. No impervious material will be used. Work involves only the leveling of trails to provide emergency vehicle access and improve drainage on the trails. This includes some cut and fill resurfacing along trails to remove rutting, and the placement of fill or stone within the trail as needed. Steel plates and stone will be placed over culverts for the duration of the work on any given trail section where a culvert crossing is required. Silt fencing will be used for erosion control in the sections being worked and as directed by NHESP as a turtle barrier to prevent turtles from entering the work areas. The only maintenance on the culverts will be cleaning, if necessary.

Commissioners discussed conditions for the Order as drafted by the Coordinator and discussed. Prior to any on site activity, the final MESA permit shall be submitted to the SCC for review, approval, and possible amendment to this Order. No activity associated with the Order may occur on this site until the MESA permitting process is complete and the Order is amended as necessary to be compatible with MESA requirements.

Prior to any work during spring and fall migration times as determined by NHESP for Box Turtles and Blue-spotted salamanders, the area shall be surveyed by qualified personnel just prior to equipment movement to remove any animals from within the work area and place them out of harm's way. The SCC shall be notified at least 24 hours in advance of the rare wildlife survey/sweep occurring.

All personnel that may camp on site for all or part of the duration of the proposed work shall do so in existing cabins, lodges, or campsites. Appropriate sanitary facilities shall be provided.

No activity shall be permitted that is in conflict with the prohibited uses as stated in the conservation restriction recorded in S. Middlesex Registry of Deeds Book 51971 page 353. No equipment shall be operated, maintained or stored on site within wetland jurisdictional areas or within the area covered by the CR. Staging areas for work crews, equipment and materials shall be located outside of wetland jurisdictional areas.

An Environmental Site Monitor (EM) shall be present on a regular basis and at least once each week and after rain events in excess of 1". The name and contact of this EM shall be provided to the Commission prior to any activity on site associated with the Order. The EM shall prepare and submit status reports to the Commission four times annually, approximately every six weeks, during the May through November activity period. These reports may be in the form of emails to the Conservation Office and shall include the areas worked, problems encountered, wildlife reported, status of erosion control, location of barrier fencing for rare wildlife during that period, and results of pre-work surveys (sweeps) for state-listed species, if any during that period.

If weather conditions create site conditions that are likely to create more disturbance than anticipated and more disturbance than the installed erosion control was intended to control (i.e. heavy rains, quick thawing of ground conditions, excessive sedimentation, etc.), all work shall cease until site conditions can resume under normal conditions.

Public notification of trail closures shall be posted.

On a motion by B. Armstrong; 2nd K. Rogers; the Commission voted unanimously in favor of closing the hearing.

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

Request for Extension of Order of Conditions:

#301-1129 Eversource (NStar original applicant), 163 Boston Post Rd., Substation Expansion

VHB on behalf of the applicant has requested a one-year extension of the Order for the purpose of completing the as-built plans and allowing a review of the wetland replication area during the next growing season. Commission felt that the as-built and replication review could be completed by Sept. 1, 2017 and a full year extension was not necessary.

On a motion by B. Armstrong; 2nd D. Henkels; the Commission voted unanimously in favor of extending the Order to Sept. 1, 2017.

Violation Status

0 Washington Dr. Review, Vote & Sign Enforcement Order/Notice of Violation as part of Settlement Agreement

D. Dineen reviewed the changes discussed with Atty. Nysten to the draft EO/NOV documents. All changes were agreed to by both parties. The elimination of the requirement to remove the pipe on the spillway was approved subject to proof that the pipe had been removed.

On a motion by B. Armstrong; 2nd B. Porter; the Commission voted unanimously in favor of accepting the final draft of the EO/NOV as discussed.

267 Landham Rd., Safar

The violation appears to include work on a retaining wall after the Order of conditions requiring wetland restoration and wall construction had expired. The work has been viewed from the abutting property.

