

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, August 6, 2018
6:30pm Rd., DPW Facility, 275 Old Lancaster Rd., Sudbury MA

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

Minutes

On a motion by D. Henkels; 2nd R. Morse; the Commission voted unanimously in favor of accepting the minutes of July 23, 2018 with one minor typographical correction.

WPA & Bylaw Abbreviated Notice of Resource Area Delineation ANRAD MBTA ROW

K. Rogers recused from the discussion

Present: Katie Kinsella & Marc Bergeron

of VHB, Inc for Eversource; Denise Bartone, Eversource; Marta Nover, Nover Armstrong, peer reviewer for the Conservation Commission

M. Nover stated she had reviewed the new ground survey and it provides better topography and delineation of bordering land subject to flooding (blsf) as it now reflects the conditions observed in the field. BLSF is not the FEMA defined 100-year floodplain but is the high water level as calculated by VHB. She agreed with that FEMA floodplain in incorrect in this location and VHB's calculations make sense. She suggested a Letter of Map Revision (LOMR) be submitted to FEMA. K. Kinsella stated that there is no regulatory requirement for submission of a LOMR if discrepancies are found. M. Bergeron noted that the FEMA study lacked detail due to the fact that the area was not very populated. D. Dineen suggested Eversource could provide the VHB calculations to the town so the town could submit the LOMR. Eversource was not opposed to providing the data to the town.

R. Morse stated that the VHB data was more conservative on the part of the flood elevations. FEMA elevations were not as high. C. Russo noted that the VHB elevations may not be conservative enough and could be an issue with future projects going forward. M. Nover stated the HEC-RAS model used by VHB seemed to be a very reasonable approach.

D. Henkels clarified that the Commission was not accepting the Floodway as shown on the referenced plans. That was confirmed as Floodway I not a wetland resource under the WPA or Bylaw.

D. Henkels motioned to close the hearing. R. Morse 2nd. Unanimous in favor. K. Rogers abstaining.

On a motion by C. Russo; D. Henkels 2nd; the Commission voted unanimously in favor of issuing the Wetlands Protection Act Order of Resource Area Delineation (ORAD) based on the current plans and as discussed. M. Sevier; K. Rogers abstaining.

On a motion by D. Henkels; R. Morse 2nd; the Commission voted unanimously in favor of issuing the ORAD under the Sudbury Wetlands Administration Bylaw. K. Rogers abstaining.

WPA & Bylaw: Notice of Intent: Eversource: Soil Borings on MBTA ROW

Soil borings, soil samplings and other exploratory testing along the MBTA ROW from the Sudbury Substation at 183 Boston Post Road to the Sudbury-Hudson line

The applicant requested for a continuation to Aug. 20 (request received July 31) to allow new ANRAD plans to be incorporated into the NOI.

On a motion by C. Russo; 2nd D. Henkels; the Commission voted unanimously in favor of the continuation as requested. K. Rogers abstaining.

WPA & Bylaw Notice of Intent: 159 Concord Rd. violation, Rachael Donalds

Deck and patio construction without a permit

At the request of the applicant the hearing was continued to Aug. 20 for the DEP file number, an arborist letter for the tree removal, and mitigation for the deck construction.

Motion by R. Morse; D. Henkels 2nd.; unanimous

WPA & Bylaw Certificate of Compliance Request: #301-1187 Nashawtuc Country Club

Violation restoration areas

Present: Mike Toohill of BSC; Troy Noble of Nashawtuc Country Club (NCC)

Mr. Toohill informed the Commission that restoration was completed in the fall of 2016. Plantings were accomplished with mixed success. Some buckthorn and multiflora rose were recolonizing the disturbed areas. Oriental bittersweet has been minimal and pussy willow and elderberry have come in very well. Pictures were provided showing the restoration plants. NCC plans to manage for height limits and invasive plants by hand cutting and a small mower on a regular basis.

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

WPA & Bylaw Notice of Intent: Nashawtuc Country Club Golf Course Improvements

Present: Mike Toohill of BSC; Troy Noble of Nashawtuc Country Club (NCC)

The Notice of Intent was filed for improvements to the existing golf course, including renovations to tees and greens, modifications to bunkers, construction of new bunkers, installation of a replacement irrigation system, and reshaping two man-made ponds within the course. Wetland and upland resource areas include bordering vegetated wetland, bank, buffer zone (WPA), adjacent upland resource area (Bylaw), land under waterbody, 200' riverfront area, and bordering land subject to flooding. Fill is proposed within bordering land subject to flooding. Compensatory flood storage will be provided in accordance with the WPA regulations and the local bylaw requirements in excess of the volume filled.

Mitigation under the Bylaw was offered in the form of additional 7,453 cy overall flood storage, increase of 13' in the linear feet of bank, an additional 7,076 sq. ft. of land under waterbody, and 492 sq. ft. of additional bordering vegetated wetland.

