



***SUDBURY CONSERVATION COMMISSION MINUTES***  
**Meeting Minutes of Monday, January 9, 2023**

**Present:** David Henkels, Chair; Ken Holtz, Vice Chair; Jeremy Cook; Richard Morse; Bruce Porter; Kasey Rogers; Mark Sevier; and Lori Capone, Conservation Coordinator

**Absent:** Luke Faust, Associate Member

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

**Minutes:**

On motion by Comm. Morse to accept the minutes of the October 3, 2022 meeting, seconded by Comm. Porter, via roll call the vote was unanimous in the affirmative.

**Wetland Applications:**

**Notice of Intent: 74 and 80 Maynard Road: Bonnie Brook Realty Corp., DEP #301-1341**

Chair Henkels re-opened the Notice of Intent hearing to construct a roadway and associated drainage system and utilities in 100-ft buffer zone and Adjacent Upland Resource Area for a 9-lot residential subdivision, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from June 7, August 9, September 27, 2021 and August 22, 2022.

On motion by Comm. Cook to continue the hearing to the February 6, 2023 meeting without discussion, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative.

**Notice of Intent: 58 Massasoit Avenue, DEP #301-1376**

Chair Henkels re-opened the Notice of Intent hearing to demolish and reconstruct a single-family home within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from September 12, October 3, and October 17, 2022.

On motion by Comm. Morse to continue the hearing to the January 23, 2022 meeting without discussion, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

**Notice of Intent: 33 Barbara Road, DEP #301-1381**

Chair Henkels re-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, continued from December 12, 2022.

Coordinator Capone stated the stumps were being removed as they posed a safety hazard to the applicant's child. Fill would be brought in to eliminate the tripping hazard. The lot is generally flat, so no impact is expected with erosion controls and stabilization, but more disturbance is anticipated than was discussed in first hearing.

In response to Chair Henkels, Mr. Santilli stated that a total of fourteen trees will be removed. The closest trees to the stream are about 15' away. This stump will be ground down and the roots kept in place. A cluster of four trees is within 30' of stream and within the lawn area. These will be removed entirely. Other trees are over 70' from stream. Four of these stumps will be removed, while the remaining five will be ground, but the roots will be left intact. There is a significant number of roots above ground, and he would like to make the area safe for his one-year old daughter

Mr. Santilli further stated that fill would be added to the disturbed lawn area, and seeded with a lawn mix. Where there is no lawn, a wildflower and native grass mix will be seeded and left to grow.

In response to Comm. Rogers, Mr. Santilli stated that the pine closest to the stream will be ground but not fully removed. The tallest pine will be exposed after the removal of trees surrounding it. There is no lawn around the tallest pine.

Coordinator Capone stated that this is a fairly standard Order, and the applicant has had a chance to review it. Phase 1 is for tree removal, which will be follow up with a landscape plan. A site visit will be conducted at this time because earthwork is anticipated. Mitigation plantings will be installed by September 1.

In response to Comm. Porter, Coordinator Capone stated that the replanting and removal will be conditioned in one Order, but will occur in two different stages. This was done to avoid the need for reopening the hearing to amend the Order, unless there are substantial changes.

There were no public comments.

On motion by Comm. Morse to close the Hearing, seconded by Comm. Cook, with Comm. Rogers abstaining due to technical difficulties, via roll call the vote was unanimous in the affirmative.

On motion by Comm. Sevier to issue the Order of Conditions, seconded by Comm. Cook, with Comm. Rogers abstaining due to technical difficulties, via roll call the vote was unanimous in the affirmative.

**Request for Determination of Applicability: 2 Elmwood Avenue, RDA 22-27**

Michael Dillon of Dillon Contracting, representative for the applicants, Michael and Stephanie Elkort, was recognized for his presentation to construct a sun porch within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. At the request of Mr. Dillon, Chair Henkels recognized Coordinator Capone for her presentation.

Commissioner Sevier secluded himself from this matter as an abutter to the project.

Coordinator Capone stated that an existing deck will be converted into a sun porch. The current yard topography slopes steeply towards a vernal pool on conservation land. The applicant proposed to bump out the deck by 2' 7" and install five helical piers to minimize ground disturbance. One condition of the Order for the house construction stipulates that all roof runoff needs to be directed to dry wells. The new porch can direct runoff into an existing drywell, or a new accommodation will be needed. A second condition was that a row of junipers be maintained on the edge of lawn. This area is not eroding but is also not fully vegetated. Mitigation is recommended to infiltrate roof runoff. Additional plantings should be installed to make up for the dead junipers. Another recommended condition would be to install erosion controls at the top of slope. The helical piers won't disturb the earth, but construction might. However, no heavy machinery will be used in the back yard.

Mr. Elkort stated that they have done their best to keep the junipers alive, despite the difficulty. He requested suggestions for replacement plants.

