



SUDBURY CONSERVATION COMMISSION MINUTES

Meeting Minutes of Monday, December 18, 2023

Present: David Henkels, Chair; Ken Holtz, Vice Chair; Luke Faust (8:11 PM); Bruce Porter; Kasey Rogers; Mark Sevier; and Lori Capone, Conservation Coordinator

Absent: Jeremy Cook

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

Minutes:

November 13, 2023

On motion by Comm. Porter to accept the minutes of the November 13, 2023 meeting, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance)

November 27, 2023

On motion by Comm. Sevier to accept the minutes of the November 27, 2023 meeting, seconded by Comm. Holtz, with Comm. Sevier abstaining, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance)

Extension Request:

Eversource and Department of Conservation and Recreation: Underground Transmission Line and Mass Central Rail Trail, DEP #301-1287:

Chair Henkels introduced a request from Eversource to extend the outstanding Order of Conditions for an additional year.

Coordinator Capone explained that Eversource's representative, Marc Bergeron, was originally scheduled to join the meeting but faced flooding issues due to recent heavy rainfall. Mr. Bergeron requested the matter be discussed in his absence, offering to address any questions in a future meeting.

Coordinator Capone proceeded to discuss the request for an Extension of the Order of Conditions. She emphasized that it had been three years since the Hearings, noting significant progress in infrastructure placement. However, she clarified that another season was required for plantings and mitigation efforts. The DCR (Department of Conservation and Recreation) would follow up with asphalt installation for the rail trail after the completion of the ongoing work.

Coordinator Capone mentioned that Eversource expected to finish their work within the year but required an Extension, in compliance with the Bylaw and Wetlands Protection Act. She specified that the Extension, limited to one year, was necessary due to the Bylaw's provisions. Chair Henkels then turned to the Commissioners, inviting any questions or comments they might have on the matter.

Comm. Rogers recused herself from this matter as she was an abutter to the project.

Comm. Holtz sought clarification regarding the involvement of DCR in the Extension. He questioned whether DCR was included in this Extension and emphasized the potential consequences if it were not granted. Comm. Holtz pointed out that without the Extension, DCR would be unable to commence their work and suggested that they might require additional Extensions beyond the current one. Coordinator Capone confirmed Comm. Holtz's

understanding, acknowledging that DCR would likely request an additional year of Extension beyond the current one.

Comm. Porter interjected, offering a note of information. He indicated that, at the time of renewal, there might be a need for small changes in the Order. Coordinator Capone clarified, stating that the Extension process would not permit alterations to the Order of Conditions. She explained that the Commission would deny an Extension if there were issues with the project or if conditions had changed in a way that necessitated modifying the Order. In such cases, the Commission would require the project to restart with a new Notice of Intent.

On motion by Comm. Sevier to issue the Extension Order, seconded by Comm. Holtz, with Comm. Rogers abstaining, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance.)

Wetland Applications:

Notice of Intent: 38 Stubtoe Lane, DEP #301-1405

Chair Henkels re-opened the Hearing to demolish an existing garage and porch, and construct an addition with garage, driveway, associated grading and utilities, within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Yang Jin and Scott Tingley were the applicants. This Hearing was continued from October 30, 2023.

On motion by Comm. Sevier to continue the Hearing to January 8, 2024, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance.)

Notice of Intent: 41 Hopestill Brown Road, DEP #301-1410

Chair Henkels re-opened the Hearing to remove trees and 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. Corinne & Brian Acampora were the applicants. This was continued from November 13, 2023.

Chair Henkels greeted the Acamporas and then requested them to provide an update on the fence and the current status of the project. The Acamporas shared that since their last meeting, they had installed the fence, thinking that the outstanding question for the group was related to tree removal. However, they realized this was a mistake and apologized for the confusion. The meeting had been extended for further consideration due to the absence of a DEP File Number.

Mrs. Acampora explained that they had encountered delays in obtaining a DEP File Number, despite submitting the application and a check. They received the number after multiple follow-ups, and while they were pleased with the progress, they acknowledged the need for the correct approval before proceeding with tree removal. Apologizing again for the premature installation of the fence, they emphasized their commitment to ensuring the right approval from the Commission.

The Acamporas mentioned that they had delayed tree removal twice to align with the Commission's requirements. Additionally, they had sent a replacement planting plan to Coordinator Capone via email, which she had reviewed. They expressed hope that the plan would be acceptable to the Commission and offered to discuss it further if needed.

Chair Henkels acknowledged Mr. Acampora and requested him to provide a brief overview of the tree removal aspect of the project. Mr. Acampora then outlined that there were approximately 12 trees around the dwelling earmarked for removal. Among these, four were situated in the Buffer Zone, necessitating consideration from the Commission. These trees, located at the back of the property, were all affected by invasive species that were gradually causing their deterioration. The Acamporas aimed to eliminate these invasives as part of their plan.

Mr. Acampora clarified that these were the major trees under question for removal. Regarding the other 8 trees, he mentioned they were within a riverfront area if the stream were perennial, which they are assumed to be under the Bylaw but not State Act.

