



SUDBURY CONSERVATION COMMISSION MINUTES

Meeting Minutes of Monday, September 11, 2023

Present: David Henkels, Chair; Ken Holtz, Vice Chair (7:06 PM); Jeremy Cook; Luke Faust; Bruce Porter; Kasey Rogers; Mark Sevier; and Lori Capone, Conservation Coordinator

The meeting was called to Order by Chair Henkels at 7:00 pm.

September 11 Remembrance

Chair Henkels invited the participants to reflect on the events that transpired in New York City 22 years ago. He emphasized the lives lost, the enduring impact on families, and the substantial contributions made by thousands of individuals in the restoration of the city's infrastructure and lives.

Town Forum Announcement

Chair Henkels recognized Selectwoman Lisa Kouchakdjian for her presentation.

Selectwoman Kouchakdjian greeted Chair Henkels and the attendees, and thanked Chair Henkels for his thoughtfulness and reflection. She introduced herself as a resident at 30 Meadowbrook Circle and member of the Select Board and explained her purpose in attending the meeting: to extend a personal invitation to the upcoming Town Forum, "Residents Shaping Sudbury's Future."

Expressing gratitude for their service on the Conservation Commission, she recognized the valuable contributions of each member as volunteers, acknowledging their crucial role. She proceeded to provide details about the event scheduled for October 12th, running from 7:00 PM to 8:30 PM, as a hybrid gathering at Lower Town Hall.

The initial half-hour will be dedicated to a meet-and-greet, and she invited members of boards, committees, and commissions, like those present, to send one or two representatives. The goal was to attract residents interested in joining a Committee. She recognized the dedication of the attendees and emphasized the value of their time.

She expressed her hope that one or two representatives could attend the event, allowing for an opportunity at the end for in-person attendees to ask questions.

Chair Henkels thanked Selectwoman Kouchakdjian for attending.

Meeting Cancellation

Chair Henkels broached a topic that wasn't on the agenda concerning a future meeting, and inquired if the Commissioners were amenable to discussing it.

After receiving acknowledgment from the Commissioners, Chair Henkels proposed the idea of holding meetings on the second and thirtieth of the October and omitting the sixteenth, given that some hearings had been continued or addressed in prior discussions. He inquired about the Commission's thoughts on this, noting that having all three meetings was also an option.

Comm. Porter mentioned that he would be unavailable on the sixteenth.

Comm. Holtz mentioned he had just joined the discussion. Chair Henkels provided a summary of the topic under consideration and inquired if the Commission would be agreeable to removing the scheduled meeting on the sixteenth while keeping the two meetings on the second and thirtieth. Comm. Holtz expressed his approval.

Comm. Faust then expressed his approval.

Comm. Rogers raised a concern about attending the meeting on the thirtieth due to work-related travel plans but noted her willingness to attend if not enough members were available. She then expressed her approval for cancelling the meeting on October 16, 2023.

Comm. Sevier expressed his agreement with the proposed plan, as did Comm. Cook.

On motion by Comm. Cook to cancel the meeting scheduled for October 16, 2023, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

Minutes:

On motion by Comm. Cook to accept the minutes of June 26, 2023, seconded by Comm. Holtz, with Comm. Porter abstaining due to his absence at said meeting, via roll call the vote was unanimous in the affirmative.

Wetland Applications:

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, October 17, 2022 and August 7, 2023.

He requested that Coordinator Capone provide the Commission and the audience with a brief background on the discussion. Coordinator Capone proceeded to outline the key points discussed in the previous meeting.

During the previous meeting, there were two main outstanding items. The first involved a detailed discussion of the drainage system. The applicant had agreed to incorporate an additional chamber into the Cultech system to ensure it could effectively handle the drainage from the roof and foundation drain.

The second point of discussion in the previous meeting was the presentation of the landscaping plan to the Commission. Coordinator Capone mentioned that the plan had been included in the packet for the current meeting, and she had reviewed the proposed plantings. Notably, some of the landscape plantings were not native to Massachusetts.

In the event that the Commission was prepared to finalize the hearing and issue an Order of Conditions during the current meeting, Coordinator Capone had prepared Special Conditions for the Order. There was a condition that required all plantings on the site should consist of native species listed in the Commission's approved plant list. These had been shared with the Commission and the applicant for review. She noted that no comments or feedback had been received on the draft order. Chair Henkels expressed his gratitude for Coordinator Capone's update.

