



SUDBURY CONSERVATION COMMISSION MINUTES
Meeting Minutes of Monday, June 26, 2023

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

Absent: Bruce Porter

The meeting was called to Order by Chair Henkels at 7:01 pm.

Chair Henkels informed the public that the Notice of Intent Hearing for the project at 502 Concord Road project will not be opened tonight. It will instead be opened at the July 10, 2023 meeting.

Minutes:

On motion by Comm. Sevier to accept the minutes of the April 24, 2023 meeting, seconded by Comm. Cook, with Comm. Faust abstaining because of his Associate Member status at the time of the meeting, via roll call the vote was unanimous in the affirmative.

Wetland Applications:

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

Chair Henkels re-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, continued from May 8, 2023.

On motion by Comm. Holtz to continue the Hearing to July 10, 2023, seconded by Comm. Faust, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 110 Codjer Lane, DEP #301-1394

Chair Henkels re-opened the Notice of Intent Hearing to construct a storage building within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from June 5, 2023.

Coordinator Capone stated that the Hearing was continued because the restoration had not been completed, as required by the Emergency Certification issued in response to fire damage to the resource area. The restoration has now been completed. The plantings are smaller than what was originally proposed in the mitigation report. She has talked to the consultant and applicant about this, and they have provided an updated schedule to incorporate significant saplings into the space. They have installed above ground irrigation until the plantings are established.

In response to Comm. Rogers, Coordinator Capone confirmed that wattles were installed at the base of the slope, downgradient of the restoration area. They have put down mulch to stabilize the slope. She further stated that the controls were still functioning when she last observed them at the end of last week.

Chair Henkels stated that the outline provided by Ecotec shows a robust planting plan compared to what was submitted previously. Larger plantings will better be able to survive in that environment.

In response to Chair Henkels, Coordinator Capone stated that a number of red maples had been burned in the fire. They have since started to re-sprout, which is preferred to overplanting. A red maple with many leaders will fill in

a larger area than a single new tree. The area had originally hosted red maples only, so the plan will increase diversity. Five different species will be introduced.

In response to Chair Henkels, Coordinator Capone confirmed that the Order will be conditioned to require survivorship for two growing seasons. The Order will have the standard conditions, except that it will detail the installation of building. No foundation will be installed, and no concrete or asphalt will be allowed.

In response to Chair Henkels, Mr. McCarty stated that they are in agreement with the conditions being proposed.

In response to Comm. Rogers, Mr. McCarty stated that, after the recent rainfall event, the mulch appears to have held in place. As evidenced in the photos, the mulch is wet with standing water. The cover of mulch is thick. Comm. Rogers indicated her satisfaction with this explanation.

There were no public comments.

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

Abbreviated Notice of Resource Area Delineation: Concord Road (Parcel E12-0007), DEP #301-1396

Chair Henkels re-opened the Hearing to approve the Bordering Vegetated Wetland delineation, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw, continued from June 5, 2023.

Coordinator Capone stated that the Commission continued the last Hearing so that the delineation could be evaluated in the field. A revised boundary has been agreed upon. Some flags were missing so she asked that they be re-staked and reevaluated, to confirm that the final plan represents the agreed-upon boundary. In the revised plan, all modifications were incorporated, except for the entrance way. She just received the final plan today, adjusting the entrance. She also walked the property with Chair Henkels. It is a very tricky site that looks wetter than it is. The soils indicate it is wet for a short time in the Spring, but dries up quickly. The majority of the agricultural field doesn't support wetland vegetation and hydric soils. The wetland line on the new survey is an accurate portrayal of the wetlands on site.

David Crossman, wetland scientist of B&C Associates, stated that they made some changes based on the transitional area between the upland and the wetland. The entrance is very hard-packed from vehicle traffic. Soil samples were taken along the edge. They agreed to include some of the entrance in the delineation. The entrance puddles with rain. He suspects the soils are hydric when water penetrates, but it is tough to get through the soil.

In response to Chair Henkels, Coordinator Capone stated that, because this is an application for an Order of Resource Area Delineation, the only paperwork in addition to the form itself is the Findings, which clarify which flags were approved as part of the plan.

There were no public comments.

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

On motion by Comm. Faust to issue the Order of Resource Area Delineation, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

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

Chair Henkels re-opened the 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.