Commissioners discussed conditions to be placed in the Order to protect the resource areas. A qualified professional Environmental Monitor shall monitor the work within bordering land subject to flooding, including the revegetation. Monitoring reports be submitted on the status of the revegetation of disturbed areas in the spring and fall of each year until a Certificate of Compliance is issued. The revegetation shall be considered successful once the area is covered by 90% native plants from the Sudbury Native Plant List. Invasive plants within the restoration area shall be managed by regular hand removal or mowing and without the use of herbicides.

Tree removal is limited to removal of up to four trees behind hole #10 for the compensatory storage area. All attempts shall be made to save the trees on the mound at holes #10 and #11. The restored compensatory storage area will have additional trees planted plus a comprehensive planting of native shrubs and grasses.

Prior to work on the ponds and any significant dewatering, the ponds shall be investigated for the presence of pond species such as turtles, snakes, and frogs. To the extent possible, these species shall be removed and placed in a similar, suitable undisturbed wetland area. The Environmental Monitor shall indicate in the report the type and number of species found and relocated.

The DEP file Number has been issued. #301-1240 and the NHESP review has been completed and “no take” determined.

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

On a motion by D. Henkels; 2nd C. Russo; the commission voted unanimously in favor of issuing the Order as discussed.

Comments to Selectmen: Melone Property Request for Proposals

Present: Paul Cavicchio; Glen Harrison, Rachael Harrington, and Nicola Cavicchio of Cavicchio Greenhouses; Atty. William Henchy for Quarry North

Commissioners reviewed the three responses to the RFPs for reuse of the Town's the Melone land on North Rd.

Cavicchio

This proposal will allow an expansion of a local business and of agriculture within town. The existing site would be used have a layout and be graded for growing of plant stock. Drip irrigation only would be used. The source of water is still to be determined. In addition to the purchase price of \$4,000,000, the Proposal offers funds over 10 years for agricultural education scholarships, beautification of Park & Recreation and Conservation lands; and seed money for affordable housing. The property will be placed under Chapter 61A so the Town would have a right of first refusal to purchase it back if the use changes.

C. Russo stated the use could protect natural resources and pen space, provide education and could be a responsible use of the property.

D. Dineen noted that the current Codjer Lane site captures and reuses water which limits the exposure of pesticides and fertilizers in the environment. Mr. Cavicchio stated that no greenhouses are contemplated at this point. The plants are containerized. No topsoil needs to be brought in. A weed barrier will be installed. Access through Sudbury Water District is additional as far as payment. Limited, careful application of pesticides and fertilizers in the closed system used by Cavicchio Greenhouses will minimize negative impacts to the environment.

Rachael Harrington stated that the proposal has a cost/benefit to the town. The linkage payments for community needs will address other uses identified as lacking. The project will not increase traffic or have any services impacts that will cost the town. There are no contingencies and no risk to the town for this proposal. The proposal represents a current and continued commitment to the community.

Quarry North

The proposal consists of the transfer of the Sudbury Station 40 acres to the town. It provides affordable housing using a Local Initiative Program. It reuses an already disturbed site, it provides \$1,000,000 in cash for to meet other specific town needs, and it settles a costly lawsuit and prevents dense development on a mostly undisturbed site. The town center 40 acres could be used as a new well site for Sudbury Water District. The APR land at Sudbury station is protected only until 2024. Town ownership will guide its future beyond that date. The Pantry Road water main will be expanded. A potential satellite well in Zone I could be constructed. Annual tax revenues would increase and permitting fees will top \$800,000. The Sudbury station land has been given a value in the pro forma of \$3,500,000 and the adjacent Gilmartin property, part of Sudbury Station development, of \$590,000. The overall financial package tops out in excess of \$9,000,000.

T. Friedlander suggested the applicants work closely with the Commission during the development design to provide natural buffers to the proposed development, including a buffer to the heron rookery. Atty. Henchy stated there are no plans at this time for any changes to the land in Concord. Housing is not a by-right use on the Concord section.

D. Dineen advised Commissioners that the Sudbury Station project will continue to move forward during negotiations in case they are not successful. A mid-November trial court date has been set.

C. Russo said he likes the idea of the town acquiring the Sudbury Station land in exchange for placing the development on an already disturbed site is very appealing, however he has credibility issues with the developer based on experience with the Sudbury Station project. He noted concern for water use, irrigation, and the need to overcome the public relations problems resulting from Sudbury Station. Atty. Henchy replied that the LIP program was chosen as it puts the town in the driver's seat and forces a collaborative approach. He hopes that the town can see the benefit to working together for the best outcome.

Solar

The Commission did not invite any of the respondents to the meeting. Mr. Cavicchio and Atty. Henchy saw the item on the agenda and wanted to be present to answer questions. The proposers for EDF Renewables did not attend the meeting and have not contacted the Conservation office at any time. Commissioners were given copies of the Proposals for all three Responses.