Comm. Holtz asked if a new dry well would be constructed if the existing dry well was not located. Mr. Dillon stated that he would follow the Commission's recommendations on this matter. Coordinator Capone added that they will try to use the existing drywell. There is very little runoff from the sunroom, so an alternative solution could be as simple as stone lined pits, or an infiltration trench with perforated pipe buried in crushed stone.

There were no public comments.

On motion by Comm. Holtz to issue a Negative Determination of Applicability #3, seconded by Comm. Morse, with Comm. Sevier abstaining, via roll call the vote was unanimous in the affirmative.

**Request for Determination of Applicability: 29 Stone Road, RDA 22-28**

Mr. Alex Hathaway, applicant and President of Mustang Development Advisors, was recognized for his presentation to remove stumps within and naturalize the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw.

Mr. Hathaway stated that he is working with Vito Colona of Connerstone Engineering to address the wetlands concerns of the project. This will be a single-family home construction, which has been approved by the Zoning Board of Appeals. The new house will be moved forward about 15' from wetlands, where previously the corner of the rear porch was in the buffer. When he bought the property in July, the house had been abandoned for a long time. The existing structure was demolished by court order. A collection of stumps is within the buffer. The plan is to remove them, then go back and remediate the area with a native seed mix. He intends to put cedar fencing along the buffer as a limit of lawn. He will attempt to locate the existing septic system, and will install erosion measures when it is located.

Coordinator Capone stated that this house was built prior to the Act and the Bylaw. The property was previously in very poor condition, and the applicant has done a lot to clean it up. Everything done so far has been outside of the buffer. The resource area is a pond at 0 Washington Drive. There is also a vernal pool to the south. All work is outside of jurisdiction except for the stump cleanup. Conditions stipulate that erosion controls and fencing be survey-located when installed. Any disturbance within the 100-foot buffer is to be seeded with a native mix and allowed to naturalize.

In response to Comm. Holtz, Mr. Hathaway stated that he didn't know if the septic tank was in the area with the stumps. Perc tests have been done. He wanted to display the septic system on a map, and the stump area seemed a possible location since it is in a low spot. Mr. Hathaway confirm that ground water tests were factored into the design of the Cultech design. The design includes driveway drainage and a catch basin. The Engineering Department has approved this. Coordinator Capone added that the 4-inch overflow pipe from the Cultech chamber is oriented outside of buffer zone, so it is outside of jurisdiction. Mr. Hathaway confirmed that it will drain to low point in the corner, along the limit of lawn and well outside of the wetlands.

In response to further questioning from Comm. Holtz, Mr. Hathaway stated that there is no need for a "No Disturb" sign on the fence, because the fence will not have any gates.

In response to Comm. Morse, Mr. Hathaway stated that the stumps are mostly rotting in a pile, creating an "eyesore". There may be a few stumps still in the ground. Once these stumps have been removed, the area will be stabilized with a native seed mix and allowed to naturalize.

In response to Chair Henkels, Mr. Hathaway stated that the stumps will be taken out using no more than one or two wheeled machines. This could include a small Bobcat or backhoe. An apron will be installed at the site entrance to reduce mud on the street.

In response to Chair Henkels, Coordinator Capone stated that the Commission should not need to discuss this project again after the Board of Health permits the new septic installation, as long as it is within the stump area. If it is located elsewhere, the applicant should provide a revised plan. Depending on the scale of the work, they might need to return before the Commission.

Mr. Hathaway stated that he would inform the Commission when the existing septic tank is found.

There were no public comments.

On motion by Comm. Morse to issue a Negative Determination of Applicability #3, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

### Certificate of Compliance:

#### Nobscot Scout Reservation

Coordinator Capone stated that a Certificate is requested for the original Order for a trail improvement project. That work never commenced, and the work last summer is covered under a new Order. One condition of the new Order is to close out the old Order. The scouts have confirmed that none of the work under the original Order has commenced, so it should be closed.

On motion by Comm. Cook to issue a Certificate of Compliance, seconded by Comm. Porter, via roll call the vote was unanimous in the affirmative.

### Other Business:

#### Sudbury Wetlands Administration Bylaw Codification

Coordinator Capone stated that the Town Clerk has hired a consultant to codify all town bylaws so that they share the same format, which will improve consistency and searchability. Every change to a bylaw, no matter how small, must go to Town Meeting. The consultant is making recommendations to each board and commission. Most recommendations are for clarification.

With regards to the Wetlands Bylaw, Coordinator Capone made a series of comments for the consideration of the Commission.

The first comment pertained to application fee structure. Since the Bylaw has not been updated since 1999, there is a question as to whether the fees are still relevant. Coordinator Capone recommended removing fees from the Bylaw and incorporating them into the Regulations. This will give the Commission more flexibility to modify fees. The Bylaw should be amended to authorize the Commission to collect fees, but details should be specified in the Regulations.