Coordinator Capone stated that peer review for stormwater was released, and the applicant is in the process of addressing the findings.

On motion by Comm. Sevier to continue the Hearing to July 10, 2023, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

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

Chair Henkels re-opened the 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, continued from May 8, 2023.

On motion by Comm. Faust to continue the Hearing to July 10, 2023, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

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

Chair Henkels re-opened the construction of a roadway and associated drainage system and utilities in 100-ft Buffer zone and Adjacent Upland Resource Area for a nine-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. Rogers to continue the Hearing to July 10, 2023, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

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

Chair Henkels re-opened the 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 and December 12, 2022

On motion by Comm. Cook to continue the Hearing to July 24, 2023, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 502 Concord Road, DEP #301-TBD

The Notice of Intent Hearing to construct a new school building with parking, grading and associated utilities within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw was not opened tonight, and instead will be opened at the July 10, 2023 Meeting.

Notice of Intent: 86-92 Boston Post Road, DEP #301-1397

Chair Henkels opened the Notice of Intent Hearing to construct a Valvoline Instant Oil Change garage with parking lot within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Vito Colonna of Connorstone Engineering, and representative to the applicant, Robert Ladas, was recognized for his presentation.

Mr. Colonna stated that the existing site is on Boston Post Road, across from Herb Chamber dealership, and near the Wayland line. It is next to Town Line Hardware. It is an existing commercial site, paved in front with a paved driveway to the rear, where there is a large gravel parking area. Some trucks are stored in the back lot. The building is vacant.

He further stated that a wetland in the back corner was delineated by Oxbow Associates. It flows to the north under Old Country Road into a larger wetland. The 100-foot Buffer Zone extends into the site. Most of the site is disturbed. There are some trees, but also gravel and low scrub brush.

He further stated that the proposed plan is for a three-bay garage for a Valvoline franchise. Customers drive to the back and enter the garage to get their vehicle serviced. They then exit out the front side. There is parking on site, but the number of spots is reduced because they don't need customer parking. The number of spots meet minimum requirements. There are 11 surface spaces on the pavement, and 3 reserve spaces for compliance. The 3 spaces will only be built if the need arises, but they have a grass surface for now. This saves on impervious area.

He further stated that they are upgrading the septic system outside the Buffer Zone. This replaces an old cesspool within the Buffer Zone and groundwater. All new utilities on Boston Post Road will be outside the Buffer Zone.

He further stated that the drainage system is a catch basin in the back. There is otherwise no drainage off site. The new system will collect runoff from all of the impervious area, including parking and the building. It will be sent to a treatment structure, then to the infiltration system in back. This will result in upwards of 96% TSS removal, where none is currently provided. This project is a redevelopment, reducing overall impervious surface by 5,000 square feet, from 19,000 to 14,000. The stormwater system is in full compliance. Most of the work in the Buffer Zone is in the back.

He further stated that they are developing a landscaping plan to enhance the back area. Cosmos Associates provided a landscaping plan. All species on the list are native. They are a mix of viburnum, birch, red oak, and winterberry. This will enhance the habitat in back, which is currently a disturbed area and mostly cleared with few trees. The plan provides a little more greenspace and buffering. Signage will be installed to indicate that no snow storage is allowed within the 50 feet of wetlands.

In response to Comm. Rogers, Mr. Colonna stated that used oil is stored in the basement until it can be recycled. Mr. Ladas, applicant, of Metrolube Enterprises, 929 Boston Post Road in Marlborough, stated that the basement has a tank room, which is fully sprinkled. There is secondary containment for used oil. There are steel tanks above ground. Any oil is pumped directly into the basement via oil lines. Once every couple of weeks, they run a hose into the basement and evacuate the oil.

Coordinator Capone stated that the site is highly degraded, including the wetlands. There is a lot of trash. The neighbor has cut a path across the lot, which is also heavily infested with invasives. She inquired as to whether there was any ability to clean up the wetlands as part of project.

She further stated that she shares Comm. Rogers concern about the management of fluids in this space. She inquired whether any underground tanks, exterior storage, could escape the building and enter the ground water or other areas of concern. She added that Mr. Ladas said they regularly build these in Florida, where they use a rubber membrane underneath the foundation as an extra precaution to prevent contamination. In this case, the foundation of the proposed building will only be a foot above groundwater. With a bladder there is less concern with fluids having the potential for exiting the building.

