



**SUDBURY CONSERVATION COMMISSION MINUTES**  
**Meeting Minutes of Monday, August 22, 2022**

**Present:** David Henkels, Chair; Ken Holtz, Vice Chair; Richard Morse; Kasey Rogers; and Lori Capone, Conservation Coordinator

**Absent:** Jeremy Cook; Bruce Porter; Mark Sevier, and Luke Faust (Associate Member)

The meeting was called to Order by Chair Henkels at 6:50 pm.

**Minutes:**

In the absence of a quorum, drafts of minutes for the June 27, 2022 meeting and the July 11, 2022 meeting were tabled until the September 12, 2022 meeting.

**Wetland Applications:**

**Notice of Intent: 57 Willis Lake Drive, DEP # 301-1373:**

Chair Henkels re-opened the Notice of Intent hearing to remove an existing retaining wall, construct a new retaining wall, steps, front walkway and terrace within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from the August 8, 2022 meeting.

Coordinator Capone reported that the drafted Order includes conditions defining how the property may be accessed and where equipment can be operated and stored. The applicant was provided with a copy.

Mr. Theriault re-summarized and clarified the project, stating that there is in fact not an existing retaining wall on the property. In the five years since taking up residence, the ground has migrated 8-12" towards the wetlands. A primary goal of the project is to prevent damage to the foundation.

He went on to state that regrading will ensure that less pressure is put on the retaining wall. As described in the plan, the wall will consist of 4' X 4' X 16" engineered, interlocking concrete blocks. These are designed to be very sturdy and long-lasting, and allow for drainage.

On motion by Comm. Morse to close the Hearing, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

On motion by Comm. Holtz to issue the Order of Conditions, seconded by Comm. Morse, via roll call the vote was unanimous in the affirmative.

**Notice of Intent: 74 and 80 Maynard Road, DEP # 301-1341:**

Chair Henkels re-opened the Notice of Intent hearing to construct a roadway and associated drainage systems and utilities for a 9-lot residential subdivision within the 100-foot Buffer Zone and Adjacent Upland Resource Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from June 2, 2021 August 9, 2021, and September 27, 2021. Desheng Wang of Creative Land and Water Engineering, was recognized for his presentation on behalf of the applicant, John Derderian. The purpose of this hearing is to evaluate the benefits of the proposed open space to provide a recommendation to the Planning Board.

Mr. Wang stated the property is over 30 acres in size, with 20 acres of upland. This present design maintains connectivity with adjacent conservation land owned by the Town and Sudbury Valley Trustees (SVT). A total of eight new homes can be accommodated. A trail will allow access from the cul-de-sac to Wake Robin Road. It will traverse upland except where it crosses Mineway Brook and a second wetland crossing.

Mr. Wang went on to state that the revised plan squares off the proposed backyards so that a clearer demarcation between the edge of permanent disturbance can be maintained. An additional 20,000 square foot of Buffer Zone is proposed to be altered. In all, the net increase in open space will be 6 acres.

Mr. Wang concluded by summarizing the three major changes made in the revision: permanent open space will eliminate the possibility of future development; it will allow for accessibility to conservation land; and lastly, the backyards will be squared-off. He added that this revision creates a larger contiguous area of open space than had been previously proposed. All new houses and septic systems will be outside of the Buffer Zone.

Chair Henkels noted the value of the current plan in preserving a wildlife corridor, but questioned the recreational value given the lack of existing trail systems on the adjacent parcels. Mr. Wang replied that there are trails apparently used by hunters and deer. Future trail-users could park at the end of the new cul-de-sac. Public access is not allowed at present. He noted the popular trend towards promoting healthy lifestyles.

In response to questions from Chair Henkels and Coordinator Capone, Mr. Wang stated that about 10,000 square feet of the open space as currently proposed is outside of jurisdiction and potentially developable. There is room for a home with septic system towards the center of the "island". He further emphasized the natural beauty of the space, as well as his belief that the presence of a trail in this location, if properly advertised, would attract users from outside of the subdivision.

Coordinator Capone noted that the proposed trail installation would result in additional impacts to the Buffer Zone/Adjacent Upland Resource Area and wetlands.

