

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, Feb. 5, 2018

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

Certificate of Compliance:

WPA & Bylaw Second Request for Certificate of Compliance: 168 Horse Pond Rd.

Present: Rich Kirby, LEC Environmental; Kevin Smith, attorney for A. Blank

The Commission received the signed original second Request for a Certificate of Compliance for the above referenced Order of Conditions on Jan. 16, 2018. Mr. Kirby explained that the first request was submitted in May 2017 and this second request was submitted to allow a discussion on the status of compliance. He stated that the fence was relocated close to the area as shown on the approved plan. A total of 360 sq. ft. of area was removed from the wetland side of the fence in one location while 240 sq. ft. was added to the area on the wetland side. The relocation was due to tree roots encountered by the fence company during installation. There has been no lawn expansion. He felt they achieved substantial compliance.

T. Friedlander questioned why the homeowners did not first come back to the Commission and ask for a revision to the approved location prior to the final installation. M. Sevier questioned if it is the fence installer at fault. Other Commissioners agreed that the homeowner was responsible for installing the fence in accordance with the plan. K. Rogers noted that the installers could have just as easily moved the fence farther from the wetland rather than closer to avoid the tree roots. M. Sevier noted that the approved location was a negotiated line that resulted from other violations on site, including the removal of quite a few mature trees within 100' of the stream and bordering vegetated wetland.

In response to a question from Atty. Smith, D. Dineen stated that even if the fence is relocated to the correct position, the restoration plantings will need to be reviewed in the spring to be sure they are viable before a Certificate of Compliance is again considered. She added that additional mitigation might be the planting of more native plants behind the fence. C. Russo questioned if more plantings could be done in front of the fence. Other Commissioners did not think more plantings in front of the fence would be beneficial as they would become part of the residential landscaped area as opposed to the natural area adjacent to the stream. D. Henkels suggested diversifying the habitat with features such as bat boxes.

T. Friedlander noted that in addition to the violations, the homeowners had a lack of responsiveness to the Commission. M. Sevier stated the options appeared to be to move the fence or offer additional mitigation that may or may not be accepted. R. Morse stated his concern for cumulative impact with the initial impact from the violations and the further impact of having less natural area remain along the stream and wetland. M. Sevier stated he understands the need for uniformity but also that circumstances are not uniform.

The materials submitted with the Request indicated that there have been no improvements to the property to bring the property into compliance since the April 2017 Request. The fence is still not located at the area agreed upon and as shown on the final approved plan. A site inspection on Jan. 26, 2018 confirmed that the fence was not in the approved location. This site inspection was attended by three Conservation Commissioners, the Conservation Coordinator, and Mr. Kirby.

On a motion by D. Henkels; 2nd R. Morse; the Commission voted 6-1 to deny the Certificate of Compliance due to the fact that the fence is not in the approved location. In addition, Commissioners will need to re-inspect the restoration plantings to be sure they are viable after this winter. No additional tree removal is permitted for fence relocation. C. Russo opposed.

Bylaw Notice of Intent: 0 Willis Rd.; Mark Merullo, applicant

Present: Scott Goddard, Goddard Consulting, LLC for the applicant

Mr. Goddard presented a plan for new house construction. The filing is a bylaw-only filing as the WPA Order was issued by DEP on appeal. Work is proposed only in the adjacent upland resource area (AURA). The 4+- acre property contains two intermittent streams. The land beyond the streams is mostly wet but does contain 30,000 sq.ft. of upland within the wet area. This area will not be altered. The plan approved by DEP had a 10' undisturbed buffer. Under the bylaw filing, this buffer has been increased to leave an additional approximate 4,750 sq. ft. of undisturbed AURA. Native shrubs from the disturbed area will be relocated to the undisturbed AURA. Roof recharge and a rain garden has been added to the plan.

D. Dineen noted that rain garden functionality long-term is difficult to monitor on a single-family house lot. She added that a conservation restriction should be required on all areas of the lot outside the footprint of development to permanently protect the undisturbed areas. She noted that the house at 147 Willis had been listed as being partially in the floodplain when it was developed in the late 1908s. Significant compensatory storage was required. The 100-year flood elevation was determined by local floodplain calculations. This should be investigated to determine the elevation of the local 100-year floodplain.