She further stated that this project has a number of permits still outstanding with the Board of Health, as well as Planning for the stormwater management component. She recommended that the Commission continue the Hearing to allow time for other Boards to comment on the project.

She further stated that snow removal will be tricky, as it is a tight site with lots of corners and no room for error. There is a sign in the back near a dumpster and behind a fence. It can't be seen, but could be pushed to side.

She further stated that the gravel is hard-packed. Mitigation for the project should include clean-up of the wetland and, if not replanting, at least reseeding.

In response to Comm. Sevier, Mr. Colonna confirmed that there will be eleven parking spaces, with six in back. One space will be for handicapped parking. There are six stack spaces, but they will only receive credit for three. The three reserve spaces are on the side.

In response to Comm. Sevier, Mr. Ladas stated the oil containment system will consist of Bentonite Waterproofing Membrane. This goes under the full slab and wraps up the walls. It is used in their South Florida stores. This membrane ensures zero water enters the basement. They are digging 10-11 feet into the ground, but will stop just above the water table.

In response to Comm. Rogers, Coordinator Capone stated that she encourages the applicant, as a part of the restoration process, to engage the abutter about their dumping of clippings. They should also remove the path so that they are not encouraged to dump clippings in that area in the future. If they have trouble with this, she has offered to reach out to them and have conversation about other management techniques for clippings.

In response to Chair Henkels, Mr. Colonna stated that the septic system is located in the front of the site. It is a conventional septic system design. Testing was conducted for the Board of Health, and it was found that the soils in front are good, highly permeable sand. They were restricted where they could test because of the building location. They tried in the back, but they were too close to the wetlands and the table water is too high.

In response to Chair Henkels, Mr. Colonna stated that new vegetation will be regularly maintained by a landscaper. Mr. Ladas added that he uses a company based in Marlborough that manages all locations in central Massachusetts. They are responsible for irrigation, mulching, and trimming.

In response to Chair Henkels, Mr. Ladas stated that the Bentonite lining is used in some other locations in Massachusetts, citing a new store in Westfield as an example. It is mainly used in South Florida, where the water table is high. The lining is not a replacement for any alternative containment system. The only other containment is the building itself. The lining is a secondary containment system installed outside the foundation, and is beyond what is typically done in Massachusetts. It is a preventative measure.

In response to Coordinator Capone, Mr. Colonna stated that any irrigation would be outside the Buffer Zone.

There were no public comments.

In response to Chair Henkels, Mr. Ladas agreed to a continuance to the July 10, 2023 meeting.

On motion by Comm. Rogers to continue the Hearing to July 10, 2023, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Request for Determination of Applicability: 325 Dutton Road (Hop Brook Marsh), RDA #23-6

Coordinator Capone was recognized for her presentation to install beaver deceiver flow devices through a beaver dam and culvert within the 200-foot Riverfront Area and Land Under Waterbodies, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw.

She stated that the Department has been struggling with beavers at Duck Pond in Hop Brook Marsh Conservation Land, where they arrived last year. Staff, volunteers, and DPW have worked over the last year to manage two locations where they dam the stream up. Around the ponds are low-lying trails which are flooding regularly. Beside clearing debris, volunteers and staff have been building bog bridges across wet areas.

She further stated that there is a foot bridge on upstream side of the pond. The bridge is about 40 feet long, with a beaver dam spanning the entire area up to the base of the bridge. There is a culvert at the outlet with flashboards used to manage the height of the pond. The beavers have been plugging up the culvert. After removing debris, it would be full again by the morning. The options are either to do away with the pond trails, build a boardwalk around the pond, or install beaver deceivers, to address the issue.

She further stated that, in the culvert, they propose to place a structure in the pond to lower the water level by about one foot. This won't bother the beavers, and is a strategy that is expected to work in the long-term. They will place a cage around the culvert inlet and a pipe within the cage, then extend the pipe upgradient of the culvert by about 20-40 feet. They will hide the cage in the water. Beavers usually leave the cage alone. They will still dam up around the culvert, but because pipe is going through the cage, they can't stop the water. The sound and movement of water triggers the beaver to dam the source.