K. Rogers stated she was not ready to make any decision without hearing from the Solar respondents. R. Morse stated he needed more time and wanted to create a comparison chart to help with review. C. Russo thought that the Cavicchio and EDF proposals are straightforward. He sees Quarry North as having a greater benefit for the town but is leery of the extent of collaboration that will actually happen. He stated that Melone vs. Sudbury Center is like comparing the environmental values of a blasted desert vs. a forest.

Commissioners decided not to form a group opinion at this time as some members did not feel ready. D. Dineen encouraged Commissioners to submit individual thoughts and opinions on the Proposals to the Selectmen for their overall consideration.

Sudbury Station Update on Extension Permit Appeal

D. Dineen and Atty. Henchy informed the Commission that DEP has accepted the appeal on adjudication for the challenge to the DEP opinion that an Extension Permit is not appealable.

Certificates of Compliance:

Lot 2A (#55) Powder Mill Rd., DEP File #301-362

On a motion by D. Henkels; 2nd C. Russo; the Commission voted unanimously in favor of issuing the COC for this property. The Coordinator reported that all work was done in accordance with the Order of Conditions. Work involved only the construction of a portion of a common driveway within 100' of bordering vegetated wetland.

Violation Status:

3 Goodnow Rd. – The Coordinator was asked to have the homeowner provide a status report on the removal of the retaining wall.

33 Maynard Rd. – Dave Burke is planning to submit the Notice of Intent this week.

35 Maple Ave., Maple Meadows & 54 Maple Ave. – The Notices of Intent must be received by tomorrow, Tuesday, Aug. 7 at 4pm for the Aug. 20 agenda deadline.

0 Washington Dr., - The Commission was asked to conduct a site inspection to review the plantings. No planting plan was ever approved by the Commission so any inspection would only confirm additional violations with work done without a permit. A planting plan of the entire slope was never submitted for approval. This plan needs to be submitted and approved before any site inspections take place.

Discussion/Vote: DPW Request of Perform Boring for Soil in Dutton Road

D. Dineen explained that the Dutton Road Bridge is deteriorating faster than anticipated and the schedule for replacement has been accelerated due to public safety concerns. DPW/Public Safety needs to perform soil borings for design of the Dutton Road Bridge Replacement. A request has been received from DPW to have four soil borings taken from within the traveled way. This work is exempt from WPA if the Commission deems no risk of wetland harm. The work must be either permitted or a filing waived by the SCC under the wetlands bylaw.

On a motion by M. Sevier; 2nd C. Russo, the Commission voted to act on the waiver request as an emergency, unforeseen safety issue to allow the Dutton Rd bridge replacement to proceed to design as soon as possible. Unanimous in favor

On a motion by M. Sevier; 2nd K. Rogers; unanimous in favor of granting a waiver from the need to file for a wetland permit under the Sudbury Wetlands Administration Bylaw for the purpose of allowing up to four borings within the traveled way of Dutton Road for soil investigation for new bridge design purposes. They agree the project is exempt from the need to file under the MA Wetlands Protection Act under 310 CMR 10.58 (6)(a) for work in riverfront area and under 10.02(b)(2)(g) for work in buffer zone.

Other Business:

Ratify letter for release of Enforcement Order for 128 Lincoln Rd.

D. Dineen reported that an Enforcement Order was issued in the 1990's for a violation at 128 Lincoln Road. The EO required a subsequent Notice of intent to correct the violation. The house is now being sold and the EO is still on record at the Registry of Deeds. No NOI was filed, however a negative Determination is on record shortly after the EO was issued. There is no paper trail to determine if the Determination was in response to the violation and the violation was therefore corrected. On an

inspection of the site, there was no obvious wetland violation. The Commission must consider if they will accept that the Determination corrected the violation. If they agreed to make this assumption, it will ratify a letter sent to the homeowner by D. Dineen.

On a motion by D. Henkels; 2nd R. Morse; the Commission voted unanimously to ratify the letter sent by the Coordinator.

2018 Bow Hunting Season Dates

D. Dineen reported that the state has extended the bow hunting season in several hunting zones for 218. This includes Zone 10 for Sudbury. The state hunting season will open Oct. 1, approximately two weeks earlier than in the past.

The Commission decided unanimously NOT to extend the hunting season on the town conservation lands that are part of our archery program. The season on town conservation lands will begin on Monday, Oct. 15 and continue through Monday, Dec. 31. The reason for not increasing the bow hunting season is to preserve the status quo. The Commission would need to do quite a bit of publicity on the extended season. Presently, there have not been any public issues and the fear could be that extending the season could bring out the opposition and jeopardize the program.

Reports for Commissioners and Staff

T. Friedlander reported on his attendance at the MA Conservation Professionals meeting in Lexington with a discussion of on conservation restrictions. He noted that there could be multiple properties covered by the same CR. Additionally, the Town and SCC could seek more Grantees authorized to hold CRs. We do not have to use Sudbury Valley Trustees to be the Grantee.

On a motion by D. Henkels; 2nd C. Russo; the Commission voted unanimously in favor of adjourning the meeting. 8:30pm