Chair Henkels invited Mr. Robert Truax from GLM Engineering to share his comments and affiliation. Mr. Truax confirmed that they had received the draft, reviewed it, and had no concerns about the special conditions. He also mentioned their willingness to collaborate with Coordinator Capone on an updated landscape plan and assured their compliance with the conditions.

Chair Henkels sought information from Coordinator Capone regarding any outstanding documents required. He specifically inquired about architectural drawings and planting plans. Coordinator Capone responded by elaborating on the special conditions, ensuring that the audience understood the details.

She explained that the Special Conditions included the necessity for a planting plan to be submitted and approved by the Commission before implementation. This requirement was to ensure the use of native plantings. The conditions also specified the need for a tree protection plan to safeguard trees adjacent to and within the work zone during construction. Additionally, an operations and maintenance plan for the stormwater system was to be provided before work commenced, ensuring its proper functioning in the future.

Coordinator Capone highlighted a Perpetual Condition wherein future homeowners must be made aware of the operations and maintenance plan. They would be required to provide an affidavit confirming their awareness and commitment to implementing the management plan. The Commission could also request inspection reports to ensure ongoing maintenance.

Other conditions discussed included the prohibition of a sump pump installation within the house and the exclusion of an irrigation system on the exterior. In addition, the restoration area, once implemented, was to be allowed to naturalize and remain unmanaged except for manual removal of invasive plants.

A specific condition addressed the management of Japanese knotweed, which would be the responsibility of a landscape professional. All vegetation was to be removed off-site, and stocks would be chemically treated to prevent the spread of Japanese knotweed. A minimum of 3 inches of soil was to be removed from the area and promptly cleared from the site, preventing stockpiling.

Furthermore, the conditions required the removal of all metal debris and trash from the site to ensure a thorough cleanup process. Coordinator Capone concluded by summarizing the key highlights of the document and offered to address any further inquiries.

Chair Henkels announced the opportunity for the audience to ask questions, with a request to focus the discussion on the Wetland Protection Act and related Bylaws, particularly on resource areas.

Mr. Michael Cameron, residing at 18 Franklin Place, began by expressing his concerns about the groundwater levels at the site, especially during periods of heavy rain causing frequent flooding in the intersection. He emphasized the importance of accurately assessing the groundwater height and its potential impact.

Mr. Cameron also noted several trees on the north side of the property that were situated on the property line and within wetlands. He stressed the need to protect these trees, both above and below ground, during excavation work related to the new driveway.

Furthermore, Mr. Cameron highlighted the grading on the south side of the property, which had a steep slope leading away from the house towards the property line. He suggested the inclusion of conditions to ensure that groundwater on the property didn't flow onto adjacent properties.

Chair Henkels expressed his gratitude for Mr. Cameron's input and directed the discussion back to the topic of tree protection. Coordinator Capone explained that the tree protection plan would not only safeguard the trees themselves but also extend to protect the root system, including the area around the drip line of the branches. Chair Henkels acknowledged her response, thanking her for the clarification.

Chair Henkels invited Ms. Mary Lester to address the Committee, giving her two minutes to speak. Mary Lester introduced herself as an abutter residing at 10 Allen Place.

She expressed her gratitude for the Committee's persistent attention to the matter, emphasizing the sensitivity of the wetland site. Ms. Lester noted that the plans indicated significant soil excavation, relocation, regrading, and the importation of additional soil to raise the septic system's height. Throughout the project's duration, questions arose regarding the accuracy and detail provided in the plans available for examination.

Ms. Lester inquired whether the Committee believed there was sufficient detail and accuracy in the plans to ensure a predictable positive outcome. Chair Henkels responded, stating that the Commission was content with the information received, particularly due to the close collaboration with Coordinator Capone and her expert analysis. However, he clarified that the Committee could not make guarantees or promises but would strive to do the best with the available information and the expertise of both staff and applicant representatives. He thanked Ms. Lester for her question.

Chair Henkels recognized Mr. Wayne Hall, who introduced himself as residing at 47 Indian Ridge Road and owning an acre of woodlands and wetlands extending from the north side of the Cemetery.

Mr. Hall expressed his ongoing concern throughout the lengthy project, emphasizing the importance of avoiding actions that could disrupt the hydrology in the wetlands. He stressed that such disruptions might lead to flooding in his house over time. He conveyed his conviction that everything necessary had been done at this point to address the issue.

Mr. Hall took the opportunity to express his gratitude to the Commission and Coordinator Capone. He particularly acknowledged his neighbors who actively participated in dealing with matters beyond his level of expertise, singling out individuals like Mike Cameron, Mary Lester, Glen, and Karen Merrill Skoloff. Mr. Hall expressed his anticipation of seeing progress made and conveyed his heartfelt thanks to everyone for their hard work. Chair Henkels reciprocated Wayne Hall's appreciation, thanking him for his kind comments.

