



SUDBURY CONSERVATION COMMISSION

Meeting Minutes of July 13, 2020

Present: Thomas Friedlander, Chair; David Henkels, Vice Chair; Richard Morse; Bruce Porter; Charlie Russo; Kasey Rogers; Mark Sevier; Ken Holtz, Associated Member; and Lori Capone, Conservation Coordinator

Chair Friedlander opened the meeting under the MA Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw at 6:30 PM. He stated the Commission would not be using the Zoom questions and answer or chat functions and asked that people raise their hands to be heard. C. Russo asked about accessibility, to which Chair Friedlander responded everyone will still have the same ability to speak but only through one avenue, instead of three, to better manage public comments. If the Commission would like to discuss further, this could be an agenda item for the next meeting.

Minutes:

The minutes of June 29, 2020 were tabled until the next meeting.

Wetland Applications:

Amended Order of Resource Area Delineation – Bruce Freeman Rail Trail, DEP #301-1193:

Chair Friedlander opened the hearing to Amend the Order of Resource Area Delineation for the Bruce Freeman Rail Trail to clarify jurisdictional wetland resource areas subject to the Wetlands Protection Act versus the Sudbury Wetland Administration Bylaw, to classify streams as intermittent or perennial, and to enter into the record the status of vernal pools along the MassDOT Right of Way, continued from June 29, 2020.

Tim Dexter and Eamon Kernan of MassDOT, Alyssa Jacobs of Epsilon Associates, and Beth Suedmeyer, Sudbury Environmental Planner, attended tonight's meeting.

Chair Friedlander stated the Commission was waiting for a proposal from David Burke, Wetlands Recourse Specialist, hired to peer review this project on behalf of the Commission. Mr. Burke presented his proposal to complete the Peer Review. He stated what areas he would review under the Contract and asked Tim Dexter from MassDOT if he agreed with the assessment. Mr. Dexter deferred the answers to Alyssa Jacobs, who is working on behalf of MassDOT on this project as the technical advisor. She stated it appeared Mr. Burke had covered the scope. She asked for clarification on the additional information on isolated vegetated wetlands he was asking for to which Mr. Burke responded that he required information of the volume of water the isolated wetlands could hold. Beth Suedmeyer explained the 2016 Order of Resource Area Delineation (ORAD) did not determine the status of intermittent and perennial streams, or vernal pools, due to time of year and drought conditions. She stated that MassDOT is seeking under this application, to clarify the perennial streams based on definition of the Wetlands Protection Act only.

When questioned about the language of the Town Bylaw regarding the status of streams, Coordinator Capone responded that under the Bylaw, a stream is presumed to be perennial unless proven to be intermittent. The burden is on the applicant. Ms. Jacobs stated that under the Act, if USGS maps show a stream as perennial, then the assumption is that it is perennial, but it can be changed based on direct observations of the stream being dry. More discussion was held about perennial vs. intermittent and the importance of correct classification.

Dave Burke was asked to disclose the cost and timeframe for his services to which he answered not to exceed \$5,500 and timeline was first week in September to complete the initial review. Coordinator Capone asked for an opinion from MassDOT on the peer review and any of their concerns. Mr. Dexter stated as far as the stream designation, MassDOT is exempt from the local Bylaw so is only looking for approval under the State Wetlands Protection Act. Mr. Burke questioned if that was the case. Coordinator Capone stated that under this ORAD the Commission was defining what was state jurisdiction and what was not. When a Notice of Intent is filed, the Commission will be looking for legal clarification from MassDOT and Sudbury's legal Counsel relative to a Bylaw exemption.

There were no public comments.

Chair Friedlander stated that the Commission is looking for a vote on awarding the Peer Review contract to David Burke. Richard Morse moved the motion, seconded by K. Rogers. By roll call, the vote was unanimous in the affirmative. With the agreement of the applicant, this matter was continued to the September 14, 2020.

Notice of Intent - 32 Churchill, DEP File #301-1297:

Chair Friedlander opened the Notice of Intent hearing for tree removal, fence installment, and deck expansion within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

Applicants Andrew and Rebecca Stone introduced the project with slides of the location. They stated they wanted to remove one tree overhanging the garage, install a fence around the yard, remove invasive plants and expand their deck. He showed a plan of these elements and several pictures of proposed work. Coordinator Capone stated the work is contained within the existing landscape areas within the outer buffer zone. She had suggested leaving a six-inch clearance under the fence, but with dogs, it would be more beneficial to allow the fence to extend to the ground to keep dogs out of the resource area as the fence will not constitute a barrier between resource areas. She was ok with all other parts of the request. B. Porter stated he understood all aspects of the request but he did not see any narrative about the tree from an arborist. The Coordinator stated the tree does show signs of rot and is in the yard next to the garage. K. Rogers asked if the tree removal would affect shading in the Vernal Pool area. Coordinator Capone stated it would have no effect, located 80 feet away. C. Russo asked for confirmation that the fence would not require additional clearing. Mr. Stone concurred.