Contact was attempted by:

- 1- Phone calls. They have a phone that does not take incoming messages.
- 2- Knocked on the door. No answer.
- 3- Sent a letter regular mail. No response.
- 4- Sent a letter certified mail. It was not picked up and has been returned by the post office.
- 5- Resent the second letter (which was a Notice of Violation) by regular mail.
- 6- Sent several citations at \$100 each. No response.
- 7- Continued to try to call.
- 8- Emailed both husband and wife at the 2012 email addresses we had on file from 2012. No response. Emails were not returned as undeliverable.

Commissioners discussed if the next action should be a court injunction. T. Friedlander suggested using a drone to view the property to confirm the violation. D. Dineen suggested checking with the Police Dept. and Town Counsel to see if the use of drones is permitted. Daily tickets and a court warrant for access and to stop work are options.

On a motion by C. Russo; 2nd B. Armstrong; the Commission voted unanimously in favor of issuing daily tickets. D. Dineen will ask the abutter if they will approve access through the abutting property to see if the work is on-going.

105 Firecut Ln.; clearing and shed construction in riverfront area

It appears homeowners have cleared a wide path and installed a shed within the riverfront area. Commission agreed to send them a letter explaining the wetland restrictions in riverfront area and advising them they need a permit and to possibly restore some of the area.

11 Barbara Rd.; tree removal in wetland

The homeowners had cut one tree that was rotted and several other smaller trees they believed posed a threat to the utility wires. They thought the drainage easement shown on their plot plan indicated the location of the wetlands. They stayed out of the drainage easement area intentionally. B. Porter and D. Dineen had visited the site and agreed the work was minor.

Commissioners agreed that no restoration is necessary, as the tree that was rotted would have been allowed to be removed. The remaining trees could have been removed by the utility company under a wetlands exemption. A letter explaining the regulations for work in and near a wetland will be sent along with approval to continue to remove invasive plant species by hand, without the use of chemicals, as mitigation.

11 Bridle Path tree clearing

The office received an anonymous call on tree clearing at 11 Bridle Path. D. Dineen went to the site. Monkey Men Tree service was on site. She noted that there have been problems with Monkey Men not obtaining wetlands permits in the past. Roughly 12 tall pines were removed with another 10+- tagged for removal. All appear to be within 100' of wetland. A few may be at the edge of bordering vegetated wetland. Work was shut down.

The homeowner is being very cooperative. He has requested approval tonight for:

1. *Permission to clean up all the stuff laying around.(safety purposes for kids)*
2. *Can I take the unsafe town tree down that's being held up by those 2 small trees by the fence. (I think those 2 little trees might have to be removed to safely do it)*
3. *There's 4-5 stick trees left that are topped off along our grass line. Can I have those removed?*
4. *There's 1-2 pine trees on the swing set side aiming right at my house (that are in a grassed area). Can I have those removed?*

On a motion by C. Russo; 2nd D. Henkels; the Commission voted unanimously to issue an EO/NOV allowing the 4 requested to be done right away for safety reasons, and the requirement for a NOI for remaining work and a restoration planting to be submitted for review and approval within 45 days.

On a motion by D. Henkels; 2nd B. Porter; the Commission voted unanimously in favor of issuing a citation to Monkey Men.

Comments to Other Boards

Bruce Freeman Rail Trail comments to BFRT Design Task Force

C. Russo reported that the BFRTTF has requested Conservation input on which of two preferred alternatives the Commission would like to see explored. The alternatives are in the Union Ave./Hop Brook area and the Pantry Brook/Featherland Park area. Five options were presented for surface treatments in these sections close to wetlands as well. He noted that Concord had reduced the width, limited tree clearing, and limited equipment size, in a sensitive area. They also prohibited the use of zinc in guardrails and required woody native plants for stabilization in some areas. Invasive plant removal and culvert replacements were part of the mitigation.

D. Henkels thought that reviewing what other towns had permitted and conditioned would be helpful.

D. Dineen questioned how stormwater was treated. She noted that her comments back to the BFRT voiced a concern with the lack of overall alternative investigations at this point. These alternatives will be required for the NOI so proceeding with a design that might change at the 75% stage seems wasteful.

