



SUDBURY CONSERVATION COMMISSION MINUTES
Meeting Minutes of Monday, December 12, 2022

Present: David Henkels, Chair; Ken Holtz, Vice Chair; Jeremy Cook; Richard Morse; Bruce Porter (6:47 PM); Kasey Rogers; Mark Sevier; Luke Faust, Associate Member; and Lori Capone, Conservation Coordinator

The meeting was called to Order by Chair Henkels at 6:45 pm.

Minutes

September 12, 2022

On motion by Comm. Sevier to accept the minutes for the September 12, 2022 meeting, seconded by Comm. Cook, with Comm. Holtz abstaining, via roll call the vote was unanimous in the affirmative.

Wetland Applications:

Notice of Intent: 219 Wayside Inn Road, DEP File #301-1378

Chair Henkels re-opened the Notice of Intent hearing to construct a single-family house with associated grading, utilities, and stormwater management within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from October 3, October 17 and October 31, 2022.

Coordinator Capone stated that this hearing was continued for the applicant to fully design an alternative plan, preferred by the Commissioners, for its minimal impact. This new plan is still being reviewed for stormwater compliance. Coordinator Capone has reported to the Planning Board that the Commission has no further comments.

In response to Chair Henkel, Coordinator Capone stated that she has drafted conditions that describe the complete findings, in order to articulate the uniqueness of this project. One of the more important items is for 4.9 acres to be donated to Sudbury Valley Trustees, to be gifted by deed. The remaining 4.62 acres that is not being developed will be placed under a Conservation Restriction (CR), which will presumably be held by the Trustees.

She added that the CR needs to be completed prior to issuance of Certificate of Compliance. The Commission could require a shorter timeframe for CR completion. Since the lot will be sold to a developer, we don't know when construction will commence, so the CR is tied to the Certificate of Compliance.

In response to Chair Henkels, Coordinator Capone stated that the eventual land owner will be responsible for executing the CR and having it available in advance of the Request for a Certificate of Compliance.

Coordinator Capone further stated that the Order usually includes a condition requiring that a Baseline Report be provided within a specified timeline, but that's usually when the Commission is the holder of CR. In this case it will be the Trustees, so that term is not included in the conditions.

Coordinator Capone further stated that Mr. Fred King, representative to the applicant, has not had a chance to review the draft conditions. Coordinator Capone reviewed the special conditions.

In response to Comm. Holtz, Mr. King stated that the transfer of the donated land to the Trustees should be easy, and may happen before the sale of the home. The new homeowners or the developer will initiate the invasive species removal, which will continue on for several years. The Trustees will manage buckthorn on the donated land, and the CR will be managed by the new owner, possibly in conjunction with the Trustees. Coordinator Capone stated that oversight of the buckthorn removal is conditioned in the Order and will be reviewed prior to issuing the Certificate of Compliance. The Order will run with both parcels, meaning that it will be recorded on the mother parcel, and after the subdivision it will be referenced in both deeds. Buckthorn is the only invasive species articulated in the Order.

In response to Chair Henkels, Comm. Holtz expressed concern that the Commission only knows the current owner, but future owners will be responsible for fulfilling the Order. Chair Henkels noted that there could indeed be multiple sales.

In response to Comm. Holtz, Mr. King stated that the Trustees probably wouldn't object to a condition on a gift of land, especially when not a lot of work is required. The CR should be finalized prior to selling to a new owner. Until there's a Certificate, the Order also goes with both properties. Invasive controls normally take 2-3 years before successful. The future owners will be responsible for that.

In response to Chair Henkels, Coordinator Capone states that manual removal of invasives should suffice, and this is conditioned in the Order.

Comm. Holtz clarified that he is not concerned about the builder and future homeowner failing to remove the buckthorn, because they will need a Certificate. However, he is concerned that the Trustees will not have an incentive to do so.

Coordinator Capone noted that the Order will show as a lien on the Trustees property, and that inspection of the Trustees property will be part of the final inspection. The likelihood of them not following through is slim. The Commission can also make it a condition of acceptance of the land at the time of transfer. Comm. Holtz recommended that the Trustees be made aware of the condition.

In response to Comm. Porter, Coordinator Capone stated that the Order could be amended to include a timeline of the buckthorn removal.