There were no public comments.

On motion by D. Henkels, seconded by R. Morse, the Commission voted unanimously, by roll call vote, to close the hearing. On motion by D. Henkels, seconded by M. Sevier, the Commission voted unanimously, by roll call vote, to issue the Order of Conditions approving the project.

Notice of Intent - 200 Mossman, DEP File #301-1298:

Chair Friedlander opened the Notice of Intent hearing to remove a tennis court and install a sport court, with associated tree and invasive species removal, within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

Applicants Benjamin and Jamie Simeone presented their project. Mr. Simeone stated the existing tennis court was very degraded and that they would like to reduce the surface by 60% and install a Sport Court in place of it. He stated there is bittersweet on site that is killing the large trees in the same general area as the court. They would like to try to eradicate as much as possible, through manual removal. Two trees are proposed to be removed: one is dead and the other is completely encased in bittersweet. He showed pictures of the area, and how the trucks would access the back area. When asked if the primary reason for

invasive removal was to make room for the construction vehicles, Mr. Simeone stated in the affirmative to some degree, but it will also prevent the bittersweet from impacting other trees in this area. Coordinator Capone mentioned this is a difficult undertaking, but stated it improves existing conditions. This space is already developed, and it does not intrude further, relative to the proximity to the wetlands. She asked if there were plans for any lighting or fencing for the Sport Court. The Simeones confirmed the neither were proposed. When asked what will occur in the remaining portion of court not used, the Applicant stated this would go back to its natural state. C. Russo asked the method of removal for invasive. The removal would be completed by hand and the bittersweet would be taken offsite. Mr. Russo cautioned that eradicating the bittersweet is a long process, where the applicants responded they understood and are interested in continuing to fight the invasion. K. Rogers asked what material the current court had and what will be used in the new Sport Court. Mr. Simeone stated the old court is made of asphalt and the new court would also be asphalt, though a much less surface area.

Chair Friedlander asked if there were any members of the public that wanted to speak on this project, and seeing none, entertained a motion by B. Porter, seconded by R. Morse, via unanimous roll call vote, to close the hearing. On motion by D. Henkels, second by C. Russo, the Commission voted unanimously, by roll call vote, to issue an Order of Conditions approving the project.

Notice of Intent - 26 Tavern Circle, DEP File #301-1296:

Chair Friedlander opened the Notice of Intent hearing for tree removal within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

Richard Kennelly, applicant, presented his project to remove nine pine trees that he feels are a safety hazard to the house. Several have fallen, limbs have come down and present a danger. Four are within closer proximity to the wetland which he highlighted. He stated those trees would be replaced by eight native shrubs from the Commission's approved plant list.

The Coordinator had noticed invasive species on the property and the homeowner agreed to remove those as part of the project. Chair Friedlander asked about the northernmost tree, whether it is in the wetland. Coordinator Capone said it was just upgradient of the edge of wetland. The Applicant showed several photos of the trees themselves. The Chair expressed concern about the trees at the bottom of the slope, and questioned why these specific trees had to come down. Mr. Kennelly expressed concern that they are very tall and could hit the house. There is no arborist report as of yet, but the Applicant could obtain one. Chair Friedlander asked if the Commissioners would like to visit the site. Coordinator Capone had been out to the site and her comments were that there are many pine trees that are dead. Her concerns were primarily around the trees nearest the wetland edge, and suggested some trees be left as snags. She had no further concerns as the area was not being converted from forest and the proposed invasive species removal would benefit the Riverfront/AURA resource areas. Mr. Kennelly stated proposed trees are not all dead. Some trees are simply too tall and if they fall on the house, it would cause a lot of damage. M. Sevier asked if the Applicant was open to leaving snags for wildlife habitat. He was open to it but would need further information. K. Rogers asked if there was some kind of invasive beetle causing the trees to die. R. Morse thought the decision is premature until an arborist can view these trees. He encouraged the Applicant secure the Arborist report then come back with more information for his permit. Chair Friedlander asked if it were possible to visit the site, to which several members of the Commission agreed. The Commission discussed requiring an Arborists report and a continuance. The Applicant was agreeable to this.