Mr. Derderian stated that the path was included with the assumption that the Commission would find it appealing, but that it can be removed from the plan if otherwise. He noted the value of the open space with or without a trail. By creating a connection between Mineway Brook and Wake Robin Conservation Land, this 10.25 acres would create a continuous 145 acres of open space extending to Featherland Park.

In response to questioning by Chair Henkels, Mr. Wang confirmed that the 10,000 square feet area of the proposed Open Space parcel is outside of the Buffer Zone. Therefore, it is entirely outside of jurisdiction. He noted that if this area were developed, the driveway would fall within jurisdiction.

In response to questioning from Chair Henkels, Coordinator Capone stated that the open space would be donated to the Town, SVT, or placed under a Conservation Restriction. On individual lots, areas outside of development would be bounded and placed under a Conservation Restriction. Of the 6 acres of additional open space land being proposed to be added to the open space, less than  $\frac{3}{4}$  of an acre is upland, with the remainder being wetlands.

In response to questioning by Comm. Holtz, Mr. Wang stated that it was not yet determined whether the open space would be a Conservation Restriction, donation, or otherwise. With regards to the possibility of a trail network at the Wake Robin land, Coordinator Capone stated that a quick GIS analysis reveals that Wake Robin is predominantly wetlands with interspersed upland "islands". She is only aware of bowhunters using this land. She clarified that a trail connection may be possible to the Broadacre land to the north. Mr. Wang stated that there is room for 4-5 parking spaces in the cul-de-sac at the proposed trailhead, which would require the creation of a public easement. Comm. Holtz observed that any trail would require a bridge to cross some wetlands. Mr. Wang stated that trails can raise public awareness of wetland values.

Laura Mattei of the Sudbury Valley Trustees interjected to clarify that there are no trails on the adjacent Mineway Brook Reservation, due to the presence of extensive wetlands and lack of street access.

In response to questioning by Comm. Rogers, Chair Henkels replied that there was no critical habitat in the area. Mr. Wang replied that creating a public easement around the trailhead parking lot would prevent residents from obstructing access to the trail. He stated that it would be the Town's responsibility to create a trail, which would require boardwalks to cross wetlands.

Comm. Morse observed that the value of the proposed plan would be to preserve the option for a trail at some future point. In response to his subsequent questions, Coordinator Capone replied that it the Commissions'

responsibility to design trails on Town land. Mr. Wang stated that a trail connecting the cul-de-sac to Wake Robin Road would be roughly 1,000 feet long.

Comm. Holtz suggested that, by preserving connectivity, the open space would have value without a trail. Coordinator Capone reminded the Commission that most of the land is undevelopable. Mr. Derderian suggested the possibility that the entirety of the open space could in fact be developed as affordable housing. Coordinator Capone responded that although the Town is currently meeting its affordable housing requirements, this could change after 2050.

There followed a conversation on what is considered true mitigation of development in the Buffer Zone. Coordinator Capone stated that the applicant is proposing to alter about 106,000 square feet of the Buffer Zone. Mr. Derderian stated that some of the alteration is only grading. Mr. Wang added that Buffer Zone impacts could be reduced by using retaining walls but these walls would potentially serve as wildlife barriers.

An informal poll was taken on the Commissioners view of the open space proposal at this time. Comm. Morse was “in favor, medium”. Comm. Holtz was in “in favor, medium”, but if adjacent properties can support trail networks, he would be more favorably inclined. Comm. Rogers was “in favor, medium-high” due to the value of the land for connecting wildlife habitat. Chair Henkels was “in favor, medium-low”. Coordinator Capone will report the Commissions’ current stance to the Planning Board.

Ms. Mattei interjected that emphasized the value of the lands as habitat, which might be compromised with the installation of trails.

Chair Henkels prompted the audience members for their questions. Anna Bhattacharya of 84 Maynard Road asked if the Commission would require a survey of vegetation in the buffer zone. Coordinator Capone responded in the negative, but stated that the limit of work has been surveyed. Louis Stephan of 26 Minebrook Road stated that, because much of the open space is not developable, the proposal is of low benefit to the Town. Chair Henkels observed, and Coordinator Capone confirmed, that the Commission could include protections in the perpetuity conditions in the Order of Conditions.

