



SUDBURY CONSERVATION COMMISSION

Meeting Minutes of March 9, 2020

Present: David Henkels, Acting Chair; Bruce Porter; Richard Morse; Charlie Russo; Mark Sevier (6:32 PM); Kasey Rogers (6:34 PM); Ken Holtz, Association Member and Lori Capone, Conservation Coordinator

Absent: Thomas Friedlander

D. Henkels opened the meeting under the MA Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw at 6:30 PM.

Violation Update:

Andrew and Anne Blank – 168 Horse Pond Road, DEP File #301-1178:

Richard Kirby of LEC Environmental attended tonight's meeting to present a restoration plan to mitigate for the installation of a fence in violation of the approved plan. Mr. Kirby explained that the fence was installed around existing trees so some of the fence was installed closer to wetlands and some was installed further from wetlands, for a net difference of 120 s.f.. To mitigate for an allowance to keep the fence as installed, the applicant is proposing to plant 40 native shrubs. They are also proposing to manually remove invasive buckthorn plants within this planting area. Any large buckthorn that cannot be manually removed, will be cut and a black bag will be placed around the stump to prevent it from resprouting. In addition, the large brush and debris pile designated on the plan, will be removed by hand. Mr. Kirby recommended the plan be implemented no later than June 15, 2020.

The Commission discussed the value of removing two additional brush piles located along the fence. The Commission determined these should also be removed.

The Commission discussed the fact that there are \$3,600 in outstanding fines associated with this project. Town Counsel has advised the Commission waive the fines, if the plan is implemented by a date certain as determined by the Commission, but, if the homeowners default on this Agreement, then the fines would be imposed.

The Commission agreed that the proposed restoration adequately mitigates for the error in the fence installation.

K. Rogers moved to approve the mitigation plan as discussed at tonight's meeting, and authorize Town Counsel to negotiate an Agreement for Judgement requiring the mitigation plan to be implemented by June 15, 2020 and further authorizing that existing fines be waived if the project is implemented to the satisfaction of the Commission by June 15, 2020. R. Morse seconded the motion. The Commission so voted unanimously.

Wetland Applications:

Notice of Intent: Stearns Mill Pond, Carding Mill Pond, and Grist Mill Pond, DEP File #301-

D. Henkels reopened the Notice of Intent hearing for the proposed herbicide treatment of Grist Mill, Carding Mill, and Stearns Mill Ponds with Clearcast for the management of water chestnut, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, last continued from February 20, 2020.

Jeff and Kathy Winston of the Hop Brook Protection Association (HBPA) attended tonight's meeting

Coordinator Capone informed the Commission that the last hearing was continued to obtain additional information on d'limonene, a chemical component of Cidekick, based on concerns raised by an abutter at the last meeting. The licensed herbicide applicator has reviewed the information raised at the last meeting and has confirmed that the formulation used in Cidekick contains a very diluted amount of d'limonene, whose chemical composition has been evaluated and approved by EPA for use in aquatic system. Coordinator Capone reported that methylated seed oil could be used in lieu of Cidekick but its formulation has the same potential of containing small amounts of unreacted ethylene oxide and 1,4-dioxane. The other item that was outstanding at the last meeting was the DEP number, which has since been issued.

There were no additional public comments.

On motion by C. Russo, seconded by R. Morse, the Commission voted unanimously to close the hearing. On motion by R. Morse, seconded by M. Sevier, the Commission voted unanimously to issue an Order of Conditions, approving the project as proposed.

Notice of Intent – Buddy Dog Humane Society, 151/183 Boston Post Road, DEP File #301-1261:

D. Henkels reopened the Notice of Intent hearing for the construction of a new animal shelter building and parking lot with associated grading and drainage within the 100-foot Buffer Zone and Adjacent Upland Resource Area, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, last continued from February 10, 2020.

Vito Colonna of Sullivan, Connors and Associates, Dan Wells of Goddard Consulting, and Steve Burt of the Buddy Dog Humane Society, attended tonight's meeting.

Since the last meeting, the Commission had performed a site walk to evaluate the existing site conditions and to evaluate the proposed areas of mitigation.

Mr. Colonna updated the Commission on revisions to the plan since the last hearing including: 1) the peer review of the stormwater management system has received a favorable review; 2) an 8-inch berm has been added downgradient of the existing dog run to contain any potential leachate running off this space; and 3) a detail of the proposed paver walkway has been added to the plan.