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

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

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

Chair Henkels re-opened the 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, continued from June 26, 2023.

Chair Henkels requested Coordinator Capone to provide a concise summary of the project's progress up to that point. Coordinator Capone commenced by recounting that the project had initially been presented in June and explained that the hearing was continued to allow the applicant to undergo a Site Plan Review with the Planning Department, a Stormwater Review, and a Board of Health Review. This approach aimed to ensure no additional modifications were necessary for the Commission's consideration.

She described the current site as highly degraded, featuring a commercial building, grass asphalt parking, and gravel primarily within the Buffer Zone. The proposed development predominantly affected the parking lot within the Commission's jurisdiction. A key consideration was the reduction of parking spaces to the maximum extent possible. The site will serve as a Valvoline station where customers stay in their cars during the process and then exit.

Coordinator Capone reported that the Site Plan Review and Stormwater Review were still ongoing, while the Board of Health had approved the septic design, an aspect outside the Commission's jurisdiction. She highlighted some important project elements discussed, such as containing fluids in the basement to prevent any underground storage and the exit of materials into the stormwater system and wetlands.

The plan proposed a bladder system, though construction details were not yet available. Another focus was mitigation due to the site's significant degradation and extensive invasive species. The applicant presented an invasive species management plan, including treatment for phragmites and re-sprouting bittersweet and black locust trees. There were also other invasive plants, such as Norway maples, multiflora rose, and a notable patch of Japanese knotweed on the neighbor's lot line, which Coordinator Capone suggested including in the mitigation package.

The Commission was informed that the Hearing needed to remain open until the Site Plan review and Stormwater Review were finalized. Chair Henkels expressed his gratitude for the summary.

Chair Henkels recognized Mr. George Connors, who was sitting in for Mr. Vito Colonna. Mr. Connors expressed agreement with Coordinator Capone's statements and confirmed their willingness to comply with the additional three items.

Mr. Connors recognized that the site was significantly disturbed and expected that the mitigation efforts would require several years of monitoring. However, he believed the plan was quite comprehensive and should be effective. He emphasized the challenging nature of dealing with black locust and acknowledged that addressing this issue would likely take multiple years of effort.

Mr. Connors assured the Commission that he was open to addressing any further questions or comments, suggesting that the plan was mostly complete apart from the three additional items identified. He also noted that these items were subject to Oxbow's review and potential modifications.

Chair Henkels requested that Mr. Connor provide an explanation of how the membranes function. Mr. Robert Ladas, the applicant, clarified that he was the owner of Valvoline. He proceeded to explain the purpose and function of the membrane in their facility. In New England, particularly in Boston, they utilize a membrane inside the tank room. The tank room features concrete block walls, and there is a full epoxy membrane applied to these walls. This epoxy membrane is approximately 3/8 to 1/2 inch thick. It is primarily used in New England tank rooms to contain spills.

The membrane is used in conjunction with a sprinkler system, which is specifically required in Massachusetts. This setup ensures that all fluids, including oils, greases, wash-off fluids, and antifreeze, are contained within the tank room. The tank room effectively acts as a triple containment system, offering a high level of protection compared to their operations in other locations.

Chair Henkels inquired about the frequency of removing waste oil. Mr. Ladas explained that waste oil is typically removed once a week or every 10 days, and the tank is cleaned during this process. New oil is delivered approximately twice a month.

Chair Henkels then opened the floor to the Commissioners for any comments or questions.

Comm. Sevier inquired about how the room would be accessed. Robert Ladas explained that to enter the room, one has to straddle over a knee wall that is about 30 inches high. There is a fire-rated door above this half wall. He mentioned that the room is only accessed for safety cleaning and when new oil is delivered, and there is no other reason for someone to enter the room.

Comm. Rogers asked about how oil is transferred into the tank room. Robert Ladas explained that it is done entirely from the inside. For safety cleaning or oil delivery, the truck backs into the bay, and the hoses are run directly into the tank room from inside the building. This approach is considered safer and more contained than doing it from the outside.

Comm. Porter inquired about the handling process during tank cleaning and whether any fluids could escape during the cleaning process. Mr. Ladas clarified that if any cleaning is required, it is usually done with rags, which are then collected in containers and sent off-site for cleaning. This approach is designed to prevent any fluids from escaping during cleaning, and there is no elevated risk factor at any point in the process. The goal is to self-contain everything and avoid mopping.

