



SUDBURY CONSERVATION COMMISSION
Meeting Minutes of June 29, 2020

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

Chair Friedlander opened the meeting under the MA Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw at 6:30 PM.

The Chair recognized, and on behalf of the Commission, congratulated Charlie Russo on his election to the Board of Selectmen. A short discussion was held relative to process of a new Commissioner.

Minutes

On motion by B. Porter, seconded by D. Henkels, the Commission unanimously approved, by roll call vote, the minutes of June 15, 2020.

Wetland Applications:

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

Chair Friedlander opened the Notice of Intent hearing for the installation of an in-ground swimming pool and patio within wetlands jurisdiction pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw, continued from February 10, 2020 and March 9, 2020. The applicant requested a further continuation to July 27 due to COVID related issues with the Landscape Architect.

On Motion by D. Henkels, seconded by K. Rogers the Commission voted unanimously, by roll call vote, to continue this hearing to July 27, 2020.

Notice of Intent: 33 Maynard Road, DEP File #301-1295:

Chair Friedlander opened the hearing for 33 Maynard Road, for tree removal conducted under an Emergency Certification and mitigation plantings in the 100-foot buffer zone to bordering vegetated wetlands, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw, continued from June 15, 2020. The Commission was awaiting the DEP file number and the revised plan, which have been received.

Hearing no additional comments, or abutter comments, on motion by D. Henkels, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to close the hearing. On motion by R. Morse, seconded by M. Sevier, the Commission voted unanimously, by roll call vote, to issue an Order of Conditions as discussed.

Request for Determination of Applicability - 11 Crestview Drive:

Chair Friedlander asked for the applicant, Keith Dennis, to present his Request for the construction of a patio and retaining wall within the 100-foot Buffer Zone pursuant to the Sudbury Wetlands Administration Bylaw. As Mr. Dennis was not in attendance, Chair Friedlander asked Coordinator Capone to make the presentation on behalf of the applicant. Sharing photos and a sketch of proposed work, Coordinator Capone explained that work to convert an existing landscaped area in the outer buffer zone is exempt under the Wetlands Protection Act. Coordinator Capone also felt that work was exempt from the local

bylaw as the site was developed prior to the Bylaw, however, this site was redeveloped after enactment of the bylaw. Work poses no new impacts to the buffer zone. Coordinator Capone also commented that the applicant is in compliance with a Determination made last year regarding tree removal.

With no questions from the Commission, on motion by D. Henkels, seconded by C. Russo, the Commission voted unanimously, by roll call vote, to issue a Negative Determination of Applicability approving the work as proposed.

Request for Determination of Applicability: 76 Cranberry Circle:

Chair Friedlander asked for the applicant, Ken Pastel, to present his Request to remove invasive species within the 100-foot buffer zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw.

Mr. Pastel described an area of invasive species, buckthorn and bittersweet, which has effected the health of the trees on site, leading to tree failure. Photos were shown of the damage and bittersweet growing up the trees. Coordinator Capone said that due to the size of the bittersweet, they cannot be successfully removed manually, and recommended that they be allowed to spot treat the stumps with an herbicide. Commissioner Russo cautioned about using glyphosate and wondered if other pesticides, such as triclopyr, be considered. Chair Friedlander stated he felt a Notice of Intent filing was needed in order to address Commission concerns, due to the complexity of the project. Discussion about whether to request a Notice of Intent filing commenced. Concerns primarily focused on use of pesticides without controls by the Commission. There was general agreement that clarity was needed on future filings that are more distinct for applications of this nature.

Patricia Pastel expressed frustration as they were told by the Conservation Office in the past that they were not allowed to do anything to control the invasives, and now they are damaging their property.

D. Henkels made a motion to issue a Positive Determination, seconded by Chair Friedlander. The motion failed 5-2, by roll call vote, to issue a Positive Determination of Applicability

M. Sevier moved to issue a Negative Determination with Conditions:

1. The applicant would attend a preconstruction meeting with the Coordinator to establish the area of impact and process of application of herbicides.
2. Herbicides would be applied via cut and dab methodology by a licensed herbicide applicator.

K. Rogers seconded the motion. The motion carried 5-2, by roll call vote.

Amended Order of Resource Area Delineation – Bruce Freeman Rail Trail, 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.

Tim Dexter from MassDOT, Alyssa Jacobs, Wetland Scientist from Epsilon, and Eamone Keirnan, Project Manager from MassDOT, and Beth Suedmeyer, Sudbury Environmental Planner, attended tonight's meeting. Ms. Suedmeyer introduced the application, and turned the presentation over to Tim Dexter who described the resource areas subject to this Order. Ms. Jacobs discussed the summary of findings. There was discussion about the perennial vs. intermittent streams.

Chair Friedlander stated the crux of the issue is that the previous Order did not differentiate wetland resources that were subject to the Act versus those subject to the Bylaw only. Chair Friedlander said the Commission is in the process of hiring a Peer Reviewer, Dave Burke, who also perform initial peer review when the wetland delineation was approved by the Commission three years ago.

Coordinator Capone asked if the wetland flags were still in the field for review. Ms. Jacobs stated that not all flags are still in place.