Dan Wells presented the revised mitigation plan that now proposes to remove invasive species and incorporate native plantings into a 2,600 s.f. area near the existing building to improve the vernal pool habitat. The habitat restoration plan proposes improvements to habitat and water quality to the vernal pool, as well as makes improvements to the adjacent upland buffer. It was agreed that the previously proposed invasive species management plan was likely going to be too difficult to successfully maintain. As an additional measure to improve wildlife habitat on site, all landscaped areas in the buffer zone will be comprised of native plants from the Commission's approved list and all areas shown as lawn in the buffer zone will be seeded with a native seed mix. Mr. Wells also confirmed that no permanent irrigation would be installed within the buffer zone.

Mr. Colonna presented the lighting plan to the Commission confirming that proposed lighting structures will not cast light into the wetland resource area.

The Commission discussed snow management. Mr. Colonna agreed that the site is tight but snow storage locations have been identified on the plan for a 1-foot snow storm. Larger snow events, or multiple smaller storms, may require snow to be removed from the site.

The Commission discussed the extent of grading needed in the parking area. Mr. Colonna explained that the proposed new facility will be constructed at grade but the entire parking area needs to be regraded with a 6% slope. Mr. Colonna explained that the only outstanding Planning matter was the alignment of the driveway with Goodman's Hill Road.

There were no abutters present to speak on this matter.

On motion by B. Porter, seconded by R. Morse, the Commission voted unanimously to close the hearing.

The Commission discussed that the alignment of the driveway with Goodman's Hill Road made sense and, if required by the Planning Board, moves the entrance further out of jurisdiction, and therefore the project could be approved as presented, with the condition that the final approved plan set be provided to the Commission.

On motion by M. Sevier, seconded by K. Rogers, the Commission voted unanimously to issue an Order of Conditions approving the project as discussed.

Notice of Intent – 22 Buckmaster Road, DEP File #301-1277:

D. Henkels reopened the Notice of Intent hearing for the construction of a swimming pool, patio and cabana within wetland jurisdiction, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, continued from February 10, 2020.

Andy Everleigh of Environmental Pools and homeowner, Danforth Sullivan, attended tonight's meeting.

Mr. Everleigh explained that the homeowner has reduced the footprint of the project by about 200 s.f. and a mitigation plan has been prepared since the last meeting. The requested 3:1 mitigation would eliminate the entire rear yard. A 2:1 mitigation plan was developed revegetating about 4,600 s.f. of lawn to native plantings, the applicant however, would like to discuss the option of reducing the required mitigation to 1:1. Mr. Sullivan informed the Commission that he would like to develop a project that will result in an improvement to the wetland without giving up his entire rear yard, noting that if the project is not permitted, there will be no improvement to the wetland resource area. The Commission explained that it is impossible to evaluate reducing the mitigation without being provided a plan to react to.

Coordinator Capone explained that under the Wetlands Protection Act, the majority of the project would qualify as an exemption, as a minor project within a landscaped area. Alteration to the buffer zone does not require mitigation under the Act. Under the Bylaw, no Adjacent Upland Resource Area would be altered as the area is disturbed and provides little function and value to the wetland resource area. Coordinator Capone was not provided the mitigation plan for review but felt that the project could result in an improvement to the resource area at a mitigation rate between 1.5:1 and 2:1.

The Commission discussed plan modifications including, moving the cabana and mechanics and moving the stairs but suggested the applicant confer with the wetland scientist to determine appropriate mitigation to improve the wetland resource area functions and values.

No abutters were present to speak on this matter.

On motion by B. Porter, seconded by K. Rogers, the Commission voted unanimously to continue the hearing to March 23, 2020.

Notice of Intent – 100 Thunder Road, DEP File 301-1284:

D. Henkels reopened the Notice of Intent hearing for tree removal and expansion of lawn within the 100-foot Buffer Zone and Adjacent Upland Resource Area at 100 Thunder Road, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

Coordinator Capone informed the Commission that the applicants are working on developing a mitigation plan and said the applicants have requested a continuance to the following meeting.

On motion by M. Sevier, seconded by K. Rogers, the Commission voted unanimously to continue the hearing to March 23, 2020.

Notice of Intent – Memorial Forest, DEP File #301-1285:

D. Henkels reopened the hearing to conduct a prescribed burn, to restore Pitch Pine - Scrub Oak Barrens in the Memorial Forest, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

Laura Mattei of Sudbury Valley Trustees attended tonight's meeting. Ms. Mattei explained that the hearing was continued for Coordinator Capone to review the area of wetlands that are within the burn zone and for DEP to issue a file number. Both of these items have been completed.