She further stated that the bridge dam is a different situation. They will notch a portion of the dam and install a pipe through the dam structure at about a one-foot elevation below the current water level. This will bring the pond level down a foot. The pipe goes down under the water, so it can't be heard. The pipe will extend upgradient of the dam, to allow the same functionality as the culvert scenario. They will install the pipe and immediately put the debris back on so the beavers don't know it has been disturbed. All work will be done by hand, but they will need a pickup truck to bring in cages and pipes. The road in Hop Brook allows vehicle access to both locations without additional disturbance.

She further stated that beaver populations are increasing all around town, and the DPW is clearing culverts daily. They are flooding out private land. This project will make a safe environment for the public while also allowing for coexistence with the beavers. There will be an educational component for the public, so that when they see these devices in actions, they will know it's a solution that will not kill the beavers.

In response to Comm. Rogers, Coordinator Capone confirmed that signs would be put up at both locations. They will explain what the devices are so that they won't be pulled out. The Department will also publish an article in the Town newsletter and on the website. The contract includes maintenance of the structures to clean or reset them. Ice can sometimes dislodge the structures.

In response to Comm. Holtz, Coordinator Capone state that the project is covered by public funds. It costs just under \$4,000 to install the devices, and to carry out annual maintenance. If it functions properly, the water level should not go up. If it drops below the one-foot elevation, the water flow will cease, and there may be a further decline in water elevation due to drought, but not due to the device. The device elevation shouldn't require changing if set properly, but they also have the flexibility to modify it in the future.

In response to Comm. Faust, Coordinator Capone confirmed that the bog bridges may no longer be needed. They are moveable so they can be taken to different location as needed, or stored for future use.

There were no public comments.

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

Enforcement Order:

Jatinder – 31 Lincoln Lane, DEP #301-1364:

Chair Henkels initiated a discussion on the Violation and a restoration proposal.

Coordinator Capone stated that the applicant had an Order for decommissioning an existing well and the installation of a new artesian well for safe drinking water. The well casing had cracked on the first new well, so the applicant came back before the Commission for a new location for a second well. That casing cracked also. A third well was installed close to the original location, and is now functional.

She further stated that she subsequently received a call about an irrigation system being installed, constituting the first violation. On visiting the site, she observed that some of the fill from the well excavations was used to regrade a portion of the property, within the floodplain. The applicant was asked to remove the fill and reestablish the grades. On a subsequent site visit, it was found that the driveway had been resurfaced, and the lot hydroseeded. Additionally, a fence and some dirt and rocks were deposited on the neighbor's property, within a Conservation Restriction. The applicant was asked to engage a professional to restore the site back to preexisting conditions and mitigate for unauthorized work.

She further stated that the applicant requested that he be allowed to overhead water the lawn to maintain the hydroseed, which Chair Henkels denied. Subsequently, overhead irrigation was observed on the site, adding to the list of after-the-fact violations.

Nicole Hayes, a wetland scientist with Goddard Consulting, addressed the letter provided by the Commission on May 16, 2023, where they requested clarification on six activities. She stated that, regarding the filling of Bordering Land Subject to Flooding (BLSF) and Riverfront Area, that may have occurred as result of testing for a new well. Each time a well was dug up, the soil was left on the ground. Coordinator Capone had asked the applicant to remove the soil pile by the shed. The soil was removed by landscapers, and the minute amount of soil left was raked within the BLSF to level out the land. This was then seeded.

She further stated that Coordinator Capone had asked for information to compare the pre- and post-topography, to see if the BSLF was indeed filled in. The issue is that the surveyors didn't take microtopography elevations prior to work because they thought they were just dealing with a well. She did six test pits, and the profiles didn't indicate evidence of fill, having a well-defined A and C horizon. If there was some fill, it was very minute and de minimis.

She further stated that, regarding the resurfacing of driveway, during winter the ploughs removed some of the stone dust. The applicant hired a landscaper to install the same material within the same footprint. A letter from the landscape designer is included in the report.

She further stated that, the dumped materials within the Conservation Restriction contained a fence, tree stumps, and limbs. This will be removed by a small Bobcat machine and taken offsite. The area will be seeded and planted with five witch hazel shrubs.