On motion by Comm. Holtz to continue the Hearing to October 17, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative.

On motion by Comm. Morse to break for three minutes, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

**Request for Determination of Applicability: 40 Maynard Farm Road, RDA #22-18:**

Chair Henkels recognized the Mr. Mike DiModica, of M. J. DiModica Excavating, representative for the applicant, Mr. Joseph Murphy, for their presentation to replace a septic system within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

Mr. DiModica stated that the project is a replacement of an existing failed system. The house was built in 1968, and the owner is trying to sell it. A soil evaluation was conducted in front of the property in the outer riparian area of the perennial stream, which identified suitable soils. Moving the system out of the riparian area would require the removal of a large maple tree. It is instead proposed to install the new system just east of the existing one. An erosion control barrier will be installed. He clarified that the work would take place 162 feet from a perennial stream, outside of the Buffer Zone.

Coordinator Capone reported that there is an open Order of Conditions for an addition off the rear of the house. The Order conditions included the creation of a Conservation Restriction. This will take another year to be approved, at which point the closing the Order can be considered. A brush pile within the Restriction is being removed and boundaries of the Conservation Restricted land have been staked out. She recommends a Negative Determination of Applicability #2, as the work takes place within the riverfront area. Conditions include the removal of lawn clippings and that a draft of the Restriction be filed no later than December 26, 2022.

In response to questioning by Chair Henkels, Coordinator Capone confirmed that no Certificate of Compliance can be issued until after the Conservation Restriction is approved. Mr. Murphy stated that any new buyer will be made aware of the pending Order and Restriction by disclosure with the Purchase and Sale agreement.

On motion by Comm. Morse to issue a Negative Determination of Applicability #2, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

**Request for Determination of Applicability: Harvey Farm Lane, RDA #22-16:**

Chair Henkels recognized Mr. Vito Colonna, of Connorstone Engineering, representative for the applicant, Mr. Raied Dinno, for their presentation to improve the roadway and extend turnarounds for emergency vehicles within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

Mr. Colonna reported that the property is an older subdivision project approved some time ago. A roadway was constructed, but the lots to which it leads have not been developed. The pavement is 14 feet wide with a gravel shoulder. A current prospective buyer wants to develop the lots, but the Town has required that the road be widened to 18 feet. There are wetlands along one side of the road, but the expansion would occur on the opposite side, where the gravel shoulder currently lies. The area is overgrown, and the undeveloped lots are outside of the Buffer Zone. Existing stormwater structures, including small detention basins and a subdrain collection system will need to be cleared due to lack of maintenance. The turnarounds will be expanded to accommodate emergency vehicles.

Chair Henkels noted that maintenance of the stormwater drainage was a requirement of the Certificate of Compliance. Mr. Colonna stated that, while no ongoing maintenance has been performed, the detention basin will be cleaned and cleared of vegetation on an annual basis. Large pockets of sediment will be removed, the cross culverts will be inspected, and stones will be replaced and checked for scour. The stone surface of the sub drain remains unclogged and stormwater flow has been confirmed.

In response to further questioning by Chair Henkels, Mr. Colonna stated that the recharge requirements have changed, specifically, the thresholds for recharge have increased depending on soil type. He did not verify whether the project would meet current standards.

Coordinator Capone stated that, typically, a project like this would only require a Request for Determination of Applicability. However, the road has been dormant for 20 years, is overgrown with invasives, and the retention basins are obscured. Substantial work will be required to bring this up to standards. This will require a large amount of work near a wetland with heavy equipment, and will result in extensive clearing. Although the work is within the Buffer Zone, it is likely to impact the wetland. She recommended the Commission issue a Positive Determination of Applicability.

Atty. Robert Dionisi, representative for the applicant, stated that the property has been owned by the applicant for over 20 years. The widening is a condition set by the Fire Department. To comply with this, the applicant has gone before the Planning Board and now the Conservation Commission. Planning has agreed to amend the decision to include the 4-foot widening. They are seeking a Negative Determination because a Notice of Intent would represent a significant burden to the applicant.

Chair Henkels noted that the Certificate of Compliance indicated that drainage operations were to be maintained in perpetuity, and this was not observed. He believes this project could cause a serious disturbance to the wetlands. The wetland flag date to 1998, so it may no longer be accurate. There is possibly gravel in the retention basins. Coordinator Capone added that given the condition of the road, just to upgrade the road to 2005 standards without widening it would require a Notice of Intent.

