

**SUDBURY CONSERVATION COMMISSION**  
**Minutes of the Meeting Held Monday, Aug. 14, 2017**

Present: Tom Friedlander, Chairman; Dave Henkels, Vice-Chairman; Mark Sevier; Kasey Rogers; Bruce Porter; Charlie Russo; Debbie Dineen, Conservation Coordinator

Chairman Friedlander opened the meeting and noted the tragic news of the accidental death of 8 year-old Harry O'Connor, of Sudbury. Chairman Friedlander attended the Memorial Service and said that it was extremely well attended.

**Minutes:**

On a motion by B. Porter; 2<sup>nd</sup> C. Russo; the Commission voted unanimously in favor of approving the minutes of July 31, 2017 as drafted. T. Friedlander abstained. Not present for meeting.

On a motion by D. Henkels; 2<sup>nd</sup> C. Russo; the Commission voted unanimously in favor of approving the minutes of May 22, 2017 as drafted.

**WPA & Bylaw Request for Determination of Applicability: 19 Guzzle Brook Dr., septic repair**

Present: Mike Sullivan, engineer; Bob & Diane Dacey, homeowners

Mr. Sullivan presented a plan for the repair of a filed septic system. There is no increase in the number of bedrooms for the system design. The proposed leach field will be further from the wetland than the existing system and will be located as far as possible away from the wetland.

D. Dineen added that the wetland resource areas consists of bordering vegetated wetland and perennial stream. For the purpose of the septic repair, it is not necessary to determine mean annual high water as the project meets the performance stands by locating the system as far as possible from all wetlands. An erosion control barrier will be installed at the limit of work.

On a motion by D. Henkels; 2<sup>nd</sup> M. Sevier; the Commission voted unanimously in favor of a negative Determination.

**WPA & Bylaw Notice of Intent: 3 Goodnow Rd., after-the fact driveway paving; Irma Dishnica, applicant**

Present: Scott Goddard, Goddard Consulting for applicant

Mr. Goddard had requested a continuation to allow them time to address the issues that were raised by a number of town departments following the filing of the NOI. T. Friedlander stated that the longer the pavement remains in place, the greater the risk to wetlands from increased runoff and increased pollutants. Mr. Goddard noted that the site was currently stable. T. Friedlander stated that the paving of the driveways and other actions were significant violations that have shown a pattern of degradation of the environment over the past several years. He said that a restoration of wetland values and functions must happen quickly.

D. Henkels added that the driveway was extended and enlarged, areas of the lot regraded, and significant pavement installed. He noted that the septic system installed in 2001 was required to be FAST system for denitrification. The integrity of the system is dependent upon its proper functioning. None of the annual reports that are required to be filed with the Board of Health has been submitted. He further commented that a trench drain and a culvert from the wetland/vernal pool to the town drainage system in Hudson Road are violations as well, even if they were performed by previous owners. All violations by the current owners are egregious violations as they occurred subsequent to six certified letters sent by the Commission to the current homeowners, which explained the need to obtain a wetland permit for any changes on the site.

M. Sevier stated that he does not feel good about the situation and expressed a concern for what can realistically be done to correct it. He believes the Commission can 1) continue the hearing to allow more time for the homeowner to respond to all the concerns; 2) deny all illegal work and require restoration, or 3) issue an Order of Conditions that requires whatever it takes to restore wetland functioning.

K. Rogers thanked staff for compiling the information on the history of the site, including previous and new violations of a number of town permit requirements. She expressed concern that pavement removal should be accomplished with a well thought out plan that protects resource areas rather than creates more wetland destruction.

B. Porter noted the many months of unresponsive behavior by the homeowners; failure of the homeowners to allow the Commission to visit the site earlier this summer; and the amount of resources expended by the SCC, staff, and other town departments on compliance for this site.

In response to M. Sevier, S. Goddard stated that he was not sure how much time would be needed to offer a plan to bring the site into compliance. He stated he is just the middleman and it is the homeowner's call as to when things get things done. C. Russo suggested Mr. Goddard communicate the Commission's concerns to the homeowner and note that it appears the SCC is close to a denial of allowing the pavement to remain. He would like to know who did what when as far the site violations. D. Henkels replied that information is irrelevant. It does not matter who the owner was at the time of the violation. Violations travel with the property except in several very distinct situations involving the builder. That is not the case at 3 Goodnow. The issue for the Commission is loss of wetland values and functions and how a NOI proposal can restore them.