Chair Henkels inquired about the reasons behind wanting to take down these trees and asked if they had received an arborist report outlining the quality or condition of these trees. Mr. Acampora explained that the chosen trees were in close proximity to the dwelling, with several branches from the last storm falling on the house and causing damage. Approximately 6 to 7 of these trees were close enough to pose a risk of damaging the home, and as a precaution for safety, they were looking to remove them. Chair Henkels acknowledged their safety perspective in wanting to take down these trees.

Chair Henkels asked for Coordinator Capone's comments on the tree removal proposal. Coordinator Capone sought clarification, asking if the proposal was to remove every tree within the yard except for the one large oak discussed at the last meeting. The Acamporas confirmed this understanding, adding that they also intended to keep one pine tree in the back and two dogwoods in the front.

Coordinator Capone then shifted the discussion to the proposed plantings, noting that approximately 54 plants, mainly consisting of small trees and shrubs, were planned for the back area. These plantings would be positioned both in front and behind the fence. The Acamporas affirmed this plan, emphasizing their intention to replant the area they had cleared of invasives, both in front and behind the fence.

Coordinator Capone further inquired about the landscape debris that the prior owner had dumped in the back and whether it would be removed, to which the Acamporas confirmed.

Coordinator Capone highlighted the need for a meeting with the tree company before they commenced their work. The Acamporas confirmed that they were hiring Stumpy's for the tree removal and they committed to coordinating a meeting with Coordinator Capone beforehand.

Coordinator Capone then emphasized that once the proposed plantings were in place in the back, the intention was not to landscape the area but to allow it to become naturalized and reforested. Coordinator Capone discussed the conditions that would be included in the Order, noting that the Acamporas would be allowed to remove invasives in the space but that future maintenance would be limited. She emphasized that the area behind the fence would serve as their mitigation area, with most proposed plantings positioned there. Only the arrowwood would be in front of the fence.

The Acamporas expressed their understanding and appreciation for the information, pledging to communicate these details to the team at Stumpy's. Coordinator Capone concluded by stating that she had nothing further for the night's meeting.

Chair Henkels asked Coordinator Capone to comment on the resource area, specifically mentioning the presence of streams on the property. Coordinator Capone explained that, under the Wetlands Protection Act, both streams would be considered intermittent. She noted that they did not appear on a USGS map, so under the local Bylaw, the presumption was that they were perennial, with a 200-foot offset requirement. It was the responsibility of the applicant to prove that the streams dry up. Given the recent conditions, it was challenging for the streams to dry up, so they were assumed to be perennial.

Coordinator Capone used a GIS map to illustrate that the 200-foot offset from the stream across the street came up to the back of the house, and the offset from the stream in the back reached almost the back of the house. There was a small area in between that would not be within 200 feet of those streams. Under the local bylaw, all of this would be in jurisdiction, but under the State Act, the 100-foot offset to wetlands brought the Commission's jurisdiction to the area where four trees were located.

Chair Henkels clarified that the 100-foot offset to the stream across the street did not reach the applicant's yard. Coordinator Capone confirmed, stating that it would be a moot point for that specific stream system. She also mentioned visiting the site after a rain event, confirming that the stream across the street was flowing, while the stream in the back had water but was not actively flowing. Chair Henkels noted the high likelihood that the streams were intermittent and thanked Coordinator Capone for the clarification. He then opened the floor for questions or comments from the commissioners.

Comm. Holtz inquired about the installation of a fence and the removal of invasive species on the property. Addressing the Acamporas, he sought details on how the invasives were cleared and disposed of.

The Acamporas responded, stating that Lynch had cleared the invasives and removed them from the premises. When Comm. Holtz inquired about the method used for clearance, the Acamporas explained that a machine was employed to extract the invasives, and the debris was dumped onto a truck, presumably taken to one of Lynch's properties.

Comm. Holtz continued the discussion, highlighting that an Order of Conditions from the Commission often dictates how invasives should be cleared. He emphasized the potential ecological impact, cautioning against using machinery that might spread seeds. Comm. Holtz also advised that, given the jurisdictional nature of their property, the Acamporas should seek approval from the Commission before undertaking such work in the future.

In response, the Acamporas expressed understanding and gratitude for the guidance. They acknowledged the learning curve as first-timers and assured Comm. Holtz that they would consider the advice for future reference.

Comm. Holtz brought up concerns about the trees on the property, specifically noting that those in the back seemed to be smothered by invasives. He acknowledged the Acamporas' worry about the proximity of healthy trees to the house but clarified that no arborist had declared them as unhealthy. The Acamporas confirmed this assessment, prioritizing the safety of their family.

Comm. Holtz inquired if they had considered trimming larger branches leaning toward the house. The Acamporas explained that due to the potential risk of damage to the home and the safety of their family, they had not considered such measures.

Chair Henkels then turned to Coordinator Capone and inquired about the number of trees outside of jurisdiction, considering two intermittent stream systems. Coordinator Capone responded that she would estimate 8 out of the 12 trees are greater than 100 feet from the streams. Chair Henkels sought clarification, asking if the four remaining trees were situated on the wetland edge. Coordinator Capone corrected, stating they were actually at the top of the slope, approximately 40 to 50 feet away.