There were no public comments.

On motion by C. Russo, seconded by R. Morse, the Commission voted unanimously to close the hearing.

On motion by C. Russo, seconded by K. Rogers, the Commission voted unanimously to issue an Order of Conditions approving the project.

Request for Determination of Applicability – 197 Landham Road:

Mike DiGiorgio of Land Pro Inc attended tonight's meeting, on behalf of the applicant, to present the Request for Determination of Applicability for 197 Landham Road to restore an area of the 100-foot buffer zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

Coordinator Capone informed the Commission that this application is in response to some vegetation clearing that occurred recently. The homeowner was very careful not to infringe on the adjacent conservation land but was not aware that a portion of the property fell within the 100-foot buffer zone and 200-foot Riverfront Area. Coordinator Capone showed aerial photos of the area showing that the area of disturbance was an agricultural field prior to the house construction. The area was allowed to naturalize following the house construction but this was not a requirement of the Order of Conditions. Approximately 1,200 s.f. of the buffer zone and Riverfront Area were altered.

Mr. DiGiorgio explained that three river birch that were preserved will be replanted in the area of clearing and the area will be seeded with a native seed mix and allowed to naturalize. The remainder of work outside jurisdiction includes installation of patios, landscaping, and seeding the area with lawn. There is a compost bin and stacked wood on the conservation land that will be removed. They are in the process of obtaining a stormwater permit from the Planning Office.

Mr. DiGiorgio offered to mow the entrance to the conservation land, located adjacent to 197 Landham Road. The Commission requested Mr. DiGiorgio mark up a plan for consideration.

On motion by C. Russo, seconded by R. Morse, the Commission voted unanimously to issue a Negative Determination of Applicability, approving proposed restoration work.

Request for Determination of Applicability, 38 Birchwood Avenue:

Jo-Anne Howe attended tonight's meeting to present her request to remove three trees and dead branches within the 100-foot buffer zone and Adjacent Upland Resource Area, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

Coordinator Capone presented aerial photos and photos of the trees proposed to be removed, explaining that as part of approval for the house construction, a Conservation Restriction (CR) was required over the undisturbed portion of the lot. The homeowner would like to address some hazard trees prior to completing the CR. There are two large dead pine: one that threatens falling on the adjacent house; and a second one that threatens to take out the electrical line on Lakeshore Drive. The third tree had come down recently across Lakeshore Drive which was cut up to make the road passable but sections of the trunk were left haphazardly, on the subject parcel which the homeowner would like removed. Coordinator Capone suggested leaving the two pine as snags and repositioning the downed logs within the CR for wildlife habitat, as it is located near two vernal pools. The Commission determined that the logs could be removed from the site.

On motion by R. Morse, seconded by C. Russo, the Commission voted unanimously to issue a Negative Determination of Applicability, as discussed.

Notice of Intent – Dutton Road Bridge Replacement, DEP File #301-1281:

D. Henkels opened the Notice of Intent Hearing for the replacement of the existing twin arch culvert bridge over Hop Brook with a concrete arched bridge, including construction of a sidewalk and relocation of utilities, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

Rich Canavan, Eric Ohanian, and Dana Vesty of Tighe and Bond presented the project to the Commission, on behalf of the Sudbury Department of Public Works. Mr. Canavan described the wetland resource areas that will be altered as part of this project including buffer zone, Riverfront Area, Bordering Land Subject to Flooding, Bank, Land under Waterbodies, and Bordering Vegetated Wetlands.

Mr. Canavan explained the deterioration of the existing bridge and efforts that were employed to improve this stream crossing, while minimizing wetland impacts. The proposed 24-foot arch bridge will be installed on precast footings to reduce the construction duration and minimize dewatering that will be needed.

Mr. Canavan discussed how the project design meets the Stream Crossing Standards. All standards were able to be achieved, except for meeting the requirement of installing a bridge span that is 1.2 times the width of the existing Bank. To meet this standard, the bridge would need to be 37 feet wide, which would have resulted in additional alterations to wetland resource areas. Mr. Canavan explained that the benefit of meeting the 1.2 times bank width requirement is for improved connectivity, stream flow, and fish migration but as the Stearns Mill Pond Dam is directly upstream of this culvert, the additional impacts to wetland resource areas to achieve this, did not seem warranted. This will require Army Corps of Engineers permitting under Section 404 of the Clean Water Act.