T. Friedlander stated that with after-the-fact NOIs, the Commission must ask itself if the work would have been permitted if an application had been submitted prior to the work being done. He said that it is very likely that the work comprising the violations would not have been permitted. In similar situations of applications for pavement, grading, retaining walls, etc. within 100' of vernal pools, he is not aware of any time this type of work has been permitted. M. Sevier added that the Commission must now look at what can be permitted in response to the violations. He added the concern that Goddard Consulting not continue to be involved and no progress is made.

D. Dineen suggested a meeting with several members (no quorum) of the Commission, along with the Town Engineer, DPW Director, Board of Health Director, and others as applicable, to look at the issues of all permitting departments and discuss resolutions that meet state laws and town bylaws. This might make it easier than having the applicant or Goddard Consulting deal with each department individually and potentially looking at conflicting resolutions. The intent is that a plan for compliance can be presented to all boards that can move forward quickly to allow the property's resource values and functions to be restored this fall to avoid flooding and habitat issues next spring. All parties agreed to this approach and the hearing was continued to Sept. 25<sup>th</sup>.

#### **WPA & Bylaw Notice of Intent: 47 Bigelow Dr.; violation compliance**

Present: Jayabal Shanamugan; applicant; Steve Poole, Engineer; Scott Goddard, Wetland Scientist; Kim A- , traffic consultant

S. Goddard explained that the NOI was filed for the widening of the driveway to allow better garage access by vehicles. To meet engineering standards for entry and exit to one of the garage bays and additional 138 sq. ft. of fill must be placed in the bordering vegetated wetland. This fill is in addition to the 108 sq. ft. of wetland fill already placed in the wetland in violation of the original OOC approving house construction. DEP had withdrawn the file number when a similar plan was filed several months ago. DEP has now issued a new file number to allow the ACOP process to proceed. DEP is assessing \$9000 in penalties with \$4500 to be waived if the restoration is accomplished according to the new plan in 30-60 days. The ACOP settlement is subject to an OOC issued for the new plan by the SCC. DEP understood the safety and egress issues.

D. Dineen noted that the SCC was not informed of or invited to any settlement discussions. C. Russo questioned if there is a process of appeal of the ACOP. T. Friedlander believed that DEP is sending a public message that violations of the WPA will end up with minimal requirement for restoration. The developer did what he wanted to do at the expense of the environment and the wildlife. He questioned who speaks for the environment in a DEP settlement action. The SCC may need to make an uncomfortable decision. This was a blatant violation that did not have to occur. It appears that no one but the SCC is going to speak for the environment.

M. Sevier stated that DEP's end product does not have to be the Commission's end product. He added that 108 sq. ft. is not much additional alteration. D. Dineen stated that the SCC must look at cumulative impacts, particularly under the local wetlands bylaw. If all properties abutting this wetland system wanted to fill 108 sq. ft., the cumulative impact could be devastating to the vernal pool within the bordering vegetated wetland and its adjacent habitat. It could set a very bad precedent. C. Russo stated that precedent is important. D. Dineen stated the only way a bad precedent is not set is if the mitigation offered far exceeded the values of the area to be filled. As of now, no meaningful mitigation, even under the WPA is proposed. S. Goddard stated that an area 1000' long by 15' wide is offered for mitigation. It is located directly adjacent to Route 20. Mr. Shanamugan could offer this parcel as mitigation. This was not viewed as meaningful mitigation by most Commissioners and D. Dineen. It would be a parcel MA DOT could take by eminent domain if it ever wanted to widen Rt. 20. T. Friedlander added that in previous discussion with Town Counsel when the issue of donation of this strip of land along Rt. 20 first came up, Town Counsel did not feel it should be considered acceptable mitigation. He stated that he is agreeable to leaving the additional 108 sq. ft. of unpermitted fill in place with mitigation, but is troubled by adding another 138 sq. ft. of fill. It is condoning illegal actions. K. Rogers agreed and stated that the homeowner could make other use of the garage bay that is difficult to access. She has had houses where she could not use the garage. C. Russo asked that the traffic engineer present his findings. T. Friedlander stated that his findings were included in the NOI. He did not feel there was any need to hear from the traffic engineer. It is not a question of use of the garage. The question for the SCC is the illegal fill that is in place and the request to place additional fill in the wetland.

The wetland replication does not meet the WPA regulations in 10.55 for wetland restoration. The replication area is configured in a finger-like projection. Future alterations of this area would be reviewed as a limited project not needing to meet performance standard thresholds. The filled area and replication area are not at the same elevation and are not directly connected. According to Goddard Consulting, there is a drainage divide under the driveway that eliminated the need for a culvert in the original plan. The replication area is on the opposite side of the driveway from the filled area.