D. Henkels stated that the streams are part of a larger corridor and the stream that crosses Willis Road appears to be perennial as it drops to a lower elevation on the Poor Farm Meadow conservation land. Numerous denning and burrowing sites were observed on 0 Willis, both in the area to remain undisturbed and in the area proposed for development. R. Morse added that it is also human intrusion with noise and lights that can degrade the functioning of the habitat. B. Porter stated that it will be important to determine the hydrology of the area and identify the floodplain elevation. K. Rogers noted that the area permitted for disturbance should be marked permanently to prevent encroachment into the undisturbed area. C. Russo agreed and noted that the lot is clearly habitat area and has significant migratory values.

Stas Gayshan, abutter, submitted photos showing the water levels in the stream on the past few days. He noted that much of the property is submerged. Irina Dubinchik, abutter, stated that she has problems with her septic system draining and does not use the washer when it rains.

Kelly Finn, 135 Willis Rd., questioned the process for approval. Chairman Friedlander reviewed the appeal process under the bylaw.

On a motion by B. Porter; 2nd K. Rogers, the Commission voted to continue the hearing to March 12, 2018. D. Henkels opposed.

WPA & Bylaw Notice of Intent: 3 Goodnow Rd.; Violation Mitigation

Irma Dishnica, applicant

Present: Ardi Rapdi, engineer; Sokrat Dishnica

The Notice of Intent was required as the result of violations on the property, including the paving of the driveway within 100' of bordering vegetated wetland, intermittent, stream, and a vernal pool without an Order of Conditions. The Notice of Intent addressed only the paving violation.

After numerous hearing continuations, the applicant has agreed to install stormwater structures to collect and infiltrate a minimum of the first 1" of runoff from most of the pavement on the site. A small area of pavement discharges to Goodnow Road and flows to the Town's stormwater system catch basin. The Commission discussed several conditions to be included in the Order. C. Russo stated that the Order should require this section of the driveway to be replaced with pavers to allow some infiltration and reduction in velocity of runoff leaving the driveway. Mr. Dishnica stated that he will install paving stones for 3' in width at the end of the driveway.

The trench drain in front of the garage shall be disconnected from the pipe discharging to the town drainage system in Hudson Road and shall be tied into the infiltration pit in the driveway. The pipe providing overflow relief for the vernal pool shall be set so there is no discharge of runoff from the vernal pool until the water reaches elevation 100.5' as shown on the referenced plan. This elevation 100.5' will allow enough water to remain in the pool during breeding season while providing relief to prevent flooding of Goodnow Road during times of excessive high water.

Mitigation includes the removing of the retaining wall located at the edge of the vernal pool, regrading the slope to the vernal pool and at least 1,175 sq. ft. of restoration plantings on this slope and surrounding area in accordance with the Buffer Zone Restoration Planting Plan dated Feb. 5, 2018, as amended and presented at the hearing. The intent is to restore upland habitat for the vernal pool obligate species. C. Russo stated that if there is any conflict or issues during planting, the restoration area shall be increased to include more overall connected habitat area.

The granite curbing installed along Goodnow Road will be removed to the extent required by the Town Engineer and DPW Department. As agreed to by the applicant and the town, the Town shall remove this curbing and shall take possession of the materials to be used elsewhere in town. The town will install a cape cod bituminous berm in its place to direct drainage to the catch basins. The final extent and timing of granite curbing removal shall be determined by the Town Engineer

The Conservation Commission is not accepting the wetland resource delineations shown on the referenced plan as part of this Order of Conditions as all work is on existing disturbed area.

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

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

Barton Farms APR Land Subdivision and Sale discussion with Chris Kurth of Siena Farms

Present: Chris Kurth

Mr. Kurth explained that he owns the 26-acre parcel of land under an Agricultural Preservation Restriction at the corner of Marlborough and Haynes Roads. He has applied to MA Dept. of Agriculture (MDAR) to permit a subdivision of the land to allow him to sell of 5 or 6 acres to an abutter. He recognized that he overpaid, based on MA farmland values, for the land when he purchased it from the former owner a number of years ago. The 2016 drought and other expenses have put him in position to need to raise some funds and make other adjustments. The SCC is a co-holder of the APR restriction because the town and state had previously purchased the development rights.