Mr. King noted that the conditions stipulate that, prior to invasives removal, the Commission is to be provided with details on how and when it will be done. Coordinator Capone added that a preconstruction meeting is a standard condition for most Orders. All conditions are reviewed at this time. This project may require multiple such meetings, including with the developer and the Trustees.

There were no public comments.

In response to Chair Henkels, Coordinator Capone stated that if the hearing is closed tonight, the Commission has 21 days to issue an Order of Conditions, unless applicant relieves them of that. The Commission is not meeting again until January 9, 2023, so such an allowance is needed to close the hearing tonight and issue the Order at the next meeting. Alternatively, the Order could be issued tonight. Mr. King requested that the draft Order be emailed to the applicants and himself so that they can review it. He expressed a wish to close the hearing at this meeting.

On motion by Comm. Morse to continue the hearing to later this evening to allow the applicant time to review the Order of Conditions, seconded by Comm. Sevier, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 5 Hunt Road, DEP #301-1380

Chair Henkels re-opened the Notice of Intent hearing to construct an addition to an existing single-family house within the 100-foot Buffer Zone and the 100-foot Adjacent Upland Resource Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from October 17, 2022. Mr. Robert Melvin, representative for the applicant, Richard Albee, was recognized for his presentation.

Mr. Melvin stated that the basic goal of the project is to build an addition to the existing house. The footprint will be within the buffer zone of Bordering Vegetated Wetlands (BVW), and about 12 feet at the closest point. They will also provide mitigation areas, including plantings along the wetland edge, as well as stone trenches on the side of the addition which will collect stormwater from the roof. Also, there will be some slight grading in order to accommodate the addition. Said grading will approach more closely to the wetland. Erosion controls will be installed around the entirety of the addition. Coordinator Capone had suggested extending the erosion controls further to set a limit of work. They will also consider how to handle dewatering. As a soil evaluation was not conducted, so the depth to groundwater is unknown. A location for a soil stockpile was suggested on the right side of driveway. The applicant wanted to remove invasive species, and this aspect of the work was partially carried

out last week before it was halted by Coordinator Capone. In order to offset this work, they would like to offer more mitigation areas to offset the entirety of footprint.

Coordinator Capone stated that this property was developed in 1985, prior to Bylaw, which is why this application can be considered. The area where the garage is proposed is a hillside covered with lawn. Most of the vegetation removed was honeysuckle, with no real loss of native plants. The removal work extends along the edge of stream, where the additional mitigation is shown in the plan. Vegetation was cleared to the stream bank. That area should be included for restoration with mitigation for the addition, which requires a plan for removal and replanting. The Commission does not generally allow lawn area to be extended.

Coordinator Capone added that the resource area is an intermittent stream under the Act, but perennial under the Bylaw. Though the region is still in drought, there was flowing water in the stream as of today. The Commission could therefore consider the site to be in the Riverfront under the Bylaw. The only degradation is the increase in impervious surface associated with the addition. The applicant has included dripline to infiltrate runoff from the new addition.

Coordinator Capone added that this project is also in front of the Zoning Board of Appeals (ZBA). The applicant has asked for a continuance without discussion to address the concerns of the ZBA. The applicant expects to keep that hearing open until they can get a Variance for the new footprint. The setback from the roadway runs through the addition, so this is a nonconforming project. A 24x24 addition was proposed in 2002, but that proposal did not come to the Commission for evaluation.

Coordinator Capone added that she has asked for increased mitigation. The current plan would cover about 480-500 square feet. She also noted that the addition doesn't line up with the driveway. As the purpose of the addition is to house a van, this implies that the van will need to go over the lawn, since an expansion of driveway has not been proposed.

In response to Coordinator Capone, Mr. Albee stated that the open space on the other side of the stream was used by his brother, who was an abutter, as a pasture for his horses. A barn is still present. Mr. Albee will have a discussion with the new owners and possibly use that area for mitigation planting.

Mr. Albee added that, as an additional detail for this project, he would like to remove a partially dead cedar tree on the other side of the stream. The tree was shaded by second cedar tree, which has since been removed. Also, he confirmed that he intends to drive the van over grass to access the new garage, but this happens infrequently.