Chair Henkels inquired about the treatment for invasive species on the site and its frequency. Mr. Connors provided information about the invasive species on the site, including patches of phragmites, garlic mustard, and others. He explained the removal protocol, which involves spraying with a backpack sprayer, removing roots and woody material by hand, and cutting and stumping certain plants. The treatment would be carried out at various times, depending on the plant's growth cycle, and would be repeated, with a report prepared after the first year for ongoing recommendations and potential replanting.

Coordinator Capone inquired about potential containment measures in the room where mechanics work underneath vehicles in case of a leak, and Mr. Ladas clarified that the basement itself is not equipped for containment. He stated that only the tank room has an epoxy-sealed floor.

Coordinator Capone further questioned whether there were any floor drains, foundation drains, or similar penetrations in the basement, to which Mr. Ladas responded that there were none. He explained that the oil from the cars is directed into a cart, and from there, it is pumped into the tank room, eliminating any manual handling.

No drains, sinks, or penetrations were present anywhere in the basement, as confirmed by Mr. Ladas.

There were no public comments.

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

Notice of Intent: 502 Concord Road, DEP #301-1398

Chair Henkels re-opened the 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, continued from July 10, 2023.

On motion by Comm. Faust to continue the Hearing to October 2, 2023, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Request for Determination of Applicability: 821 Boston Post Road, RDA #23-8

Chair Henkels initiated a follow-up discussion to determine jurisdiction of a Vegetated Wetland, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. He noted that the discussion was a continuation from the meeting on August 21, 2023, and welcomed Mr. Conti and Mr. Ryan Roseen.

Chair Henkels recognized Mr. Roseen's intention to present observations, findings, and facts derived from the recent site walk and inquiries posed by attendees, including Coordinator Capone. He expressed appreciation for the submitted supplementary letter.

Mr. Roseen of Goddard Consulting, LLC, delved into the rationale behind designating the site as an isolated wetland. During the site walk, only two members, along with Coordinator Capone, were present. She identified a feature she referred to as a "swale-like" characteristic, which was previously denoted as a bank in the 2004-2005 application. Mr. Roseen explained their disagreement with this characterization and elaborated on their position by citing relevant case law and similar scenarios.

Mr. Roseen proceeded to present the existing plan and emphasized the area that was previously labeled as a Bank. He expressed disagreement with this designation, citing the absence of stream characteristics in the area. The wetland's size was identified as approximately 5,280 square feet.

Mr. Roseen delved into the definitions of a stream and Bank under the Act and the local Bylaw, asserting the need for a definite channel of a stream readily identifiable to the average observer. He referred to attached case law and exhibits supporting their argument that the site did not exhibit these necessary characteristics.

Mr. Roseen described the site as a flat area between two slopes, characterized by semi-concentrated flow, rather than a clearly defined stream. He highlighted the absence of standard gravel, wetland indicators, species disturbance, leaflet flow paths disturbance, or traits typical of a stream.

Mr. Roseen addressed the lack of scouring effects, pushed-over vegetation, or visible flow of water, even in a wet year. He outlined the criteria for Isolated Land Subject to Flooding or hydrological connection to another resource area, explaining that none of these criteria applied in their assessment.

In conclusion, Mr. Roseen contended that the wetland was isolated in nature and not bordering any other resource areas. He invited questions from the commission or the audience.

Chair Henkels commended Mr. Roseen for the informative overview and invited Coordinator Capone to provide her comments.

Coordinator Capone provided an overview of the site visit, highlighting that the attendees carefully assessed each water pocket's capacity to hold six inches of water. The maximum water capacity observed was around one and a half to two inches, despite the exceptionally wet year. She pointed out that if the area were indeed a jurisdictional wetland, they would have expected more significant water accumulation.

Coordinator Capone also mentioned an area where flow was observed, previously designated as a Bank. She suggested that this flow might be attributed to high groundwater percolating through the system, rather than representing a well-defined channel with banks.

Furthermore, she detailed their examination of the upgradient area that had been flagged as both a bordering wetland and a bank. The consensus among the observers was that no wetland or Bank was present in that location.

Coordinator Capone expressed her belief that the initial delineation, identifying the area as a bank with a Bordering Vegetated Wetland, was incorrect.

Chair Henkels acknowledged Coordinator Capone's perspective and requested a restatement of the Determination being sought.