D. Dineen questioned the intent of the buyer and their expectation as to what they can do with the property. Mr. Kurth explained that the land would continue to be managed as it has been for farm use. It is not prime crop land and it not active farmland. It has, and will continue to be brush-hogged every few years to keep it from growing up in woody vegetation and provide a buffer between active farm land and neighboring residences. D. Dineen thought the Commission should have some form of written acknowledgment from the buyer. She also noted that the more farm land is divided into smaller parcels under separate ownerships, the less likely it is that large-scale farming will continue.

C. Russo was not opposed to the sale but agreed that a written acknowledgment from the buyer would be preferred. M. Sevier questioned the benefit to the buyers. Mr. Kurth replied that it will add value to their present residential estate and help protect the historic barns on the property.

D, Dineen noted that there is not direct access to the parcel to be sold from the buyer's property. There is a 25' – 50' strip of town-owned land that is mostly wet. C. Kurth stated that access would be permitted through an easement on his other property.

D. Henkels agreed that a letter of expectation from the buyer should be submitted so everyone is on the record as to the limitations on use of the land. Mr. Kurth will provide the letter from the buyer and keep the Commission informed as to his progress obtaining approval from MDAR.

Mahoney Farms – Request for Amendments to the Orders of Conditions

Present: Daniel Ruiz and William DiPetri of Capital Properties Group

Mr. Ruiz has asked the Commission to formally vote on several deviances from the approved plans for the Mahoney Farms subdivision. These include:

- approval of revised Operation & Maintenance Plan;
- review documented attempts with abutter for permission for pond cleaning;
- approve “emitters” on Cultec drainage chambers;
- approve change in grading after-the-fact to add wall for building height compliance

In response, Mr. Ruiz explained that the O & M Plan was revised Jan. 2, 2018 and is much more site specific.

The abutter has not responded to numerous requests for permission to discuss and/or correct any sedimentation into the pond.

The emitters are drywells that have a controlled overflow rather than allowing them to surcharge once they are full. The groundwater in the area is high.

The change in grading was to conform with zoning height requirements.

On a motion by C. Russo; motion seconded; the commission voted unanimously to approve the requested changes. B. Porter abstaining.

Minutes:

On a motion by D. Henkels; 2nd C. Russo; the Commission voted unanimously in favor of approving the Minutes of Jan. 8, 2018. K. Rogers abstained.

The Commission voted unanimously in favor of approving the Minutes of Jan. 22, 2018. Motion by K. Rogers; 2nd D. Henkels. B. Porter abstained.

Bylaw Notice of Intent: 69-71 Brewster Rd; common driveway and drainage construction

Sumito, applicant

On a motion by D. Henkels; 2nd C. Russo, the Commission voted unanimously to continue the hearing to March 12, 2018 at the applicant's request.

Discuss and Vote: Requests for Proposals for Agricultural Use of Carding Mill field; Landham Brook Marsh field, and Piper field(s)

Commissioners discussed the status of the three agricultural fields on conservation land that are currently not being farmed. Where the commission encourages agriculture and wishes to keep its fields in proper agricultural use, they voted unanimously in favor of going to bid for the use of these fields. Motion by D. Henkels; 2nd C. Russo.

Discussion (cont.): Wildlife Habitat and Wildlife Protection under WPA vs. Wetlands Bylaw

D. Dineen presented a comparison outline of the Wildlife and Wildlife Habitat Protection in the WPA vs. the local bylaw. C. Russo stated that wildlife was not a listed interest under the bylaw. D. Dineen replied that although it was not a listed interest, it was included as a natural resource feature and amenity which is protected as an over-arching purpose of the bylaw. She added that section 7.3 of the bylaw sets disturbance restrictions in bylaw jurisdictional areas to, among other reasons, address adverse impacts to wildlife, such as from human intrusions due to lights, noise, etc. These type of intrusions do not adversely impact the habitat but do adversely impact the animal. C. Russo noted that he was surprised wildlife protection is not clearer in the bylaw. D. Henkels stated that effects on the habitat effect the animal itself and the bylaw recognizes this. D. Dineen added that section 7.3 must be read in conjunction with the bylaw purpose that treats wildlife as an amenity.