She further stated that, regarding the grass strip along the driveway, the report shows this was present prior the project. The applicant had freshened the area by raking leaves and hydroseeding.

She further stated that the main problem is the irrigation system within the BSLF and Riverfront Area. Since it has already been done, the applicant is requesting that it remain in place, to be offset by the proposed mitigation. The major part of the mitigation package was the decommissioning of the well within BSLF and Riverfront Area, which was drawing down surface and ground water in the resource areas. The well was abandoned in place, and a new well was installed outside of the BSLF. This new well will only be taking from deep ground water sources, about 500 feet deep. This is a betterment for the site. Additionally, they propose to remove invasive vegetation, including multiflora rose, bittersweet, and buckthorn. They will also plant highbush blueberry shrubs to increase diversity in the Riverfront Area. They are aware that the Commission doesn't like to see irrigation systems in resource areas, however, this is a different situation since the mitigation of the well is an expensive and time-consuming project.

The setting of a precedent is different than that for the mitigation of the well. Most homeowners are not going to move a well.

In response to Chair Henkels and Comm. Sevier, Coordinator Capone stated that the abandoned well was to be decommissioned as part of original well installation. It was not additional mitigation to offset anything else. She confirmed that the decommissioning was required by the Board of Health. The applicant is required to crush it, but it is unclear if this has been done. Failure to crush the abandoned well thus far can't be considered a violation as the project is still open. Both the Board of Health and the Conservation Commission oversees the crushing.

Comm. Sevier stated that Commission is in a reactive position. If the applicant and their representative are going to support an unreasonable position, there cannot be a good working relationship. Ms. Hayes stated that they offered other mitigation, and could use some advice from the Commission. They will also consider a no touch zone. They can remove the heads of the irrigation system and leave the piping in place, in order to not dig up the ground.

Comm. Sevier expressed his preference that irrigation system is removed. This was supported by Comm. Rogers. Comm. Sevier expressed concern that heads could be reinstalled. Ms. Hayes stated that removing the irrigation system would cause another impact to the wetland area.

In response to Chair Henkels, Coordinator Capone stated that there are only three houses on this side of Lincoln Lane near the river. Having reviewed past Orders of Conditions for two of them, she discovered that there are perpetual conditions on both which prohibit irrigation systems.

Chair Henkels expressed his strong support for Comm. Sevier's position. He noted that this was the fifth time the applicant has come before the Commission.

In response to Chair Henkels, Coordinator Capone stated that the footprint of the driveway is unchanged. Stone dust was not observed, prior to work. However, the driveway was so hardpacked that the water was not infiltrating. This is not a new impact to the resource area, just an unpermitted activity. She agreed that the mitigation as proposed was insufficient, and noted a lack of clarity on how the mitigation would be implemented. Ms. Hayes requested clarification on the Commission's preferences, asking whether plantings should be more robust, should the square footage of area proposed for invasives species removal be increased, or should more details be provided on how plants would be installed or removed.

Comm. Holtz stated that more information was needed for the irrigation system.

In response to Chair Henkels, Coordinator Capone confirmed that the Commission could require that the irrigation system be removed, adding that an Enforcement Order would be the means to dictate that.

Comm. Cook expressed an interest in finding a reasonable path forward, while noting that applicant had appeared before the Commission five times, and had failed to comply with the rules. He further stated that a more robust planting plan seems reasonable. He expressed concern at the need to again dig up the ground, but that leaving the system in place would require intermittent inspections.

In response to Chair Henkels, Ms. Hayes stated that the irrigation system might be decommissioned by blowing foam into line. Comm. Cook expressed concern over the potential impact of foam on long-term basis. Comm. Sevier noted that the foam would be encased.

Comm. Sevier stated that removing the irrigation system would not create a large impact. He suggested that it could be done using a Ditch Witch.

Comm. Rogers concur with removal of the irrigation system.

Comm. Faust stated that he sees the mitigation provided as offsetting one of the smaller impacts, but would want to see something more complete to address the others. The irrigation system should come out and more mitigation should be offered. He suggested reducing the lawn area around the Riverfront Area.

Chair Henkels expressed a concern that this violation might set a precedent. He agreed that removing the irrigation system with a Ditch Witch would have a minimal impact. He suggested holding a straw vote.