Coordinator Capone reiterated that the Determination being sought concerned whether the area qualified as a jurisdictional wetland under the State Wetlands Protection Act or the Bylaw. She clarified that if the Commission concluded that the site did not meet the definitions of a wetland under either of these legislative frameworks, they would issue a negative Determination, signifying that the area was not subject to jurisdiction under the Wetlands Protection Act or the Bylaw.

Chair Henkels expressed appreciation for the clarification and invited comments from the Commissioners.

Comm. Holtz, shared his experience as one of the Commissioners who conducted an on-site visit. He admitted that prior to receiving the supplemental information, he had left the site visit with a misconception about what constitutes an intermittent stream. He expressed his gratitude for the supplementary details, which had altered his initial perspective. Without this additional information, he had intended to argue that he had observed an intermittent stream on the site and that it should be considered jurisdictional. However, the supplementary information had convinced him that there was no clearly defined Bank. He acknowledged the presence of water bubbling up and pooling in one area, as well as water flowing from that pool to another part of the site. Still, he concluded that it did not conform to a well-defined Bank. He thanked the presenter for providing the supplementary information.

Chair Henkels concurred with Comm. Holtz's assessment, stating that he also believed the site was not jurisdictional.

Comm. Sevier raised concerns about the possibility of building a house in the middle of the area in question if it were not considered jurisdictional. Coordinator Capone responded by explaining that the previous plan had involved constructing two houses with a driveway crossing the wetland. Mr. Roseen added that any project in that area would need approval from Mass Natural Heritage due to it being priority habitat.

Comm. Sevier expressed his reservations about completely relinquishing control over the area. He wondered whether anyone had a specific plan for the location of houses and the driveway. Mr. Roseen then shared the old plan that had been previously approved, which showed the location of houses and the driveway crossing.

Comm. Sevier emphasized the importance of ensuring that any development allowed water to flow past, rather than obstructing the natural flow. He felt that simply issuing a negative Determination might not provide enough control.

In response, Chair Henkels and Coordinator Capone acknowledged the concerns, with Chair Henkels noting that the absence of stream crossing standards could create potential issues if houses were to be built in the area, given the site's current classification as non-jurisdictional.

Chair Henkels recognized Mr. William Conti. Mr. Conti stated that he resided at 12 Patricia Road, and expressed his intent to replicate the plans that had received approval from the Town of Sudbury in 2008 without making any modifications.

Comm. Sevier inquired about the details regarding the driveway's passage through the wetland area. Mr. Conti confirmed that the previous plans included the use of a culvert beneath the driveway to facilitate the flow of water from one side of the wetland to the other. Additionally, Deed Restrictions were in place to protect the entire wetland area, except for the area containing the driveway crossing.

Chair Henkels mentioned that the previous plans had been approved in 2008 but had unfortunately expired due to the former landowner's failure to record the documents. Mr. Conti clarified that his goal was to renew these plans without making any alterations.

Coordinator Capone emphasized that the Deed Restrictions would continue to safeguard the wetland, whether or not it was considered jurisdictional, except for the driveway crossing, if Mr. Conti's plan remained the same.

Comm. Sevier inquired if there was a way to officially document Mr. Conti's plan to replicate the previously approved 2008 plans as part of the current Determination process and whether this would impact the Determination itself.

Coordinator Capone clarified that the current Determination process specifically focuses on the wetland resource area's jurisdictional status and does not encompass the associated work. She suggested the possibility of including the information in a cover letter, highlighting that Mr. Conti's intent to implement the 2008 plans without modifications was expressed during the meeting. This information could then be conveyed to the Planning Office during the plan's submission and review. Additionally, she noted that the Conservation Commission would have the opportunity to provide comments during the plan evaluation stage. However, no definitive action could be taken at the current meeting to formalize the plan.

Chair Henkels asked Coordinator Capone if the proposed procedure to convey the applicant's plan to implement the previously approved 2008 plans as part of the current Determination process would be enforceable. Coordinator Capone clarified that this procedure would not be legally enforceable.

Comm. Sevier expressed concern about the applicant's intentions to replicate the 2008 plans, emphasizing that while everyone hopes for a smooth process, unforeseen circumstances can arise. He pointed out the importance of having a legal system in place to address potential issues.

Mr. Conti assured the Commission that he was willing to do whatever was necessary to obtain approval for the lots. He reiterated his plan to replicate the 2008 plans without alterations.

Comm. Sevier noted that his initial concerns had arisen because the applicant had not provided specific details about their plan. He acknowledged the limitations of asking for the overall plan during a Request for Determination of Applicability process, as it primarily focuses on wetland assessment and jurisdictional determination.