C. Russo stated that he is trying to determine what additional scope of work should take place for wildlife and wildlife habitat assessments under the bylaw for the Bruce Freeman Rail Trail Project.

Discussion: Review of Stantec Scope of Services: Wildlife Habitat Evaluation for Bruce Freeman Rail Trail

Present: Beth Suedmeyer

Commissioners reviewed the Scope of Services for a Wildlife Habitat Evaluation of the land along the proposed Bruce Freeman Rail Trail by Stantec Corp. The resumes look very good and the scope covers the extent of the assessments done under the WPA. Under the bylaw, B. Suedmeyer stated that Stantec will be using the DEP Appendix B for Wildlife Habitat Evaluation Guidance and will also look at the adjacent upland resource area, vernal pools, and perennial streams for cold water fisheries.

D. Dineen asked if an RFP was issued for the Scope of Services and if there were any other respondents for comparison. B. Suedmeyer stated that no RFP was issued as Stantec is contracted with Mass DOT and Mass DOT is funding the Study. D. Dineen also asked for clarification if the town is planning to meet the local wetlands bylaw performance standards in the design as the Selectmen's vote of May 2016 stated they will not and no further vote has been taken by the Selectmen. B. Suedmeyer explained that the bylaw requirements will be met to the extent practicable.

On a motion by B. Porter; 2nd D. Henkels; the Commission voted unanimously in favor of accepting Stantec's Scope of Work as stated in the Proposal and explained by Ms. Suedmeyer for the bylaw standards.

The Study will be undertaken in the spring. Len Simon added that other towns along the BFRT have the trail either constructed or under construction. Mass DOT would like input from the SCC.

On a motion by D. Henkels; 2nd M. Sevier; the Commission voted unanimously in favor of accepting the Stantec credentials and Scope of Work.

Violation Status:

1. Morse Rd. E08-0013 (across from 275 Morse, N. Haight

Commissioners

2. 40 French Rd., S. Prince

On a motion by C. Russo; 2nd D. Henkels; Commissioners voted unanimously in favor of issuing a Notice of Violation/EO and beginning the violation protocol.

3. 140 Barton Dr.; tree removal without a permit

On a motion by B. Porter; 2nd C. Russo; the Commission voted unanimously in favor issuing a Notice of Violation/EO to both the homeowners and the tree company. No response to the Commission's request for a letter from a certified arborist has been received from either to date.

4. 322/328/370 Maynard Rd.- A site visit will be scheduled for next week to determine if the erosion control is functioning properly.

Other Business:

5. Landham Brook Marsh Management Plan and CR

Commissioners discussed the final four items in the current draft of the CR that may need to be revised. T. Friedlander and C. Russo met at SVT with Christa Collins and Dan Stimson to discuss the Conservation Restriction wording that would then allow some details to be included in the Management Plan.

C. Russo stated that SVT would appreciate some sort of Notice as a courtesy when the SCC is proposing work on the land. The 30-day did not seem practical to the Commission because it might preclude some last minute work by volunteers. They would be happy to provide Notice as soon as possible but would like the 30-day prior requirement to be removed.

C. Russo reported that SVT would like the CR to not prohibit the use of herbicides as that would be a prohibition in perpetuity. The prohibition could be in the Management Plan and could be more flexible in catastrophic events. D. Dineen noted that all other CRs in the past several decades have prohibited herbicide use. Additionally, the SCC prohibits the use of herbicides on private properties within wetland jurisdiction. She questioned why this CR should be any different and the SCC should not change the rules for its own property. C. Russo felt that due to the land being public, the option should exist for the use of herbicides as a last resort. Comments were made that it is because it is public land that the use of herbicides should be prohibited. D. Dineen suggested a compromise statement that herbicide use should be prohibited except with prior written permission of the SCC. That would allow any unusual circumstance to be reviewed as an exception. C. Russo stated that SVT wants to address herbicides only in the Management Plan.