Comm. Cook noted that there were misconceptions about the irrigation system. He added that it would be a good idea to give the applicant more time to provide more reasonable options.

Comm. Sevier stated that the irrigation system needs to be removed, and that the applicant should return with a revised mitigation package.

Comm. Faust stated that the applicant should get the property to a state that is acceptable to the Commission, and that this is best achieved by having them return with a full plan.

Comm. Rogers agreed to the need for a full plan, but stressed that the land would be better served by getting the irrigation system out as soon as possible. She recommended issuing the Enforcement Order and include a request for a more robust mitigation plan.

Chair Henkels stated that the consensus of the Commission is that they would like the applicant to review their comments and return with a stronger plan. He expressed support for removing lawn within the Riverfront Area.

In response to Chair Henkels, Coordinator Capone stated that the Commission could issue an Enforcement Order to dictate that decision, or issue a Certificate of Compliance for the open Order, once all restoration and mitigation work is complete.

Ms. Hayes expressed concern that they could create a large mitigation plan at high-cost, which the Commission may then not consider. The only thing they can present is to install larger and more diverse plants and convert more lawn into vegetated area. The homeowner prefers to keep the irrigation system, which the Commission might deny.

Comm. Sevier stated that it makes sense to issue an Enforcement for the irrigation system, but there are still other issues.

In response to Comm. Sevier and Chair Henkels, Coordinator Capone stated that it would be difficult to quantify the amount of fill but the change in grade should be discernible by survey. The original survey was at 2-foot contours.

In response to Coordinator Capone, Ms. Hayes stated that they have an As-built plan with 2-foot contours. The engineers have stated that they do not have the information to compare topography before and after the filling, so they can't give an affidavit. Coordinator Capone stated that she understands the engineers not wanting to take responsibility, but they could draft the plan while the Commission does the comparison. Ms. Hayes stated that she would get the information.

Jatinder Gill, the seven-year resident of 31 Lincoln Lane, expressed is regret that the situation had become very confrontational. He noted that the reason he came before the Commission so many times was because of the well. Photos show that the driveway and grass strip have not changed since at least 2017. He stated that he would remove

the irrigation system, at which point the lot would be much improved. He implored the Commission to have an open mind and consider his situation. He noted that the fill has been removed.

In response to Comm. Sevier, Mr. Gill re-confirmed that he will remove the irrigation system, and that he was never aware that it wasn't allowed to have one. He added that the first Enforcement Order was to remove the fill. The problem with the wells was not his fault. He requested clarity from the Commission about what they would like for mitigation.

In response to Chair Henkels, Mr. Gill re-confirmed that he would remove the irrigation system. The Commissioners each expressed their satisfaction with this statement. Coordinator Capone stated that since Mr. Gill has agreed to this, the Commission does not need to issue an Enforcement Order. Comm. Sevier stated that a plan for the removal is needed before the work can begin.

In response to Chair Henkels, Comm. Sevier stated that additional mitigation is required.

In response to Comm. Sevier, Ms. Hayes stated that they have an As-built plan that can be used to estimate the difference in ground elevation. They will try to get a revised plan, and will compare pre- and post-fill topography.

In response to Coordinator Capone, Ms. Hayes confirmed that the As-built plan was drafted to survey locate the well location, but did not resurvey topography.

Ms. Hayes stated that the mitigation includes the removal of the irrigation system, the dumping in the Conservation Restriction, removal of invasive plants, and the planting of blueberry bushes. Chair Henkels suggested that Ms. Hayes return with a plan indicating how the irrigation system would be removed, and also what additional vegetative mitigation would be carried out. The restoration of the CR is not to be considered mitigation.

In response to Ms. Hayes, Coordinator Capone stated that the plan should be received one week in advance of the July 24, 2023 Hearing.

Kris Bursik, an abutter at 41 Lincoln Lane, stated that she had been working with the Commission for a decade on a variety of projects. Her property is also on the River. She expressed her hope that the restrictions on abutting properties, apply to this property as well. She expressed concern that rules weren't being applied consistently. Chair Henkels noted that there is now an agreement between the Commission and the homeowner that the irrigation system will be removed. Mrs. Bursik recognized that not being able to water their lawn has been a challenge.