D. Henkels stated he would not be in favor of any further wetland alterations. He is interested in further permanent protection of additional land as mitigation. K. Rogers agreed with this approach. M. Sevier stated that it might be more practical to look at mitigation off-site for any additional fill. C. Russo expressed concern that anything other than allowing the total of 246 sq. ft. of wetland alteration could be perceived as "picking a fight" with DEP. B. Porter felt that the offer of the land donation was non-contributory to permanent protection of wetlands. He did not want to see any of the 246 sq. ft. of wetland fill permitted.

Mr. Shanamugan informed the Commission he is doing what he can within his financial constraints. C. Russo believed that the SCC can take the applicant's situation into account or there would be no need for the SCC to exist. D. Dineen reminded Commissioners that the Order of Conditions was recorded at the Registry of Deeds prior to Mr. Shanamugan's purchase of the property.

She added that the builder, William Senecal, came before the Commission in May 2016 to discuss the current status of the project now that the OOC has expired. In response to her request for an interim as-built plan prior to sodding, Mr. Senecal stated that he is confident that the project completely complies with the expired Order. Mr. Shanamugan, the owner of the lot at the time, did not attend this meeting. T. Friedlander noted, "buyer beware". The OOC was recorded. He still has total use of the garage bay; it just may be pedestrian use. D. Henkels noted that the buyer likely had the assumption that he would have a two-car garage.

S. Goddard stated that the additional requested fill is the absolute minimum needed for safety. D. Dineen stated that the NOI lacks meaningful mitigation. Additionally, the extra pavement on the west side of the house was not permitted and is not a safety issue, yet removal of this pavement has not been offered. Street drainage upgrades of runoff that discharges into the stream and vernal pools should be other form of mitigation to investigate. Restoration of the conservation restriction area in the rear of the lot also needs to be added.

D. Henkels agree restoration plantings should be extensive in the areas that were originally meant as temporary disturbance areas or were not to be disturbed at all. He suggested the hearing be continued to Sept. 25 contingent on receipt of a meaningful mitigation plan. M. Sevier 2<sup>nd</sup>. Unanimous in favor

D. Dineen suggested the Commission look at the area of proposed wetland replication on site prior to Sept. 25. Mr. Shanamugan gave Commissioners and staff permission to enter the site at any time.

#### **Bruce Freeman Rail Trail comments on 25% design**

Present: Beth Suedmeyer, Sudbury Environmental Planner

C. Russo and D, Henkels submitted draft comments for consideration by the Commission.

B. Suedmeyer explained that the town's consultants are close to submitting the 25% design to MA DOT. She stated that two options would be submitted for the Pantry Brook crossing that both meet state stream crossing standards.

D. Dineen questioned when during the design process is the detailed alternatives analysis done to wetland protection act requirements. B. Suedmeyer replied that it is done throughout the process. C. Russo felt that the use of the bike path for a rail trail was the best alternative but agreed there are challenge areas with a density of overlapping issues. Commissioners agreed.

D. Henkels expressed concern for the impact of soil disturbance on the six hazardous waste disposal sites nearby.

C. Russo noted that an Environmental Monitor during construction is not listed in the budget.

D. Henkels questioned if there was any consideration given at this point for meeting the wetlands bylaw requirements. B. Suedmeyer stated that the design and construction would meet the bylaw to extent possible. The MEPA ENF will require an alternative analysis.

In response to a question, B. Suedmeyer stated that an amended ANRAD would be filed in early spring 2018.

**WPA & Bylaw Notice of Intent: 1011 Boston Post Rd.; Chris Torti**

A request to continue to Sept. 11 has been received due to wetland delineation issues.

On a motion by D. Henkels; 2<sup>nd</sup> C. Russo, the Commission voted unanimously in favor of the continuation to Sept. 11, 2017.

**Bylaw Notice of Intent: 69-71 Brewster Rd.; A. Sumito, Trustee of Leeya Realty Trust**

A request to continue to Aug. 28, 2017 has been received due to wetland delineation issues.

On a motion by D. Henkels; 2<sup>nd</sup> C. Russo, the Commission voted unanimously in favor of the continuation to Aug. 28, 2017.

