



SUDBURY CONSERVATION COMMISSION MINUTES
Meeting Minutes of Monday, May 8, 2023

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

Absent: None

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

Minutes

On motion by Comm. Cook to accept the minutes of the March 13, 2023 meeting, seconded by Comm. Rogers, with Comm. Faust abstaining due to his status as Associate Commissioner at the time of said meeting and Bruce Porter abstaining as he was not present at this meeting, via roll call the vote was unanimous in the affirmative.

Wetland Applications:

Request for Determination of Applicability, 109 Maynard Farm Road, RDA #23-5

Chair Henkels recognized Mr. Joseph F. Martino for his presentation to remove trees within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

Mr. Martino stated that there are two large pine trees on his property, both near edge of the Buffer Zone, as determined by the Town and DEP maps. Both trees are over 100 feet tall, and can easily reach the house if they fall. They both are growing only on the side facing the house. The first tree is 18 inches in diameter, while the other is about 31 inches in diameter. There is also a dead tree, about 6 inches in diameter and 25 feet high, and about 72 feet from wetlands. He proposed to remove these three trees.

Coordinator Capone stated that there is an uncertified vernal pool in back of property, with the Buffer Zone extending onto the site. Because the site is heavily forested, all tree growth is toward the house. The trees don't appear to be unhealthy, but should they fall, they could damage the house.

In response to Coordinator Capone, Mr. Martino confirmed that the trees would be removed by crane.

Coordinator Capone stated that there is not a lot of lawn area, and the project will not expand the lawn space. Because of their location, removing the trees won't be detrimental to the vernal pool. If replanting is required, some shade-loving shrubs would be ideal. However, there are plenty of trees on site. The applicant is willing to put in some plantings if Commission requested it.

Comm. Cook recused himself as an abutter.

In response to Comm. Porter, Mr. Martino stated that the crane could reach the trees from the driveway.

In response to further questioning by Comm. Porter, Mr. Martino stated that the dead tree will fall eventually, and it would be safer to have it removed.

In response to Comm. Sevier, Mr. Martino stated that he has a list of trees that would be suitable for replanting, but that he did not have particular trees in mind. There is a lot of growth around both trees. He is going to have the stumps leveled to the surface and all residue will be left in place.

In response to Comm. Holtz, Coordinator Capone stated that the understory is relatively clear of invasives, and that it hadn't been altered in a long time.

In response to Chair Henkels, Coordinator Capone confirmed that no mats are required for staging of the crane, since it will be on the driveway.

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

Notice of Intent: 1 Liberty Ledge (Camp Sewataro), DEP #301-1393

Chair Henkels opened the Notice of Intent hearing to construct handicap accessible parking, walkways, and picnic areas within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Mr. Keith Murray, of Graves Engineering, Inc., and representative to the applicant, Mr. Andrew Sheehan, Town Manager for the Town of Sudbury, was recognized for his presentation.

Mr. Murray stated that the site has a cement-lined pool area within the Buffer Zone. There is also a swimming and fish pond. A handicap accessible parking area will lead to both the swimming pool and seating area. There will be a viewing area for pool and ponds. There will be a handicap-accessible walkway. This will increase the impervious area. To mitigate for the increase, a bioretention area will be installed meeting the DEP standard.

Mr. Murray further stated that there will be essentially no overflow during a 100-year storm, and standing water will infiltrate through a system comprised of a forebay, check dams and an infiltration trench. The soils here are extremely sandy, and infiltration happens quickly. There is an emergency overflow pipe that will connect to a drain line. Some tree clearing will be carried out. Post development rates will be less than the peak rate. All work will be stabilized and protected by siltation and erosion control barriers, so that any runoff will be caught before it gets into the pond.

Mr. Murray further stated that the original assertion was that this is not a regulated area. However, wetlands were subsequently identified and flagged by a wetland botanist. They determined the area is in fact jurisdictional. The work is entirely within the Buffer Zone, but mitigation will ensure that there won't be any detrimental effect to the resource area.

Coordinator Capone stated that there is an asphalt driveway that pitches very steeply down into this space. There is a pipe that emanates from the end of the driveway and discharges directly into the fishing pond.