On motion by Comm. Morse to issue a Positive Determination of Applicability, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative.

Subsequently to the motion, there followed a conversation between Mr. Dinno and Chair Henkels, wherein Mr. Dinno provided additional historical context for the proposed project, and requested clarification of the relevant laws surrounding the decision. Chair Henkels cited the mandate of the Commission as granted by the Wetlands Protection Act and local Bylaw, and encouraged the applicant to submit a Notice of Intent should he wish to proceed.

**Notice of Intent: 1 Nobscot Road, DEP #301-1375:**

Chair Henkels opened the Notice of Intent hearing to carry out trail restoration including grading, fill removal, placement of gravel, drainage upgrades, replacement of wooden bridges, construction of a bog bridge, and tree removal within the 100-foot Buffer Zone, Bank, and Bordering Vegetated Wetlands, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. He recognized Mr. Chris Lucas, of Lucas Environmental, representative for the applicant, Mr. Hunter McCormick, of the Mayflower Council, Boy Scouts of America, to present the project.

Mr. Lucas stated the applicant was before the Commission in 2017 for a similar project improving 2.7 miles of trails, whereas the current project will involve only 1.2 miles. Additionally, this application is in response to an Enforcement Order issued in 2021 for unapproved work on the trails in the same area. An erosion and sedimentation control plan and emergency stabilization plan have been implemented.

He stated that the project site extends across the town line into Framingham, and is bounded on the west, north, and south by state park land. A wetlands delineation was completed in 2016. The site is located in a Priority Habitat of Rare Species for the eastern box turtle. The Notice of Intent was submitted to the Natural Heritage & Endangered Species Program, and a formal review is awaited. No impacts are anticipated. The site hosts a certified vernal pool. There are no Areas of Critical Environmental Concern.

He stated that the 1.2 miles of trail is almost entirely within the 100-foot Buffer Zone, and varies in width from 8.5 to 11 feet. The work will not result in any widening and will primarily involve minor grading and bank stabilization. A new culvert will be also installed. The trail will be resurfaced with 6-12 inches of permeable gravel to allow for infiltration. Some minor impacts to Wetlands and Banks are anticipated with the installation of a wooden platform bog bridges on pre-cast concrete footings. This is needed since the existing bridges are rotting. Cabin and latrine improvements will consist of soil removal, stump grinding, and rock removal to promote drainage.

He stated that the project is divided into four phases. The first phase is wetland restoration, and will employ a volunteer group of about fifteen people, with specialized work being handled by a third-party vendor. All work will be overseen by a wetland specialist or project engineer, as appropriate. Each phase will last about one season. Staging will be done in the parking area and at some points along the trail. Equipment will include a John Deere tractor and an all-terrain vehicle. A primarily goal of the trail improvement is to facilitate vehicular access for fire safety and latrine maintenance.

He stated that the project is fully compliant with the Bylaw, and most of the work is in upland resource areas. There will no impact to Land Under Water. The total permanent impact will be 64 square feet within Bordering Vegetated Wetland. Another 639 square feet of temporary impact will be restored in place. To mitigate the permanent impact, 150 square feet of mitigation area is proposed.

Mr. Lucas concluded my stating that the applicant has requested a waiver of the Bylaw fee, due to their non-profit status. This was granted on a previous project.

Coordinator Capone reported that the Commission should vote on whether they will waive the Bylaw fee per the applicants request. This project will require a major Stormwater Permit through the Planning Board. Since they don't otherwise have jurisdiction, they may delegate administration of the Stormwater Permit to the Commission.

She stated that her greatest concern was the apparent disregard for oversight of the volunteers. The project scope under the original Order was confined to the existing trail, but substantial drainage ditches were constructed at multiple points within jurisdiction. These are proposed to be stabilized, but it should be determined whether they

are necessary and if these areas should be restored. The proposed work is smaller in scope but still relies on volunteers, so there is a question of expertise. She stated that the plans don't show enough detail to direct grading to be done. Impacts to adjacent uplands are not discussed by Mr. Lucas.