Three-minute Break:

On motion by Comm. Rogers to pause the meeting for three minutes, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

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

Certificate of Compliance:

MacDonough – 11 Murray Drive, DEP #301-1365: Septic Replacement

Coordinator Capone stated that the existing septic system was in failure and very close to the wetlands. They have re-positioned it almost entirely out of the Buffer Zone. The system is entirely within lawn area. No mitigation was required, and everything was done per plan. The site has been stabilized.

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

Jandl – 150 Wayside Inn Road, DEP# 301-1225: Landscaping

Coordinator Capone stated that one of the conditions of a recent Notice of Intent required the applicant to close out an existing Order of Conditions. All the tree clearing occurred and the Order has since lapsed. This pertained only to the wetland area at Wayside Inn Road. Also, there are areas in the rear within the Buffer Zone where the pumpkin/gourd patches will be, which were cleared but were not permitted. However, all that work and associated mitigation is covered under the new Order of Conditions. She recommended closing out the existing expired Order.

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

Other Business:

150 Wayside Inn Road, DEP #301-1383: Seeking Permission to use foliar spray on invasives

Coordinator Capone stated she went to the site to inspect the condition of the invasives area. This area has been allowed to expand since the tree removal in 2020. The plants were under full light for three years, and they are substantial. It was hard to determine which smaller plants would receive foliar treatment and which would receive cut-and-dab treatment or manual removal. If the Commission did permit the foliar treatment, they can re-assess the need after the initial removal of larger plants. This will help to understand how much foliar spray is needed.

Zoe Krouner, with Goddard Consulting, stated that the project included an invasive species management plan. A licensed herbicide specialist, Richard Ruby of Ruby Environmental, assessed the site and recommended foliar treatment along with cut-and-dab and manual removal. In his experience, with some vine plants like bittersweet, the stem is too narrow and cut-and-dab is not effective. A one-time foliar application will be better at eradicating the invasives. They are seeking permission to use this approach.

In response to Chair Henkels, Coordinator Capone stated that she does not have a pre-growth photo of the area, but the vegetation is currently very thick.

In response to Comm. Sevier, Coordinator Capone stated that the first treatment would be manual or cut-an-dab, not foliar. She added that the specialist had previously used a foliar application on the phragmites on Trevor Way, which was the only successful methodology, given the population size.

Comms. Sevier, Rogers, and Cook all expressed their support for this approach.

In response to Ms. Krouner, Coordinator Capone confirmed that they would implement the original method, and if unsuccessful, they would inform the Commission. She added that the forsythia and periwinkle should also be removed, because it smothers other plants.

219 Wayside Inn Road, DEP #301-1378: Discuss position on holding Conservation Restriction

Coordinator Capone stated that the Commission met on this project a number of times. The site is a ten-acre lot near the Marlborough town line. It has been with the current owners since the 1950s, and was purchased with the understanding that it was a single-family lot. They submitted a conservative plan for development, which included septic and a three-bedroom house. There was a condition that half of the lot, or about 5 acres, would be donated to the Sudbury Valley Trustees as part of the mitigation, and the remainder of undeveloped space would have a Conservation Restriction. About 11,000 square feet would be developed.

She added that, after discussion with the Trustees and the homeowner, the Trustees have indicated that they do not want to hold the CR. There is time and cost associated with monitoring. The Commission should decide whether they are interested in holding the CR. She noted that there is no benefit to the Commission, and there is a likelihood of encroachment. They don't own anything adjacent. There aren't any other entities willing to hold the CR, and they can't develop the lot if the CR is not held by someone. The wetlands species are protected already and much

of the lot can't be developed even without the CR in place. There is a cost to annual monitoring and drafting the CR and baseline report.

In response to Chair Henkels, Coordinator Capone stated that construction of the house is contingent on the CR. The Order does not indicate who holds the CR, only how large it will be and that it be in place prior to development.

In response to Comm. Sevier, Coordinator Capone confirmed that it is usually the developer who has funds to draft the CR and submit it to the State, as well as for the baseline reporting. That is the upfront cost. Then the Town or the Trustees assumes the long-term cost to monitor it in perpetuity. She added that the department lacks the resources to monitor its CRs and confirm conformance. However, the new Land Manager will be able to assist with monitoring.