T. Friedlander and B. Armstrong both stated they have concerns for issuing a group consensus at this point, especially on very narrowly focused details.

Coolidge II additional comments to ZBA on new materials submitted

D. Dineen presented two plans to the Commission of the site showing two very different wetland delineations. The first plan was a 2007 plan by Schofield Brothers with the wetland delineation by Fred King, who is one of the Commission's peer reviewers. This 2007 plan shows much larger wetland than is shown on the second plan. This second plan shows the wetland by LEC Environmental.

Commissioners noted that the Schofield wetland, if correct, would eliminate the ability to place the stormwater detention basin as is now shown on the plan submitted to ZBA. Commissioners agreed that an ANRAD will be necessary to resolve the wetland line on this site.

Comments to Planning Board on Definitive Cluster Subdivision Plan- Livermore Estates, Maynard Rd.

The Conservation Commission reviewed the Livermore Estates Subdivision at last night's meeting. Comments developed for the Planning Board included:

- A current Order of Conditions under the local wetlands bylaw is valid until June 30, 2017. This Order is required due to the drainage from the site discharging to a jurisdictional wetland area. This Order will expire June 30, 2017. This Order requires a perpetuity conservation restriction to be recorded on all areas outside the limit of disturbance (steep hillside) prior to the start of any activities on site. It appears the Order will expire before the conservation restriction is recorded and construction is completed. A new Notice of Intent will be required.
- As the subdivision is a Flexible Development, the intent of this type of Subdivision is to preserve natural features. Therefore, any subsequent Orders will also require the conservation restriction on the steep slope.
- Soils in the area of the infiltration structures will need to be provided as part of the NOI.

A permit is needed to connect to the town drainage system in Maynard Rd. These connections are closely reviewed to ensure system capacity of the existing pipes and culverts. Pre-treatment of the runoff entering this system is reviewed to be sure the town meets the standards under our EPA MS4 permit. Any upgrades to the town system (i.e. catch basin grease/gas traps, deep sumps, etc.) should be the responsibility of the developer as mitigation for the connection permit

Signatures - Revolving Fund Articles for 2017 ATM – vote to ratify

Commissioners voted unanimously in favor of signing the two warrant articles for FY18 Revolving funds for wetland fees and trail maintenance funds. Motion by D. Henkels; 2nd C. Russo

Other Business:

- 0 Willis Rd. appeal; additional response to DEP

Commissioners discussed a response letter to DEP indicating that shading is not the only benefit of trees and other native vegetation at the edge of wetlands, and that the statement of the Commission that the clearing will alter wetlands is not opinion, but fact supported by extensive study.
- Notice from Tenneco Gas re: gas line clearing on town conservation land

Notice was received informing the Commission that vegetation clearing over the buried gas utility line will commence shortly in the Landham Brook Marsh conservation area. This work will be confined to the Tenneco easement area and is exempt from wetland permitting.

- Conveyance of three parcels to USFW – vote recommendation to Selectmen

The Commission voted unanimously to support the sale of the following three parcels of land to USFW to be maintained as part of the Great Meadows National Wildlife Refuge:

F13-0013. 6 acres. Assessed value is \$3,000.

G12-0015. 12 acres. Assessed value is \$6,100.

G12-0013. 5 acres. Assessed value is \$2,500.

Motion D. Henkels; 2nd C. Russo

- Reports from Board Members and Staff

B. Armstrong informed the Commission that she will be moving out of Town in the spring. This leaves an opening on the Commission and the need for a new Vice-Chairman.

T. Friedlander reported issues with the receipt of emails from Yahoo accounts. As several members use Yahoo, he reminded everyone to check junk in boxes occasionally.

On a motion by B. Porter; 2nd K. Rogers; the Commission voted unanimously in favor of adjourning the meeting. 9:30pm