Coordinator Capone acknowledged Comm. Sevier's sentiment, stating that they could convey the plan's details, but their jurisdiction did not provide a mechanism to ensure it would be executed, aside from collaborating with the Planning office.

There were no public comments.

On motion by Comm. Cook to issue a Negative Determination of Applicability #1 and #6, seconded by Comm. Faust, via roll call the vote was unanimous in the affirmative.

Request for Determination of Applicability: 36 Babe Ruth Drive, RDA #23-9

Chair Henkels recognized Douglas Jones for presenting the project to install a fence within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw.

Douglas Jones presented a proposal related to his backyard, which lies within the vicinity of a 100-foot Buffer Zone adjacent to the Wetlands area and 200-foot Riverfront Area. Mr. Jones offered a detailed explanation of his plans with the aid of visual materials.

Mr. Jones began by emphasizing the environmental significance of the backyard's location, indicating the presence of a Buffer Zone around the wetlands area. He shared photographs depicting the proposed changes, highlighting a blue line representing the intended fencing and a blue square designating the area allocated for a swing set.

Upon examining the backyard from the vantage point of the back deck, Mr. Jones described the presence of three white panels and an adjacent mulched garden area.

He emphasized that the wooded area in the backyard is a part of the wetlands and falls within the Buffer Zone. Mr. Jones proceeded to provide insights into the layout of the backyard, drawing attention to the driveway's edge and the wooded area on the right side.

Mr. Jones expressed that his original proposal involved fencing the entire backyard, although he had discussed potential modifications with Coordinator Capone. He detailed a revised plan involving a smaller fenced area that would be contained within the existing lawn area, illustrated with a marked photograph.

The primary concern highlighted by Mr. Jones was the back border of the backyard, especially the section adjacent to the wooded area. His plan involved using fencing within areas where the lawn was already established and extending it into the mulched area on the left. The proposed design included the use of aluminum wrought iron in specific areas marked in red and chain link fencing along designated black lines on the back, raised approximately 6 inches from the ground. Visual aids were provided to illustrate the proposed wrought iron design, and Mr. Jones discussed the option of either placing it on the ground or elevating it by 6 inches.

Mr. Jones concluded his presentation by welcoming questions and feedback from the attendees, and Chair Henkels expressed appreciation for the presentation.

Comm. Cook sought clarification regarding the intended clearance for the fencing. He inquired whether it should be 6 inches above the ground or if there should be a 6-inch gap between the interior surface to the fence and the ground. Coordinator Capone provided clarification, explaining that the objective was to establish a 6-inch clearance, either underneath the fence or the railings themselves, to allow small animals to migrate between the yard and the woods. Mr. Jones also admitted that he had not previously been aware of this requirement, and he indicated his agreement with either option for the 6-inch clearance. Coordinator Capone added that typically, the fences themselves do not have 6-inch gaps to ensure the safety of children and pets.

Coordinator Capone raised a concern, particularly its proximity to the tree line. She mentioned that the Conservation Commission has previously expressed concerns about the installation of fences and its potential impact on tree root systems. To address this concern, the homeowner agreed to allow Coordinator Capone to meet with the fence company when determining the exact fence location on-site, ensuring that it would not harm the trees' root systems.

Coordinator Capone further explained that apart from this concern, she had no objections to the proposal. She clarified that the hatched area on the screen represented the wetland edge, and the dark ribbon on the right-hand side represented Run Brook. This area falls under both the Buffer Zone and Riverfront Area regulations, but it had been altered before the implementation of the Wetlands Protection Act and local Bylaw.

Chair Henkels thanked Coordinator Capone for her input and information regarding the project.

Comm. Holtz inquired about the panels marked with blue lines behind the garden bed in the backyard. He sought clarification, asking if they were a form of trellis. Mr. Jones, explained that these panels at the back of the garden bed were installed by the previous owner. They were separate and not connected, primarily intended to provide a visual barrier from neighboring properties.

Comm. Holtz further asked if the proposed fence would extend into the woods, as it appeared in a picture. Mr. Jones clarified that the fence would be positioned at the back edge of the mulched garden, and it would not intrude into the wooded area. Its primary purpose was to serve as a visual barrier to the neighbors.

Comm. Holtz inquired whether there were any invasive species within the tree line and if they were being maintained. Mr. Jones stated that he believed there were no invasive species.

Comm. Holtz inquired further if Coordinator Capone knew of any invasive species. Coordinator Capone acknowledged that while there might be some invasive species, it was not extensive. The proposed fence included a gate at the back for access into the wooded area, should any maintenance become necessary in the future.