She observed that the risk from invasive plants is not addressed in the application. The trail system is mostly host to native species, although some bittersweet and buckthorn are present. Invasives are extensive around the parking lot, however. Altered trail areas are at risk from invasion, so she recommends a robust management plan that addresses the existing pockets of invasives.

She requested additional information on several items missing from the proposal or lacking sufficient detail, including the restoration of the area where boulders were removed and proposed areas of stump removal, methods of stabilization of disturbed areas, choice of footing for bridges, alternatives to culverts, risk of tree damage, whether the trail is being expanded, missing erosion controls, plans for keeping equipment out of wetlands, and the position of the cabins relative to the resource areas.

In response to questioning from Chair Henkels, Coordinator Capone indicated that the Natural Heritage & Endangered Species Program has thirty days from the receipt of the Notice of Intent to respond. Mr. Lucas added that they expect to hear by September 9, 2022. Coordinator Capone reports no comments by the Department of Environmental Protection. She added that the stormwater application will undergo third party peer review by Horsley & Witten, but that comments and implementation will be delegated to the Commission.

Chair Henkels proposed a site walk in advance of the next hearing.

Comm. Holtz requested clarification on whether existing conditions or previously permitted conditions are the starting point with regards to the Notice of Intent. He stated that the Notice of Intent should address the Enforcement Order. Mr. James Downing of Howard, Stein and Hudson, a representative for the applicant, replied that the original survey completed in 2016 shows the same limit of trail system as is present today. The unpermitted work included the addition of two swales on the White Ridge and Ellis trails. The White Ridge swale can be downsized and regraded, without the need to remove trees. The applicant is requesting that the Ellis swale, which are more trench-like, be kept.

In response to further questioning by Comm. Holtz, Mr. Downing replied that there was some unpermitted trail widening for the stormwater system. The trail is generally 8-10 feet wide, but widened at a crossing to about 18 feet. This area was heavily trodden, devoid of vegetation, and had been disturbed previously. No work in sensitive habitat areas will involve remedying trail modifications cited in the Enforcement Order, and he added that the 2017 Notice of Intent included a plan to top the entire trail network with stone. He agreed that, since the goal of the project is not to widen the trails, any alterations will be corrected.

In response to questioning by Chair Henkels, Coordinator Capone stated that the original Order issued in 2017 might still be open due to a COVID extension, but this will require verification. However, it is immaterial since the work is well outside the scope of that Order. The Commission can either close out that Order immediately, or close that Order simultaneously upon issuance for the proposed project.

In response to questioning by Comm. Rogers, Mr. Lucas stated that the only filling of wetlands will be temporary impacts for installing bridges or regrading. Filled wetlands will be replicated on a 2:1 basis.

Coordinator Capone stated that there are trees around the parking lot that have been flagged for removal. These should be considered for inclusion in the NOI.

Comm. Holtz and Comm. Morse stated that they do not support the waiving of the Bylaw fee for the applicant. Other non-profits have not been granted a waiver. Also, this Notice of Intent was the result of an Enforcement Order.

Coordinator Capone states that the Sudbury Valley Trustees have attended several site walks and have also received a copy of the Notice of Intent.

Chair Henkels turned to the audience members for its comments. Mr. Blumfield of Edgell Road in Framingham expressed concern about the project and mentioned historical examples from previous projects at the property. In one instance, several acres of ancient pine trees were removed. He recommended that, should the project move forward, it be done with strong oversight.

On motion by Comm. Holtz to collect the Bylaw fee, seconded by Comm. Morse, via roll call the vote was unanimous in the affirmative.

On motion by Comm. Morse to continue the Hearing to September 12, 2022, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative.

#### Other Business:

Coordinator Capone reported on the recent brush fire in the “desert” area near the Hop Brook Conservation Land. This covered 25 acres, primarily in Marlboro. Fire crews were still active as of this date. The fire had burned underground, but did not reach the pitch pine area.

Coordinator Capone reported that the Community Historic Preservation Plan is in a draft review period, and all comments are due by tomorrow.

#### Adjourned:

With no further business, on motion by Comm. Rogers, seconded by Comm. Morse, the Commission voted unanimously to adjourn the meeting at 9:55 PM.