K. Rogers asked if the entire project is being redefined relative to wetlands. Ms. Jacobs confirmed that it is for the entire project. Discussion focused on the boardwalk area, and the need for a Peer Review, location of the review, and the breadth of the scope of work. Eamon Kiernan MassDOT stated that the Peer reviewer was there to confirm the current findings for the Application. The Chair stated that in order to concentrate on the area for review, the flags should be reinstalled. T. Dexter said the reflagging should be only done in the area of the boardwalk. There was discussion about the timeline for this application relative to the Peer Review and future meetings.

The Chair asked for input from the public at this point. Dan DePompei, 35 Haynes Road, asked to verify who the Applicant is. Ms. Suedmeyer responded that MassDOT is the Applicant. Mr. DePompei stated that he believed the wetlands Bylaw was being sacrificed to move the project forward and that MassDOT appeared to not respect the local bylaw. B. Suedmeyer explained the MassDOT is willing to comply with the Bylaw to the maximum extent practicable but wetland impacts would be quantified for the Notice of Intent based on state jurisdictional wetlands only. Any wetland impacts would be mitigated. Discussion centered on what MassDOT was asking for, and whether they planned to observe the local Bylaw.

Chair Friedlander asked for a motion to continue the hearing to July 13, to obtain a proposal and approve a contract to hire the Peer Reviewer. On motion by M. Sevier, seconded by D. Henkels, the Commission voted unanimously, by roll call vote, to continue the hearing to July 13, 2020.

Certificate of Compliance:

Richard Williamson: 273 Lincoln Road: Partial Certificate of Compliance

Greg Hochmuth, of Williams and Sparages, attended for the Applicant. He remediation that has been conducted in response to an oil spill that occurred at that address, (249 gallons of home heating oil), into a bordering vegetated wetland. There were significant challenges to the project relative to access, but, the result was successful. All the oil contaminated soil and groundwater has been removed from the site, monitoring wells have been installed, clean soil has been brought in to restore grades and restoration plantings have been installed.

The Applicant was requesting a Partial Certificate of Compliance in order to allow Escrow funds to be released and for the new homeowners to take responsibility for the survival of the plantings. A full COC is not possible until the two-year monitoring period is complete. Coordinator Capone was satisfied with the result and reporting, and recommended the Commission issue a Partial Certificate of Compliance.

On motion by C. Russo, seconded by B. Porter, the Commission voted unanimously, by roll call vote, to issue the Partial Certificate.

Other Business:

Appointment to the Land Acquisition Review Committee:

Chair Friedlander stated he has been on this Committee for quite some time. He would like to have someone else take on the responsibility. D. Henkels said he was willing to accept.

On motion by C. Russo, seconded by R. Morse, D. Henkels was nominated as the new representative of the Conservation Commission to the Land Acquisition Review Committee. The Commission voted unanimously, by roll call vote, to appoint D. Henkels to the Land Acquisition Review Committee.

Tree Removal Regulation:

D. Henkels explained that he has been reviewing other Town Bylaws on tree removals and suggested the Commission develop parameters and protocols to direct and/or approve tree removal projects. He reviewed the current Regulation, under Section 7.14 of the Commission's Bylaw Regulations.

The Coordinator recommended revising this section, in conjunction with the Regulations rewrite that will be conducted in the near future, to make it more understandable to residents, and less complicated for small tree removal projects.

Chair Friedlander was hesitant to permit an Administrative Approval process. His concern was adding to the permitting process and providing oversight to ensure work was conducted properly. R. Morse stated he had heard that tree preservation should be more restrictive as the result of conversations he had with the public. Coordinator Capone stated that the Planning Office would be a more appropriate office to put forth a Tree Bylaw to preserve all trees but our Regulations can only be associated with trees in wetland jurisdiction.

Further discussion on technical and environmental aspects to tree removal took place. D. Henkels suggested the Commission come back later to further discuss and take action. All agreed.

Flash Vote and Next Steps:

Chair Friedlander congratulated K. Holtz on the work done and success, for the Flash Vote. The response was outstanding. K. Holtz stated that much of the response was relative to Nobscot Mountain and poison ivy. He found that information on what conservation lands are used with regularity was helpful. Trail maintenance and signage was a big concern. A need for better trail maps was illustrated in the comments as well. He would have liked to be able to recruit volunteers, but Flash Vote does not allow for that. Chair Friedlander suggested examining the possibility of CPC funds for signage. B. Porter said other towns have better maps and signage. Coordinator Capone stated that the Town IT Department will be hiring a consultant to organize the Town's GIS data and will be asked to develop a trails layer. Once this data is updated, the Town will be in a position to develop accurate trail maps. The only feedback received by the Office was a resident commenting on proper spelling of Tippling/Tipling Rock.

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

Coordinator Capone provided an update on status of the above referenced Order of Conditions. The mitigation plantings were installed by the deadline in June. The buckthorn however, was not cut and bagged as of this meeting. If this has been confirmed and an official request submitted, the Coordinator stated the Commission would be in a position to issue a Certificate of Compliance at their next meeting.

Brimstone Lane Warrant Article Revision:

Coordinator Capone presented a plan showing the approximate land exchange proposed under Article 39 for Town Meeting. She has continued to work with Attorney Fox to finalize this Warrant Article. The amount of land to be gifted is double that of the initial proposed land swap. This increases the buffer to conservation trails from 20' to 40'. A surveyor will finalize plan to bring it to the Commission at a future meeting to be voted.

On motion by B. Porter, seconded by K. Rogers, the Commission voted unanimously, by roll call vote, to adjourn the meeting at 8:48PM.