Comm. Holtz also clarified the proposal, as it included a red line as an alternative to the black line. He wanted to confirm if Mr. Jones was requesting approval for both options. Mr. Jones affirmed that he was seeking approval for either option, as the red line had been proposed after discussions with Coordinator Capone to address concerns. The final decision would be made in consultation with her and the fence company.

Comm. Holtz sought clarification on the red line along the northern part of the house, and Mr. Jones explained that the red lines represented the aluminum wrought iron sections, while the remaining portion would be chain-link fencing.

Chair Henkels expressed his thanks to both Mr. Jones and Comm. Holtz for their contributions to the discussion.

Coordinator Capone explained that Determination #2 indicated that the project involved working within a resource area, specifically the Riverfront Area, rather than just the Buffer Zone.

Comm. Rogers raised a question about the choice between the red and black fence, seeking insight into the merits and drawbacks of each. Coordinator Capone responded, noting that part of the black area to the south originally occupied wooded space. By opting for the red fence, the intention was to confine it entirely within the lawn area. The end result was expected to strike a balance between the two options, with the goal of maintaining the fence within the lawn area.

Comm. Holtz then inquired about a tree depicted in the corner of the red and black sections. Mr. Jones clarified that the tree symbol was originally used to represent an aluminum wrought iron facing.

Comm. Rogers expressed concerns regarding previous fence projects where undefined boundaries had led to complications. She emphasized the need for a definitive area to prevent issues arising from fence companies and

homeowners taking independent actions. This prompted Chair Henkels to inquire about her preference. In response, Comm. Rogers expressed her preference for the red fence, with the aim of keeping it away from the wooded area, Comm. Holtz proposed a potential solution, suggesting that they keep the fence within the lawn area, as Coordinator Capone had mentioned earlier. In response to this, Mr. Jones offered to present a picture that could clarify the situation, explaining that the woods extended all the way to a certain point. He expressed a preference for the red fence, emphasizing its distance from the wooded area.

Comm. Sevier noted that the issues in a previous fence project had arisen due to a lack of communication between the Coordinator and the fence company before work commenced. He pointed out that Coordinator Capone's conditions were included in the current project to ensure better-defined boundaries, reducing the likelihood of similar issues occurring.

Chair Henkels addressed the Commissioners, seeking their input on the choice between the black and red fences. He inquired whether they preferred to grant Coordinator Capone the flexibility to collaborate with the applicant to make a determination that might be advantageous to both the Commission and the applicant.

In response, Comm. Cook pointed out that the applicant had already expressed a willingness to consider the red fence option.

There were no public comments.

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

Request for Determination of Applicability: 42 Drum Lane, RDA #23-10

Chair Henkels recognized Nicole Hayes, of Goddard Consulting, a representative to the applicant, Ms. Janice B. Miller, for presenting the project to expand garage and driveway and construct an addition within the 100-foot Buffer, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Janis B. Miller, Applicant.

Ms. Hayes explained the location of the wetland and the 100-foot Buffer Zone, noting the applicant's intention to make an addition that falls outside this Buffer Zone. However, due to the proximity, some work within the outer edge of the Buffer Zone might be necessary to accommodate machinery and grading. She acknowledged the absence of erosion control plans on the current proposal but mentioned that such conditions could be added at the limit of work.

Ms. Hayes went on to clarify that the proposed addition itself was located outside the buffer zone, and she pointed out that approximately 53 square feet of existing asphalt pavement would be removed and relocated outside the Buffer Zone, which would result in an overall benefit to the area by eliminating pavement. She highlighted that the new work would be situated farther from the wetland, indicating that the proposal represented an overall improvement in terms of environmental impact.

Chair Henkels thanked her for her comments and invited Coordinator Capone to speak.

Coordinator Capone expressed her agreement with Ms. Hayes' assessment of the project. She highlighted the need for erosion controls in the backyard to minimize any potential disturbances, machinery operations, or activities. Notably, she mentioned that the site was situated approximately 15 feet above the wetland elevation, mitigating concerns about encountering groundwater during construction.

Additionally, Coordinator Capone mentioned that soil stockpiling would be in the front yard, ensuring no alterations to the resource area due to the work. She emphasized that almost all new impervious surfaces would be located outside the Buffer Zone, leading her to conclude that no mitigation measures were necessary to offset the new construction's environmental impact.

Chair Henkels thanked Coordinator Capone for her input and opened the floor for any comments or observations from the Commissioners.