On motion to continue the hearing to the next meeting date, July 27, made by R. Morse, seconded by M. Sevier, the motion carried by unanimously by roll call vote.

Other Business:

137 Brimstone Lane Warrant Article Revision:

The Chair recognized Atty. Josh Fox to discuss a revision to the Warrant Article previously submitted and voted on by the Commission for 137 Brimstone Lane. The landowner has proposed a land swap with the Conservation Commission for land in the rear of the property for land in the front of the property. He gave a brief review of the history of the property and revised land transfer: 1,033 s.f. on conservation land, for 29,800 s.f. of conservation land. . Based on a request from the Board of Selectmen, the proposed 20-foot strip of land has been expanded to 40 feet wide, which allows for better access by hikers and protections for the homeowner. M. Sevier questioned why the land swap was increased by so much. C. Russo stated he had brought this up at a Selectman's Meeting. He had been concerned about the assessment and whether the Town had intentionally retained the sliver of land so as not to give the ability to the property owner to create a second lot. This, in discussion with the Selectman, eventually led to a request for more land to improve the conservation value of the land swap. M. Sevier had some reservations about taking so much land from a landowner. Mr. Fox stated as the representative for the landowner, they are comfortable with this swap. R. Morse made a motion to approve the Amended Warrant Article, seconded by M. Sevier, and via roll call vote, support was unanimous.

Certificate of Compliance:

44 Belcher Road, DEP File #301-1260:

Coordinator Capone explained that this Order is for a deck that was constructed without a permit, which led to a violation that resulted in the Notice of Intent. Coordinator Capone explained that the deck was constructed per plan except that the stairs were constructed further from the wetland and the applicant significantly expanded the mitigation area, so she recommended the Commission issue a Certificate of Compliance.

On motion by D. Henkels, seconded by B. Porter, via unanimous roll call vote, the Certificate of Compliance was issued.

168 Horse Pond Road, DEP File #301-1178:

Coordinator Capone stated that as discussed at the last meeting the only outstanding item associated with the proposed restoration was the removal of buckthorn. She has revisited the site to confirm that this work has been completed and recommended the Commission issue a Certificate of Compliance.

On motion from B. Porter, seconded by R. Morse, by unanimous roll call vote, the Certificate of Compliance was issued.

96 Plympton Road, DEP File #301-1263:

Coordinator Capone explained that this Order was for the expansion of a deck and conversion of a three season room to a four season room, with a small expansion, which required mitigation plantings to convert a portion of the lawn to native species and install an infiltration chamber to infiltrate run off from the roof expansion. She explained that the infiltration chamber was not installed and the plan and homeowners do not show where the mitigation plantings were required. As the roof runoff was naturally infiltrating into the lawn and there were no signs of erosion, Coordinator Capone recommended the site not be redisturbed to install the underground chamber. She discussed alternate mitigation with the homeowners which would remove several invasive species and replant the area with native plants and was seeking confirmation that the alternative mitigation was acceptable to the Commission. The Commission agreed and the Certificate of Compliance will be deferred until the mitigation is complete.

Other Business continued:

Camping on Conservation Land:

Coordinator Capone stated the areas for camping are not clear on our website. The only accommodations for fire are at Davis, though the website indicates that camping is permitted on all conservation lands except Poor Farm Meadow. She asked for guidance from the Commission as to a process, particularly in the time of COVID when outdoor activities are at higher demand. A permit currently is required. The Commission discussed whether or not they are comfortable allowing camping on all conservation lands. They discussed the responsibilities by the Commission to allow this activity. D. Henkels asked where permit requests are for and she stated typically Davis, but she had received requests for Nobscot and another area. Ken Holtz (Associate Member), stated he had been to Hop Brook, where the trail map show potential camp sites which are crossed out in pencil. The Chair asked the Commission if they want to allow camping in Town or not. Further discussion on this led to the suggestion to allow the program go along as it is, and develop more comprehensive guidelines and updated maps, at a later date.

On motion by R. Morse seconded by D. Henkels, to authorize the Coordinator use her discretion in administering the Camping Program. The Commission will examine further at a later date. By roll call vote the motion passed 6-1 (B. Porter opposed).

On motion by R. Morse, seconded by D. Henkels, the meeting was adjourned at 8:30pm.