In response to Coordinator Capone, Mr. Murray stated that the infiltration basin will capture as much runoff as possible. Given the nature of the slope of the property, very little runoff comes off the site anyway, and they don't expect additional runoff. The project will result in a decrease in runoff. He confirmed that the driveway will be pitched slightly so that some drainage from roadway will be captured in the new system.

Coordinator Capone stated that there are two prominent trees on either side of parking area. Those trees are called out on the plan as being preserved.

In response to further questioning by Coordinator Capone, Mr. Murray stated that the tree line on the plan is in fact a brush line. There is one tree by the swimming area, which is healthy and will remain. They have made modifications to the original design.

Coordinator Capone stated that the project is mostly converting grass to pavement. It still does need to be reviewed by the Planning Board for the stormwater management component. The applicant is scheduled to appear before that Board on May 24, 2023. The Commission should keep this hearing open until that review has been completed.

Coordinator Capone further stated that the plantings in the bioretention area should be native species. Fountain grass and globe thistle is not native, and an alternative should be found. Mr. Murray agreed to this, and would entertain any recommendations.

In response to Coordinator Capone, Mr. Murray stated that the walkway to the beach will be five feet in width, not four feet, except near the front of the building. It will likely be a rubber mat that lays on ground, but it must be

handicap accessible, secured, and able to support the weight put on it. A dock is not part of the design. Presumably, the handicap walkway will lead to the dock.

Coordinator Capone recommended that the applicant approve a continuation to the June 5, 2023 meeting, to allow for a stormwater review.

In response to Comm. Sevier, Mr. Murray stated that all runoff is going overland to a basin. It is not piped. The basin is shallow. There would otherwise be a need to cover over a pipe and an outlet would be needed. The contours here are lower than the elevation of the ponds. Infiltration couldn't get back to that area.

Comm. Sevier suggested that there could be a trench drain across the drive, to capture runoff.

In response to Comm. Sevier, Mr. Murray stated that the driveway needs to be paved as planned to allow for handicap accessibility. This ties it into the stormwater system. There is minimal area for the turning radius of a vehicle. If this was not allowed, cars would be going into the grassed area. The proposed topography generally follows the existing topography. There is also a gravel area. There is little flow going there currently, and the proposed plan will reduce it further.

Coordinator Capone stated that the applicant is doing what is required, and the project is an improvement over the existing conditions. The property was originally developed in the 1960s. It was not an ideal situation, but this plan doesn't worsen conditions. However, improving drainage is always desirable.

In response to Comm. Sevier, Coordinator Capone stated that it wasn't known if the existing roadway also drains into the property. If that drainage is captured, the bioretention area may need to be a lot larger than currently shown. The cost to implement this needs to include an engineering study to understand drainage. Ideally, they should capture all drainage and use the existing pipe as emergency overflow. The bioretention area may or may not be sized to handle flow.

Mr. Murray added that there will be a 2-foot stone trench. Gravity could carry flow into the basin, but you would change the contours against the existing grade.

In response to Chair Henkels, Coordinator Capone confirmed that the stormwater report being prepared as part of the review process should address Comm. Sevier's concerns. She offered to convey his specific questions to the peer reviewer.

In response to Chair Henkels, Mr. Murray stated that the staging area will be outside of the Buffer Zone.

In response to Comm. Rogers and Chair Henkels, Ms. Sandra Duran, Director of Facilities for the Town of Sudbury, stated that the lay-down area will be out of the parking lot and far away from pond, in a flat area. It will be close to the work area in the existing gravel parking lot near the horse corral.

In response to Chair Henkels, Coordinator Capone stated that the erosion controls appear to be adequate as they appear on the plan. There shouldn't be any significant sedimentation, since it will be in a flat area well away from the pond. No trees are being removed. The plan shows two trees remaining on either end of the parking lot. Only lawn is being altered by the project.

In response to Comm. Rogers' concerns that altering the surface and substrate for the parking lot might affect the root system of the two large trees, Mr. Murray stated that the trees are going to be protected. Some of the root structure may expand into that area, but the wetland botanist agrees that this should not be an issue.

In response to Chair Henkels, Coordinator Capone stated that this is a challenging resource area. The swimming pond is the closest resource area to the work site. It is a concrete-lined basin dug in the 1960s which is fed by a spring upgradient of the pond. The swimming pond then overflows into the fishing pond, which is then pumped back up into the swimming pond, forming a hydrologic connection. There is also a plug at the bottom of the pond. The ponds drain into the headwaters of Pantry Brook. The Buffer Zone is already altered.