C. Russo asked about the dewatering sequence and the applicability of limited project status. Mr. Ohanian explained how the stream would be diverted and the work area dewatered to install the footings and natural stream bed under the new bridge. The exact design will be left to the contractor, which will be reviewed and approved by Public Works and Conservation prior to implementation. Mr. Canavan and Ms. Vesty explained that the project qualifies as a limited project as it is work on an existing bridge under 310CMR 10.53 (3)(i). 310CMR Under 10.53(3)(f) the project qualifies as a limited project as work on an existing roadway without expansion and 310CMR 10.53(3)(d) allows for work on public utilities. These provisions relate to public works project which cannot otherwise meet the performance standards for the

resource areas. Mr. Canavan confirmed that the project meets the performance standards without needing limited project status, except for meeting stream crossing standards. Mr. Canavan explained that they conducted a hydrologic study to determine what span types could be considered and evaluated each of the designs to minimize impacts on wetlands. An alternative analysis was provided in the Notice of Intent to substantiate that the current design is the best alternative to achieve the project while minimizing wetland impacts.

To a question by D. Henkels regarding having an environmental monitor overseeing work, Mr. Canavan responded that Tighe and Bond would have a full-time observer in the field during construction. Work is anticipated to commence this summer.

The Commission informed the applicant that Stearns Mill Pond is scheduled for herbicide treatment this summer. Mr. Canavan requested that he be notified when the treatment is scheduled and any in water restrictions that he should be aware of for his downstream crew.

Coordinator Capone updated the Commission on concerns regarding the proposed new outfall being located on conservation land and whether that would constitute a conversion of Article 97 land which would require a unanimous vote of the Commission, a 2/3 vote of Town Meeting, and 2/3 vote of State Legislature to permit. Town Counsel has opined that as the use of the land is not changing, work would not trigger Article 97 conversion.

There were no public comments.

On motion by R. Morse, seconded by B. Porter, the Commission voted unanimously to close the hearing. On motion by C. Russo, seconded by R. Morse, the Commission voted unanimously to issue an Order of Conditions approving the project.

Notice of Intent – 273 Lincoln Road, DEP File #301-1282:

D. Henkels opened the Notice of Intent Hearing to restore 16,000 square feet of bordering vegetated wetlands, altered as part of remediation activities associated with an oil spill that occurred in December 2019.

Greg Hockmuth of Williams and Sparages LLC presented the project to the Commission for the applicant who was also present. Mr. Hockmuth provided the background of activities that have occurred on site over the last 60 days to remove all oil contaminated soil and water from the site, which required the excavation of about 16,000 s.f. of bordering vegetated wetland, about one foot deep. Excavation has been completed and monitoring wells were installed. This Notice of Intent is to bring clean soil back in to restore the pre-existing elevations, remove the access road, and install plantings to revegetate the altered wetland and buffer zone. All disturbed areas will be seeded with an appropriate native seed mix at twice the recommended application rate and 117 trees and shrubs will be planted. All work will be conducted under the direct supervision of a soil evaluator and/or wetland scientist. Work is proposed to commence as soon as a contractor is chosen. The restoration area will be monitored for 2 years to prevent invasive species from overtaking the area until the area is re-established.

Coordinator Capone said she had received an inquiry about reinstalling a fence. Mr. Williamson said he would like to reinstall the wire fence at the edge of yard.

There were no public comments.

On motion by K. Rogers, seconded by M. Sevier, the Commission voted unanimously to close the hearing. On motion by M. Sevier, seconded by B. Porter, the Commission voted unanimously to issue an Order of Conditions approving the project.

Other Business:

Davis Meadow Restoration Project:

Coordinator Capone informed the Commission that this discussion was continued from the last meeting for the Commission to consider amending the management regime for the Davis Farm Meadow Restoration project to allow for spot treatment with an herbicide of an area that is densely vegetated with bittersweet. The Commission's contractor had requested this consideration given the ineffectiveness that solarization has had on these plants and the fact that their seed persists for nine years, and given the funds that are available to accomplish the work. The contractor expressed concern with attempting to plant or seed the meadow until the bittersweet is under control.