T. Friedlander stated that there needs to be meeting of the minds with SVT keeping in mind that this is town land.

D. Henkels, K. Rogers, M. Sevier, and R. Morse all agreed that the prohibition on herbicide use should be in the CR and they would agree to add the condition that could consider its use in extraordinary situations with prior written permission of the SCC.

C. Russo stated that SVT was clear that Notice is being requested only for large-scale projects. Commissioners agreed on the wording "... appropriate notice as soon as possible".

D. Dineen stated that the CR as now worded does not permit the clearing of the existing farm roads or use of vehicles for land stewardship beyond the one-acre agricultural field. As currently worded, the SCC could not bring in large equipment for projects such as the field restoration at Davis Farm or the forestry work for invasive clearing at King Philip Woods. C. Russo said that SVT is concerned about inviting ATV use if the trails are widened. He shares SVT's concern. He would like to see trails kept to a minimum in number and width. D. Dineen reminded Commissioners that she is not suggesting additional trails be developed, only that the former cart roads that have become overgrown with buckthorn since the last mowing around 2010 could be made use of for land stewardship activities and public safety access. A brush hog would be needed to cut down the buckthorn to make these old farm roads passable for equipment needed to remove invasive species. Prohibiting the use of vehicles beyond the agricultural field and limiting the width of the existing old gravel farm roads to less than 8' or 10' will effectively prohibit the use of equipment to remove invasive plants on a large scale. C. Russo restated his and SVT's desire to 8' – 10' gravel road only to the agricultural field. D. Henkels stated that means that any land stewardship involving larger vehicles will be prohibited and the land must stay as it is. He noted it is growing in with thick buckthorn. C. Russo suggested a smaller truck could be used. D. Dineen suggested a site walk so Commissioners can see the current status of the old farm roads beyond the field. T. Friedlander thought it was reasonable to end the use of vehicles at the field. D. Henkels argued that there is nothing wrong with access of limited width for land stewardship purposes. B. Porter stated that the CR should allow the SCC the ability to approve vehicles and clearing for their access for land stewardship purposes. C. Russo again stated that SVT wants no roads beyond the field. C. Russo stated he agreed with the language proposed by D. Dineen but wants to be sure the scope of trail widening and use of farm roads is clearly limited to that necessary for land stewardship.

B. Porter made a motion to continue the discussion to the next meeting. No second.

Commissioners briefly discussed the language on irrigation for the agricultural field. All were in agreement on the language used in Sudbury Agricultural Licenses that requires an acceptable draw-down test for approval of in-ground irrigation well installation.

M. Sevier thought the only item remaining for the Commission to come to agreement on was the farm road issue.

D. Henkels moved to 1) permit access to the agricultural field by the existing gravel farm road that shall not be more than 10' wide and allow vehicle access beyond the farm fields on the overall property for land stewardship purposes; 2) the use of herbicides and pesticides shall be prohibited in the CR unless the SCC approves their use in writing for extraordinary circumstances; 3) irrigation well language shall be the same as in the SCC Agricultural Licenses; 4) SCC shall make reasonable efforts to give SVT written notice as early as possible of planned stewardship activities. B. Porter 2nd. Unanimous in favor

Use of Turtle Habitat Fund

D. Dineen informed Commissioners that there is \$925 in a turtle habitat fund for restoration of turtle nesting areas should the Commission wish to consider any projects of this type.

Sign Certificate of Compliance; DEP File #301-1129, 163 Boston Post Rd., Eversource Substation Expansion (voted Jan. 22, 2018). COC was signed.

Reports from Commissioners and Staff

- B. Porter reported that he attended the Protect Sudbury meeting last week. It was noted that the SC and staff are doing a good job on examining the issues associated with the Eversource project.
- D. Dineen reported that the Notice of Intent for Eversource Soil Exploration Borings has been received. She would like to add a review of the Notice of Intent to the peer review consultants scope of work for the ANRAD for wetland delineation. The increased cost can be covered under the filing fees.

On a motion by C. Russo; 2nd D. Henkels; the Commission voted unanimously in favor of increasing the scope of work for both consultants for this additional NOI.

On a motion by C. Russo; 2nd D. Henkels; the Commission voted unanimously favor of adjourning the meeting. Approximately 10:35pm.