On motion by Comm. Rogers to continue the Hearing to June 5, 2023, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 4 Demarco Road, DEP #301-1392

Chair Henkels opened the Notice of Intent Hearing to construct an addition and expand the septic system and driveway within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Mr. Matthew Marro, of Matthew S. Marro Environmental Consulting, representative for the applicant, Horizon Holding LLC, was recognized for his presentation.

Mr. Marro stated that the project is a replacement of a septic system, along with a proposed decking complex with steps. Additionally, they will expand the existing driveway to double the width. The resource areas are a Bordering Vegetated Wetland, a perennial stream, and Riverfront Area. The 50-foot Buffer line goes through the home. Degraded areas include an impervious driveway, roof line, and deck. The proposal was pared down from the original, and it came out to 54 square feet over the 10% allowable. This calls for a 2:1 mitigation planting area of 108 square feet. They propose a 120 square foot planting area in the area of the existing line of shrubs.

He further stated that the work has been done in the rear yard of the site. The soil has been disturbed and some vegetation removed. Coordinator Capone discovered that the work had started in the rear yard. The client was asked to put in erosion protection, which was established last week. They will replant trees in the corner and expand the seed area to replace what was removed. The ground-based seeding mix is a conservation mix from New England Wetland Plants. This will not be a grassy area, but more of a naturalized area.

Coordinator Capone stated that work has already started, and erosion controls were in place as of today.

In response to Coordinator Capone, Mr. Marro stated that he didn't know where the existing septic system was, but the plan has been approved by the Board of Health. Coordinator Capone added that the existing septic system needs to be decommissioned.

In response to Coordinator Capone, Mr. Marro stated that he did not know if there would be an expansion of the bedrooms.

Coordinator Capone stated that the Commission may allow up to 10% of the Riverfront Area to be altered but the project must be an improvement over the existing conditions. Mitigation would be required even if the project was below the 10% limit.

She further stated that the stormwater management is another provision. On a single-family house project, it is not required under the Act if more than 5,000 square feet are altered, but under the Bylaw it is.

In response to Coordinator Capone, Mr. Marro stated that the proposal would result in less than 5,000 square feet being disturbed. The degraded area accounts for 2,493 square feet. The septic system will not exceed 1,300 square feet. This will be added to the plan.

In response to further questioning by Coordinator Capone, Mr. Marro confirmed that none of the additions, like the deck, will be closer to the river.

In response to further questioning by Coordinator Capone, Mr. Marro stated that the driveway is very small, and the owner will want to park multiple vehicles without damaging the lawn. He will discuss the possibility of a square parking area with his client. Coordinator Capone added that this would reduce impervious surface and allow for multiple cars.

Coordinator Capone noted that the site should be surveyed. She noticed two stumps. She stated that plan should be stamped by an engineer. Mr. Marro replied that the engineer typically waits for Board of Health approval before doing so.

In response to Comm. Porter, Mr. Marro confirmed that the footprint for new the new septic system is same as existing. The entire existing system, including leach field is being replaced. The house is a four-bedroom and will remain that way.

In response to Comm. Holtz, Mr. Marro stated that the State regulation calls for 2:1 mitigation within the 100-foot riparian zone. The mitigation plan was submitted to the DEP, and a file number was issued without comment. He confirmed that they would provide additional mitigation to align with the Bylaw.

In response to Comm. Rogers, Mr. Marro stated that his client cleared the land. Shrubs were taken out, but only two stumps were observed. Coordinator Capone added that Google Earth can provide aerial photography of site before the trees were removed, but vegetation was very dense, and it is hard to see individual trees. She further added that it was probably mostly shrubs.

In response to further questioning by Comm. Rogers, Mr. Marro stated that the plan calls for native seeding to be put down in the planting area, along with shrubs. An example of the shrubs to be planted is winterberry. Coordinator Capone noted that one blueberry bush was included in the plan. Mr. Marro added that he will run a landscape calculation. The native plantings usually include edible berry bushes. He will reexamine the area for invasive plants. He had previously observed burning bush and buckthorn, which he will add to the narrative. They will also replace the trees that were taken out. More work will be needed to comply with the Bylaw. He confirmed that a more detailed planting plan will be submitted.