In response to Chair Henkels and Comm. Rogers, Coordinator Capone stated she inspected the partially dead cedar tree, and agreed that it should be removed. The second cedar tree which was removed was within jurisdiction, however, it was also a safety concern, and Mr. Albee was granted administrative approval to remove it.

In response to Comm. Morse, Coordinator Capone stated that there is a footbridge crossing the stream which is still functional, but in need of repair. Mr. Albee confirmed that he would like to keep this structure and would like to include this repair as part of the current project being considered. The bridge is supported by three telephone poles, and only needs some new planks to be made safe. Coordinator Capone will work with Mr. Melvin to get more details on the bridge repair.

In response to Comm. Morse, Mr. Albee stated that the new garage door will be directly in front of where the van is currently parked. There will be a living space on the second floor.

In response to Comm. Rogers, Mr. Albee justified his decision to forego the expansion of his driveway by stating that his van has been parked in that same spot for about 20 years, and the spot is currently bare. He has an existing garage, but this project will add a second bay and new storage area.

In response to Comm. Rogers, Comm. Holtz stated that any future homeowner would need to come before the Commission should they wish to expand the driveway. Mr. Albee confirmed that the garage will have a foundation.

In response to Comm. Morse, Mr. Albee stated that he is creating a two-level addition with a garage, as well as a storage area a few feet lower to accommodate the slope of the land. Mr. Melvin added that the permitting plan has two different garage floors indicated, with elevation drawings also included. These are being reworked in response to comments from the ZBA. Mr. Albee added that there will be access on the far left of the addition, which will allow him to walk into the garage from the lawn area. This entrance will be from the side yard.

In response to Comm. Holtz, Mr. Melvin stated that the proposed tree line is in the area where additional invasives were removed. The original tree line came closer to the new structure, but is now cleared. Some vegetation needs to be removed to do the grading, but the scope has changed. They will have to reflect what has been done, so an updated plan will make it clear what happened and what is being proposed. Mr. Albee stated that the trees are large mature trees, and they are not proposing to remove them. There is no concern about them being a danger to the structure.

There were no public comments.

In response to Comm. Henkels, Coordinator Capone suggested continuing the hearing to January 23, 2023, which will fall after the next ZBA meeting on January 9, 2023. She will conduct a site visit at 8:30 AM on December 14, 2022 with Chair Henkels and Comms. Holtz and Morse.

On motion by Comm. Cook to continue the hearing, seconded by Comm. Morse, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 33 Barbara Road, DEP #301-TBD

Chair Henkels opened the Notice of Intent hearing to remove trees and replant trees and shrubs within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Mr. Marc Santilli, applicant, was recognized for his presentation.

Mr. Santilli stated that the property was closed on November 30, 2022, and there is no DEP File number to date, because he just submitted the documentation today.

In response to Chair Henkels, Mr. Santilli stated that he learned from the selling agent about the intermittent stream in the backyard, which prompted him to contact the Conservation Department.

Mr. Santilli stated that the house was built in 1967. He purchased it two weeks ago, and the previous owner has been the only owner until now. There are 14 trees to be removed in total, of which 10 are pines, 3 are oaks, and 1 a cherry, as determined by four different arborists. The distances from the stream for each tree are: 1 tree at 15 feet, 4 trees at 30 feet, 5 trees at 70 feet, 1 tree at 80 feet, and 3 trees at 90 feet from the resource area. His biggest concern is three trees near the house. Their roots are exposed and likely under the basement. The house is very shaded, such that the roof is covered in mold, and there is substantial rot from a lack of sunlight. In addition, there is a large pine, and the removal of the other pines will expose this tree. It has shallow roots and will be unprotected from future storms.

Mr. Santilli then reviewed the proposed locations for new trees and shrubs. He wants to replant 11 trees and 13 shrubs, with 15-foot spacing for trees and 30-foot spacing for shrubs. He would like to remove the trees in February, and replace them in late summer or early autumn.

In response to Chair Henkels, Coordinator Capone stated that the property is so dense with pine trees that there is no understory, and no vegetation along stream bank. There is an opportunity to alleviate the risk to the structure and also create a vegetated buffer to the stream. The lot was developed in 60s, prior to the regulations, and the stream is not in the USGS maps and is presumed to be intermittent. However, she noted that it did have flow during the drought. The tree removal is more of a concern under the Bylaw. However, most of the lot falls within the buffer zone, and there is a safety concern since they are all leaning toward the house. The large pine would be highly susceptible to wind and would likely crush the house should it fall.