Comm. Cook and Chair Henkels expressed their support for this change.

In response to Chair Henkels, Coordinator Capone stated that she will be working over the winter to modify the Regulations. For guidance on fee structure, she is reviewing similar communities. The current Bylaw fee structure is very good. She will complete her analysis and present any findings at a later meeting. She added that the goal is to have the Regulations modified and approved by Commission before the next Town Meeting. When the vote is taken, the Regulations will be in place with a fee structure. The hearing is scheduled for the fall Town Meeting of 2023. She further added that she hopes to have Commission approval no later than the spring.

The second comment was concerning the structure of consultant fees. Presently, the fee cannot exceed a maximum cap. Coordinator Capone recommended completely removing that section and adding language to the Bylaw that allows the Commission to collect consulting fees commensurate to the needs of the project. Peer reviews are not comparable to the construction costs of a project. For example, an expensive project can require very little review, and vice versa.

In response to Chair Henkels, Coordinator Capone confirmed that Town Counsel will review a draft of the revised Bylaw.

Coordinator Capone stated that the third comment was to clarify the definition of the term “value”. She recommended a change to clarify wetland values as protected in the Bylaw, as distinct from the Act.

Coordinator Capone stated that the fourth comment was to change the “Division of Wildlife and Fisheries” to “Division of Fisheries and Wildlife”.

Coordinator Capone stated that a fifth comment was pertaining to fines. Currently, the Commission can impose a fine of \$100 per day per violation. She questioned whether this was sufficient. However, this is dictated by the Non-Criminal Disposition of Bylaw Violations, not within our Regulations. The Commission can impose the fee daily, and this is probably more than adequate for our needs. Chair Henkels added that fines have been used less than a handful of times during his tenure, and it has been effective.

Coordinator Capone stated that she will schedule a public hearing for the next meeting for the Commissioners to vote on the modifications. The consultants need the final language by February 1, 2023. After that, the next steps are to bring the draft to Town Meeting and revise our Regulations.

#### Lincoln Meadows South

Coordinator Capone discussed a possible Short-Term License Agreement for Neuco to use Conservation Land for staging for its work on a gas line project. There was a Determination issued for a new gas line running from

Concord Road down Lincoln Road to Lincoln Lane. That project started last week. When inspecting erosion controls, it was noticed that the contractor began using Lincoln Meadows South for staging for their vehicles and stockpiles used as backfill for trenches. This was not on the original proposal. She has talked to the company this morning about the need to obtain permission. There is no other location on Lincoln Road that would allow them to store their machinery off the road.

She added that the staging area is a roughly 100' x 100' patch with a gravel driveway. Cavicchio uses the fields beyond this area. The staging area is to the right of the gravel driveway, near the barn. It is all gravel or grass. No vegetation was removed. The contractor has stated that they would put secondary containment under their vehicles to catch any spills. The area is not within jurisdiction under the Act, but it is in conservation land. The grassy area is likely to be disturbed during operations.

She further added that Town Counsel has stated that the Commission could issue a Short-Term License Agreement. A fee structure should be included. The staging area will be used from now to the end of March. Town Counsel has suggested that the Commission require a Bond to cover any costs associated with damages. The Agreement should allow the Commission to require the contractor restore the space to preexisting conditions. This means leveling out any rutting and other minor renovations after they are done with the site. This is completely up to the Commission. Paul Cavicchio has indicated this activity will not create an imposition to his operations. A vote is needed if they want to allow this activity.

In response to Comm. Sevier, Coordinator Capone stated that there is a single new gas line being installed. If it was a simple replacement, it would have been an exempt activity under the Act.

In response to Comm. Porter, Coordinator Capone stated that the Agreement would end in March. The date was extended to allow for seeding during the growing season. If there is a schedule problem and they need more time, the Agreement can be modified at that time.

In response to Comm. Sevier, Coordinator Capone stated that the contractor will install 400 linear feet per day until the end of March.

In response to Chair Henkels, Coordinator Capone stated that she will provide Cavicchio with a copy of the Agreement once it is finalized. They need to access the fields at the end of March for harvesting. The contractor has agreed to move their vehicles as needed.

On motion by Comm. Morse to draft a short-term License Agreement, seconded by Comm. Porter, via roll call the vote was unanimous in the affirmative.

### **Christmas Bird Count**

Coordinator Capone stated that Associate Commissioner Luke Faust has provided an update on this year's bird count, which happened on January 1, 2023. There were 15 volunteers in the Sudbury part of the project. They found 2,000 birds representing 52 species. Most were found on conservation land.

### **Adjourn Meeting**

With no further business, on motion by Comm. Morse, seconded by Comm. Holtz, the Commission voted unanimously to adjourn the meeting at 8:00 PM.