In response to further questioning by Comm. Rogers concerning future expansion of the garage since the driveway was proposed to be expanded, Mr. Marro confirmed that they do not plan on returning before the Commission for other construction. The existing garage will remain in the same footprint.

In response to Chair Henkels, Mr. Marro agreed to a continuation of this hearing.

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

Other Business:

Enforcement Order: 31 Lincoln Lane, DEP #301-1364

Mr. Jatinder Gill was recognized to discuss the unauthorized installation of an irrigation system and regrading within the Buffer Zone and Riverfront Area and unauthorize filling of the 100-year floodplain (Bordering Land Subject to Flooding) in violation of an Order of Conditions.

Mr. Gill stated that it has been one year since he first came before the Commission. At the time, he had a well in the river bank that was decommissioned. After that, two different building companies installed replacement wells. The first well leaked, and the second well, installed behind garage, also leaked. A third company installed a third well, which finally provided good water. Unfortunately, after all this drilling of wells and trenches, the condition of the yard was bad, with lots of dirt. He has hired a landscape company to replant the grass, and was advised that a sprinkler system was needed. He was further told that there was no need for a permit. He has been living at this address for seven years. The soil is very sandy, and grass has trouble growing. Grass with well-developed roots would be good for the area, and will conserve water. A high efficiency system was installed.

He further stated that the landscaper levelled the dirt when he wasn't home. The Town pointed out that this changed the elevation of the floodplain. This dirt has been completely removed now, and the area restored back to the original grade. On the other side of the garage, they spread loam and dumped material on the neighbor's property.

In response to Chair Henkels, Mr. Gill stated that approximately 2-3 yards of soil and some fencing were dumped. He apologized to the Commission, and added that has not had good luck with companies. He reiterated that the sprinkler system will be useful for growing the lawn and for erosion control. This will help conserve water. He

added that he is willing to do some plantings along the edge of the lawn, and whatever else the Commission will ask for mitigation.

In response to Chair Henkels, Mr. Gill stated that he has been before the Commission four times. He did not know that the irrigation system required a permit, and did not consider that it might be within a resource area.

Chair Henkels expressed his concern that Mr. Gill had been through the Notice of Intent process, and by claiming to be unaware of the need for a permit, he is making a provocative statement. Mr. Gill reiterated that the landscaping company informed him that a permit wasn't needed. He added that he is a single person with a busy work schedule and that he has done everything required by the Commission. He reiterated that the licensed professionals he hired have done bad jobs, and did not give him accurate information. He further added that this system is the most conservative way of watering the yard.

Coordinator Capone stated that she has worked with the applicant very closely, and issued an Enforcement Order last week requiring him to remove the fill from the floodplain. A survey is needed to confirm whether there is fill in the flood plain. The plan shows grades that weren't straight previously. She is unable to confirm without a survey if there is fill in the floodplain or not.

She added that she received a call today that area was being hydroseeded. Erosion controls were reinstalled as a condition of the Enforcement Order, but why they were removed originally is not known. It was never confirmed that the ground was stabilized.

She added that they also resurfaced the driveway since late last week. It has been modified from gravel to stone dust. It is not the same degree of permeability, and is also within resource areas. There is also encroachment onto the neighbor's property, including a dumped fence, logs and fill. A tree was damaged in the process. The land was also under a Conservation Restriction. There is therefore a legal issue with the adjacent property. While easy to fix, it should have been clear that work could not be done there.

She added that, at this point, the Commission will require an amendment for additional restoration. He will need a survey plan to establish what grades need to be reestablished. He will need to address the restoration of the neighbor's property and the installation of the driveway. She noted that the Commission has denied irrigation for others in the past. The yard had a little grass, but was vegetated before that. She questioned the need for irrigation. She expressed concern that a future owner may use herbicide or pesticide. The land slopes right into the wetland, and there is potential for future contamination.

Comm. Sevier stated that Mr. Gill should hire a consultant and contractor who can operate effectively without oversight. The Commission was supportive with regards to the issue with the wells. This is the only way to regain support.