Coordinator Capone added that, since mitigation will be provided, it is reasonable to remove all the proposed trees. Mr. Santilli will pick shrubs from the native plant list, which she will review before they implement the plan. Plantings will be installed in early fall. She is comfortable with a September 1, 2023 planting date. They are waiting on a DEP file number, so the Commission will need to continue this hearing to January 9, 2023. All the trees make sense, and there will be pine in the far corner of the lot that will remain in place.

In response to Comm. Holtz, Mr. Santilli stated that they will pick plants and shrubs from the Commission's native plant list that are appropriate for the soil conditions. The ground is covered in pine needles, is bare of vegetation, and is very dry. Coordinator Capone added that the stream runs through a ditch dug when the property was agricultural, and there is a decent change in grade from the yard to the stream. She recommended that the applicant choose plants that like wet roots and acidic soil.

In response to Coordinator Capone, Mr. Santilli stated that they do not plan to install a lawn at this time, but will possibly consider this in the next couple of years.

In response to Comm. Morse, Mr. Santilli stated they do not plan on moving in until February or March of 2023.

In response to Chair Henkels, Coordinator Capone stated that there will be two growing seasons needed for the survival of the plantings, which will run from fall of 2023 to fall of 2025.

There were no public comments.

On motion by Comm. Morse to continue the hearing to January 9, 2023, seconded by Comm. Morse, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 219 Wayside Inn Road, DEP File #301-1378

On motion by Comm. Holtz to re-open the hearing, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

In response to Mr. King, Coordinator Capone stated that she would append this text, "with the exception of invasive species removal", to Part II.n. of the draft Order.

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

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

Other Business:

Budget Review

Coordinator Capone stated that the Town requested a level-funded budget for this year. This year's budget is similar to last year's, with the bulk of funds going to staff. One notable change is that the \$10,000 in the Trail Maintenance fund and the \$800 in the General Expense fund from last year was redistributed to reflect how the funds are actually expended. For example, the Massachusetts Association of Conservation Commissioners dues are \$1,100, which is a general expense. The \$10,000 was split evenly between General and Trail Maintenance. There are additional funds for Contracted Services used to pay for mowing operations that the Department of Public Works (DPW) are not able to assist with. Form 3 articulates Contracted Services for mowing and also \$2,000 for the Organization for the Assabet, Concord, & Sudbury Rivers (OARS), which pays for services at Hop Brook. Form 4 shows funds brought in through wetlands filings and agricultural licenses, which are about the same every year. Form 6 reports on the Commission's activities, such as how many permits were issued and overall workload, and is used to substantiate the use of town funds.

In response to Comm. Holtz, Coordinator Capone stated that the Commission could use the money from agricultural licenses to buy a brush hog, for example. Money for this type of expense is kept in a revolving fund that is accruing, for major expenses in trail maintenance, such as removing large trees. With enough money in that account, the Commission could potentially buy a brush hog outright, or they could put in a capital request. A

simpler and cheaper method is to work with the DPW to share equipment. This can involve sharing the cost. For larger equipment, there are also considerations for housing and maintenance.

In response to Comm. Porter, Coordinator Capone stated that any general funds not expended are returned to the general fund. In Contrast, funds from fees and licenses go into the revolving fund, which are kept from year to year.

In response to Comm. Morse, Coordinator Capone stated that the \$400 clothing allowance is for her position, and fulfills a Union contractual obligation.

Community Preservation Act Application

Coordinator Capone stated that there is a Community Preservation Act application in Framingham to purchase and construct a Motocross Park on top of Nobscot Hill. The application was not accepted this year due to incompleteness and lateness of submission, however, it is being kept in the queue for next year. The potential site abuts the Scout reservation and trails connecting with Nobscot Conservation Land. This application should be monitored closely.

In response to Comm. Sevier, Coordinator Capone clarified that projects with a recreational purpose can be considered for CPC applications.

Adjourn Meeting

With no further business, on motion by Comm. Porter, seconded by Comm. Morse, the Commission voted unanimously to adjourn the meeting at 8:25 PM.