Chair Henkels sought clarification regarding the applicant's request for a Negative Determination #3. Coordinator Capone stated that it confirms that the proposed work falls within the Buffer Zone but will not have an adverse

impact on the resource area. She also mentioned her request for a preconstruction meeting with the contractor to inspect and ensure proper installation of erosion controls.

Coordinator Capone further outlined her expectation that the applicant would provide photo documentation after the construction to confirm that the addition adhered to the determination, and that the site had been stabilized effectively following the work.

Chair Henkels expressed his gratitude for her explanation, indicating that the commission had a clear understanding of the request.

There were no public comments.

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

Other Business:

Emergency Certification:

Chair Henkels recognized Coordinator Capone for her comments on the clogged culvert at 92 Blueberry Hill Road.

Coordinator Capone provided a detailed account of a recent situation on Peakham Road involving a resident living adjacent to the wetland. She recounted how the homeowner's basement had become flooded due to heavy rain, prompting them to install a pump in the wetland to alleviate the issue. Coordinator Capone and Chair Henkels had met with the homeowner to assess the situation, and while it was acknowledged that the homeowner should not have installed the pump in the wetland, they had managed to pump the water without causing damage to the wetlands. Consequently, they deemed no further action necessary, except for implementing measures to prevent such occurrences in the future.

Coordinator Capone also discussed their investigation into a downstream culvert located beneath 92 Blueberry Hill Road, which had previously experienced issues. The culvert was identified as a likely cause of water backup, and its condition was found to be compromised due to the absence of head walls and wing walls. The dirt around the culvert had collapsed, obstructing the flow of water. An Emergency Certification had been issued to the homeowner to address the situation, and a company was hired to vacuum out the sediment from the inlet and within the pipe.

Despite removing the sediment, the hillside remained unstable, and the homeowner was aware of the need to present an engineered plan to either replace the culvert or install head walls and stabilize the slope. Coordinator Capone reported that although new sediment had appeared at the inlet side of the pipe, the water was still flowing, preventing further issues for the neighbor. She mentioned that the homeowner had been authorized to periodically clear the front of the culvert, by hand, as sediment continued to accumulate in the resource area.

Coordinator Capone concluded by noting the thickness and extent of the sediment removed and emphasized the importance of monitoring the situation and ensuring the homeowner followed through with the culvert's replacement.

Comm. Sevier sought clarification on the property ownership related to the issue, specifically inquiring if 92 Blueberry Hill Road, where the culvert problem was located, was separate from 451 Peakham Road, where the wetland was situated. Coordinator Capone confirmed that the culvert at 92 Blueberry Hill Road was the source of the problem, and it caused water to back up toward 451 Peakham Road, which marked the beginning of the wetland. She also mentioned that the cooperation between the two property owners was essential to address the issue, to which Comm. Sevier responded positively.

Chair Henkels inquired about the next steps in addressing the culvert issue. Coordinator Capone responded by stating that unless the culvert needed cleaning again, which might require another Emergency Certification, the homeowner was in the process of hiring an engineer to design a solution for the problematic location. Following the design, they would submit a Notice of Intent to the Commission for evaluation. Chair Henkels expressed his approval of this course of action and opened the floor for any questions or comments from the Commissioners.

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

Town Forum:

Coordinator Capone noted that she had already handled the arrangements for the Town Forum. She expressed her anticipation for the presence of Chair Henkels and urged attendees to consider joining them for a portion of the evening.

MACC Conference

Chair Henkels informed the group about MACC's upcoming annual conference scheduled for the twenty-eighth of October. He mentioned that the event would take place both in-person at Devens Common Center and in a hybrid format, with some sessions requiring physical attendance and others being available online. He encouraged interested individuals to sign up for the conference and explore the course offerings on MACC's website, macc.org.

Associate Members:

Comm. Holtz inquired about the process for bringing on associate members and the status of current vacancies. Coordinator Capone responded by mentioning that they had recently received an application and that she and Chair Henkels were planning to meet with the applicant to discuss her interest and ensure her readiness for the role. If the initial meeting went well, the applicant would then be interviewed by the Conservation Commission, and a recommendation would be made to the Town Manager. They also noted that they had only received one application, leaving one opening.

Comm. Holtz further inquired about whether the applicant was aware that they could attend meetings without being an Associate Member. Chair Henkels added that the Town Forum could serve as a platform to engage potential members and initiate conversations with interested individuals.

Adjourn Meeting

With no further business, on motion by Comm. Faust, seconded by Comm. Cook, the Commission voted unanimously to adjourn the meeting at 8:32 PM.