Comm. Porter stated that the two options are to deny a permit, or for Mr. Gill to hire a consultant. He concurs with Comm. Sevier. He further stated that he expects flawless and direct cooperation moving forward.

Comm. Rogers stated Mr. Gill should have understood the need for a permit after his conversation with Coordinator Capone. He was well informed of the requirement to stop work. He has shown blatant disregard of the Commission Orders.

Chair Henkels concurred with the other Commissioners.

Coordinator Capone stated that the Enforcement Order should be modified since the situation has changed. In response to Comm. Sevier and Comm. Rogers, she stated that she would prefer to have time to prepare a draft. The Commission should take a vote that no additional work is to take place in the interim.

In response to Chair Henkels, Coordinator Capone stated that, as the irrigation system is already in the ground, it would cause more disturbance to remove it without a plan. If there is no chance the irrigation can remain in place,

the removal should be included in a new Enforcement Order. At a minimum, the Order should state that the system shall not be activated until the matter is resolved.

Comm. Cook stated that removal of the irrigation system is excessive and would cause more disturbance. He otherwise concurs with Comm. Sevier regarding the need for a consultant.

In response to Comm. Holtz, Coordinator Capone stated that erosion controls were originally installed along the base of the slope near the shrub line. They have been reinstalled but not completed along the entire rear of the property. The grade there is gentler. If there was a significant downpour, there is potential for erosion. She recommended that Mr. Gill install erosion controls along the entire base of the slope.

In response to Chair Henkels, she confirmed that completion of the erosion control installation should be included in the Enforcement Order. Comms. Rogers, Faust, and Holtz agreed to this and the other conditions previously discussed.

In response to Chair Henkels, Coordinator Capone confirmed that she will draft an Enforcement Order, which will include conditions for erosion controls and the irrigation system. The cease and desist will remain in its entirety until after a mitigation plan has been presented to the Commission. The only action required tonight is the ratification of the Enforcement Order.

On motion by Comm. Sevier to ratify the Enforcement Order, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative.

Enforcement Order: 25 Bridle Path, David and Eva Watson

Coordinator Capone was recognized to discuss the unpermitted tree removal within the 100-foot Buffer Zone and the 200-foot Riverfront Area.

She stated that, while executing an inspection for the unrelated Eversource Transmission Line project, she noticed a crane on the other side of the swamp. She left the corridor and went to Bridle Path, but was too late to stop the removal of all but five trees. These are still in place, however, most of the trees that were removed were large pines adjacent to wetlands. The homeowners were unaware they needed permission to do the work. Their goal was to remove the hazard to their house. She was unable to determine if this was the case as only the stumps remained. All of the stumps appeared to be healthy, with no hollowed centers indicating health issues. The goal was to remove hazardous trees and replant the area with native species. The end goal would have been modified from the original request, but it is likely a similar plan would have resulted under a Notice of Intent.

She further stated that she didn't have the homeowners attend tonight's meeting since they are already on the right track. Unfortunately, they have since put up a swing set in the yard space. This must also be mitigated in the Notice. All trees of consequence are gone, but they will replant with native species and remove invasives, which include buckthorn and burning bush. She requested that the Commission ratify the Enforcement Order, which requires them to submit a Notice of Intent with a restoration plan.

In response to Comm. Cook, Coordinator Capone stated that the company that removed the trees does a lot of work in town, and usually does contact her when they know there are wetlands. It was obvious that there were wetlands on site, and she has since called the company multiple times, but has yet to receive a response.

Comm. Porter stated that there has been difficulty with a small collection of tree companies in the past. However, some companies cooperate completely. Coordinator Capone stated that it is a goal to regularly send out letters to landscapers in town regarding permitting. Chair Henkels observed that this has been a problem for as long as he has been on the Commission.

On motion by Comm. Sevier to ratify the Enforcement Order, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Comm. Sevier proposed to begin all future Commission meetings at 7:00 PM, instead of 6:45 PM. Coordinator Capone stated that this would not present a problem from a legal standpoint.

On motion by Comm. Sevier to reschedule future meetings of the Conservation Commission to begin at 7:00 PM, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Adjourn Meeting

With no further business, on motion by Comm. Sevier, seconded by Comm. Porter, the Commission voted unanimously to adjourn the meeting at 8:40 PM.