**Land Stewardship -King Philip Woods Invasive Species Removal & Forestry work**

Commissioners discussed the problems they have encountered seeking assistance from the Native American archaeologists in identifying any possible ceremonial landscapes within the King Philip Woods conservation land. They want the Commission to perform a costly study of the area (\$50,000+-). The Historical Society has attempted to help to identify someone who might be able to assist the Commission. They have not been successful; however, the SCC appreciates their investigation. Commissioners decided to move forward with the invasive plant removal this fall subject to approval by the Town Manager. They will do the best they can to identify possible ceremonial landscapes so as not to disturb them.

Massachusetts does not regulate ceremonial landscapes. The Commission is attempting to do so to be respectful of the Native American concerns, however no help is forthcoming from the tribes in the identification of areas to be cautious in or not alter. M. Sevier was opposed to the Commission identifying the ceremonial landscapes.

**Violation Status:**

168 Horse Pond Rd. - the fence relocation that was to be completed by June 30 and the SCC was to be SCC notified. No contact has been received from the homeowners even after several tickets were issued. D. Dineen reviewed the timeline of the violations on this property. The Blanks purchased the property 12/2/14 and the first violation of tree clearing was found on 1/2/2015. Thirteen additional attempts to get compliance were performed between 1/2/15 and 8/4/17. These included site visits, hearings, contact with the environmental consultant, certified letters, and tickets. The fence remains in the non-permitted location.

On a motion by D. Henkels; 2<sup>nd</sup> B. Porter; the Commission voted unanimously in favor of a \$100/day fine beginning 8/15/2017.

11 Philemon Whale Ln. – D. Dineen observed what she thought was a violation of a COC that limited the amount of lawn around the vernal pool on this property.

She added that she could not get the best view without going on the property and no one answered the door. She suggested a letter be sent to the property owners. On a motion by C. Russ; 2<sup>nd</sup> D. Henkels the Commission voted to send a Notice of Violation letter.

31 Thunder Rd.- The NOI was due and received today.

### **Code of Conduct for Board and Commission Members**

At request of the Board of Selectmen, the Commission reviewed the Code of Conduct.

### **Letter to New Sudbury Homeowners**

Commissioners reviewed D. Henkels draft of a letter to be sent to new homeowners with the Wetlands Brochure. The letter will be sent to new homeowners of properties in or near wetlands.

On a motion by K. Rogers; 2<sup>nd</sup> C. Russo; the Commission voted unanimously in favor of approving the letter. It will be sent under Vice-Chairman Henkels signature.

### **Vote to Authorize 2017 Bow hunting Program**

On a motion by M. Sevier; 2<sup>nd</sup> D. Henkels; Commissioners voted unanimously in favor of continuing the bow hunting program for the 2017 season. The Commission agreed not to seek new hunters for the 2017 season due to the regulatory workload. The program will continue with any returning hunters in good standing from last year.

### **Warrant Articles for October 2017 Special Town Meeting** on Oct. 16 (8/9 – 8/31/17 submission window)

Commissioners voted unanimously in favor of submitting two Warrant Articles for the October Special Town Meeting :

1. Revolving Fund for Forestry proceeds
2. Selectmen designation of Landham Brook Marsh as conservation land per MGL Chapter 4 s. 8C

If appropriate, the Board of Selectmen or Town Manager may wish to submit the Landham Brook Marsh designation article.

### **Discussion: COC 61 Dakin Rd. site visit update**

T. Friedlander informed Commissioners that a site inspection was held Aug. 8<sup>th</sup> to see if the property could have a COC issued to a closing. He attended the inspection along with D. Henkels, D. Dineen, the property buyers, and realtors for both buyers and sellers. It appeared that the limit of lawn had to be confirmed as being the correct location and bounds needed to be set. Once this is done, the COC will be placed on an agenda for vote.

### **Fall Walks**

Commissioners agreed that there appears to be enough interest to hold a Fall Walk series this year. It will not be done through LS Adult Education. It will be advertised on the town website with walks to occur late September to November.

### **Wetland Delineation Peer Review – 74/80 Maynard Rd.**

D. Dineen reported that a new ANRAD has been received. She requested the Commission approve the contracting with Dave Burke, Wetland Specialist, for a peer review of the almost one mile of wetland line on this Maynard Road property. There is extensive bordering vegetated wetland, stream that perennial/intermittent has not yet been determined for this area, and potential vernal pools.

On a motion by D. Henkels; 2<sup>nd</sup> M. Sevier; the Commission voted unanimously in favor of hiring Davie Burke to review the wetland delineation.

On a motion by B. Porter; 2<sup>nd</sup> D. Henkels; the Commission voted unanimously to adjourn the meeting. 9:30pm.