In response to Comm. Rogers, Coordinator Capone confirmed that it is possible for the homeowner to do all the paperwork and baseline reporting. However, the Commission would still have the cost associated with monitoring. She also confirmed that the property could be developed if someone else took on the responsibility, but questioned who other than the Commission would do this.

In response to Chair Henkels, Coordinator Capone stated only the house can be developed, even without the CR. This is one of the reasons the permit was issued. She suggested that the Commission could require that the remainder of land be placed under a Deed Restriction, so that rest of the building lot can't be altered. No monitoring would be required in this case.

In response to Comm. Sevier, Coordinator Capone confirmed that the landowner was expecting some other entity to pay for the costs associated with the Conservation Restriction. With a Deed Restriction, the Commission should require an Amendment to the Order, and require a copy of the recording, before the commencement of work.

In response to Comm. Rogers, Coordinator Capone stated that, since there is an active Order for construction, any modifications would have to be approved by the Commission. She confirmed that the Commission has oversight during construction, but not in the long-term. However, it is wetlands, so there is not a lot to be gained with a CR. The larger issue was keeping the development to a smaller size.

In response to Chair Henkels, Coordinator Capone stated that any work being done within the lot could be viewed from the street.

In response to Comm. Sevier, Coordinator Capone stated that, unlike previous projects which involved CRs, with this one it was assumed that the Trustees would be the holder. However, it wasn't clearly specified that this was the assumption. There are subdivisions with open space parcels with CRs that the Commission typically holds. Also, there are a lot of outstanding CRs that were required but not completed.

In response to Comm. Holtz, Coordinator Capone stated that it was assumed that the homeowners had discussed the matter with the Trustees. However, the Trustees have changed personnel recently, and they are getting away from holding CRs because it is onerous. She confirmed that they are not on the record for agreeing to hold this CR.

Comm. Holtz stated that the Commission shouldn't entertain the project if the owners or developer don't want to incur the cost of a CR.

In response to Comm. Sevier, Coordinator Capone stated that the deliverable is that the Commission agrees to hold the CR without incurring costs, except monitoring. She agreed to discuss this with the with landowner.

Nolan Estates, Powers Road: Discuss tree removal

Coordinator Capone stated that this is a subdivision on the Concord line. The developer did everything to not need an Order of Conditions, so all work was just outside the Buffer Zone. The top has fallen off a tree, creating a large snag just inside the Buffer Zone. The developer asked if he could remove the snag. It is great habitat. The developer said that, as this is a cul-de-sac, there is no other reason to go down the road. A new homeowner could cut it and the Commission would never know. The developer suggested that he remove the tree and position it into the woods so it is not unsightly. He would then install granite posts indicating the Buffer Zone and that the area cannot be disturbed. This would prevent violations and in the long-term would preserve the Buffer Zone from future encroachment.

Comm. Rogers expressed her approval.

On motion by Comm. Rogers to authorize the removal the snag and the installation of at least two granite markers, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Other Business:

Coordinator Capone reported that a bridge reconstruction at Frost Farm was completed last week. A month ago, an unused trail was cleared out, during which the bridge was discovered to be in disrepair. The project was carried out by volunteers and staff, and the Department of Public Works cut up the wood. She also reported that the first new trail guide has been finished.

Coordinator Capone reported that progress was made on the pollinator garden initiative at Davis Farm. Cam Rogers, joined the discussion, and updated the Commission on his Eagle Scout project. He explained that for the first couple of weekends, he and his volunteers removed bittersweet and buckthorn. They then planted native plants in areas of invasive removal. They filled 54 bags with pulled invasives, and installed 80 plants. There are about 80-100 more to plants to be installed. He was assisted by Troop 61 in Sudbury, and also Troop 65 (Girl Scouts)

Coordinator Capone reported that a water chestnut treatment is occurring this week for the Hop Brook Mill Ponds, and then the Sudbury River. The water chestnut problem at the Grist Mill was the worst, covering 100% of the pond surface, but this year it is only 20-30%. The treatment is having a significant effect on the pond.

Adjourn Meeting

With no further business, on motion by Comm. Cook, seconded by Comm. Rogers, the Commission voted unanimously to adjourn the meeting at 9:51 PM.