C. Russo expressed concern with using an herbicide because the Commission's goal for the project was to create a pollinator meadow without the use of herbicides. The Commission should determine what result the Commission can get without the use of herbicides. B. Porter said the Commission had permitted SVT to use spot treatment use of herbicides for invasive species management. M. Sevier agreed that the Commission should determine if there are other options. The Commission discussed other management techniques including manual removal, mowing, and continuing with the solarization.

Coordinator Capone suggested that the Commission also consider abandoning the bittersweet area and focusing management and plantings on the remainder of the meadow to create at least a portion of the area as a productive meadow. The bittersweet area is about 1/4 to 1/3 of the meadow area. The Commission discussed the economics and success potential between herbicide treatment and solarization. The Commission requested the contractor provide costs between the two alternatives to consider and tabled the discussion to the next meeting.

Land Stewardship Flash Vote:

Ken Holtz presented the Flash Vote questions that he, D. Henkels, and R. Morse developed to poll the community to see where the Commission should devote time and energy if a Land Management Subcommittee is formed. The poll is also intended to develop a volunteer base to assist with land management projects. The vote is focused on King Philip Woods, Hop Brook, and Tipling Rock/Nobscoot to see where the community ranks them as far as which are used the most and what the needs for each property are.

K. Rogers suggested adding a question about the frequency that people are using each area as we do not have any sense of how often people are using these resources. R. Morse said that the intention is to have additional Flash Votes to gather more specific information on each area as the Land Management Subcommittee forms, to direct focus. M. Sevier suggested having the first survey be more broad to all conservation lands instead of picking only three conservation lands. K. Holtz responded that these properties were chosen due to presumed popularity. The Commission discussed having a more freeform and/or drop down list type questions. There was concern that people may not even know the names of the areas that they are walking and suggested including a map that shows where they are located.

The Commission discussed allowing people to provide contact information of volunteers that would be interested in helping with land management initiatives. Another purpose for this flash vote is to allow the Commission to focus their limited resources and to also substantiate the need for seasonal staff to assist with improving these community resources. K. Holtz suggested everyone access this google doc to edit and make suggestions for discussion at the next meeting.

Commission Charge:

Coordinator Capone informed the Commission that it was noted that the Commission does not have a Mission Statement on the website. Coordinator Capone found two draft charges on the computer which were combined for the Commission to review. The Commission discussed the proposed language and requested a few modifications to be incorporated and placed on the next Agenda for adoption.

Commissioner Regulation Revisions:

Coordinator Capone informed the Commission that there were modifications that are needed to the Commission's Regulations. There was one incorrect reference regarding adjacent upland resource area mitigation and a need for uniformity. The Commission discussed reorganizing the Regulations and making them more user friendly. Coordinator Capone will work on amending the Regulations and asked each Commissioner to provide input on sections that they would like to see revised.

Minutes:

On motion made by B. Porter, seconded by R. Morse, the Commission voted unanimously to approve the minutes of the February 10, 2020 meeting.

On motion made by M. Sevier, seconded by K. Rogers, the Commission voted unanimously to release the Executive Session minutes pertaining to Zero Washington.

Other Business:

Open Meeting Workshop

Coordinator Capone informed the Commission that there is an Open Meeting Law Workshop on March 25, 2020 at the Pompo Community Center in Stow for members that have not attended an Open Meeting Law Workshop recently.

OARS Legislative Breakfast

Coordinator Capone informed that Commission OARS and SVT are holding a Land and Water Legislative Breakfast on April 3, 2020, from 8:00-10:00AM at the Stow Community Center.

Hop Brook Annual Meeting

Coordinator Capone informed the Commission that the Hop Brook Protection Association invited the Commission to attend their Annual Meeting on April 28, 2020 at 7:30PM at the Wayside Inn.

Right of First Refusal - 3 French Road

Coordinator Capone informed the Commission that she received the Right of First Refusal for 3 French Road, which is in Chapter 61A. The site has a single family house with no obvious agricultural use from review of aerial photos. There are no wetlands on site and there is no adjacency to other protected open spaces. The Commission has 120 days to make a recommendation to the Select Board as to whether to exercise their Right of First Refusal. This will be placed on the next agenda for discussion.

MACC Fundamentals

Coordinator Capone informed the Commission that R. Morse and K. Rogers for having completed the MACC Fundamental Classes.

Complete Streets

B. Porter invited the Commissioners to attend the next Board of Selectmen where he will be presenting on bicycle safety and also encouraged members to attend Town Meeting in regards to this matter.

On motion by C. Russo, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to adjourn the meeting at 9:17 PM.