Comm. Rogers raised a question concerning the removal of trees closer to the stream and its potential impact on the habitat. She inquired about the possibility of increased sunlight and whether the stream might dry out more quickly. Comm. Rogers sought Coordinator Capone's opinion on the matter.

Coordinator Capone responded, expressing more concern about the trees' role in providing stability to the slope rather than their impact on shading the stream. She noted that the stream area was already well-vegetated, minimizing the significance of the trees for shading purposes. Coordinator Capone explained the geographical layout, indicating that the trees were positioned at the top of the slope, and she suggested that the invasives posed a more substantial threat to the resource area.

In conclusion, Coordinator Capone acknowledged the loss of trees but indicated that the overall impact might be mitigated by the benefits to the wetland area. Comm. Rogers thanked Coordinator Capone for her insight.

Chair Henkels addressed Mr. Acampora, emphasizing the importance of following the proper procedure if the Acamporas were to come before the Commission again. He stressed the need to wait until the Commission had closed the Hearing and a vote on the Order of Conditions had been issued.

Mr. Acampora acknowledged the instruction, stating that he understood the process. Chair Henkels thanked the Commissioners and invited any further questions or comments.

Following this, Chair Henkels opened the floor to the audience, asking if anyone had questions. No inquiries were raised. Then, he inquired if anyone wanted to make a motion to close the Hearing.

On motion by Comm. Porter to close the Hearing, seconded by Comm. Sevier, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance.)

Chair Henkels announced that the Hearing was now closed, and the Order of Conditions would be made available on January 8. Coordinator Capone intervened to clarify that the Commission had already reviewed the conditions before the meeting, deeming them fairly standard. She emphasized that Mr. Acampora needed to be aware of the preconstruction meeting and the expectations for mitigation following the work. Coordinator Capone explained that, unless the applicant opted for a continuation, the Commission could issue the Order of Conditions that night.

Comm. Holtz raised a question about a specific point in the Order of Conditions before the vote. He referred to Line F, which stated that invasive species shall be manually removed under the areas of tree removal. Comm. Holtz sought clarification on what "manually removed" meant in this context.

Coordinator Capone explained that "manually removed" referred to the process of removing invasive plants by hand. She clarified that Lynch typically consulted her if they intended to use chemicals, but in this case, the initial removal involved some mechanical harvesting. Coordinator Capone suggested that during that phase, machinery might have been used to extract the plants, either by ripping the roots out or pulling them with a chain. However, she emphasized that moving forward, only manual removal by hand would be permitted for invasive plants, now that the initial work had been completed.

Comm. Rogers raised concerns about the timing of the invasive plant removal just before a significant storm and inquired whether it may have destabilized the slope, causing erosion into the stream. Coordinator Capone admitted that they didn't have information on the post-storm condition and turned to Mr. Acampora, asking if he had observed any changes after the rain.

Mr. Acampora responded that he hadn't been outside to check after the rain, but from what he could see from his yard, there was no visible alteration in the topography. Coordinator Capone offered to inspect the site to confirm the absence of erosion issues before the Commission issued the Order of Conditions.

Coordinator Capone clarified that the erosion control aspect of the Order wasn't addressed because all the stumps were left in place. She explained that in a normal process, she would have discussed the invasive removal strategy with Lynch to assess potential erosion concerns and the need for erosion controls.

Expressing uncertainty about the current conditions, Coordinator Capone committed to inspecting the site the following day. If erosion or sedimentation issues were identified, she stated that she would require appropriate erosion controls before allowing the rest of the work to proceed.

Comm. Rogers expressed a preference for waiting in this case. Chair Henkels summarized the situation, stating that Coordinator Capone would inspect the property for erosion or related issues. He asked whether the Commission could make a motion to issue the Order contingent upon Coordinator Capone's findings or if they should wait until the draft was fully prepared.

Coordinator Capone explained that she could inspect the site in the morning, and if severe concerns were identified, they could reconvene on January 8. She acknowledged the scheduled tree service and noted that any delay might impact the targeted date but suggested it shouldn't be a significant issue.

Chair Henkels sought clarification on Coordinator Capone's inspection, asking what specifically she was looking for in terms of potential erosion from the recent storm. Comm. Rogers explained her concern, pointing out that without the usual procedure with Lynch discussing best management practices, there was uncertainty about potential runoff into the stream due to the removal of invasive plants.

The Acamporas asked whether leaving the invasives in place was a preferable option. Coordinator Capone clarified that the consideration would have been installing erosion controls at the base of the slope if a significant amount of material were to be removed. Mrs. Acampora suggested incorporating this into the mitigation plan if erosion was observed.

Chair Henkels expressed no objection to including erosion and sedimentation control provisions in the plan if Coordinator Capone deemed it necessary based on her observations. Comm. Rogers and the other Commission members agreed.

Chair Henkels then proceeded to call for a motion to issue the Order of Conditions, incorporating the provision regarding erosion controls that had been discussed earlier.

On motion by Comm. Sevier to issue the Order of Conditions, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance.)

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. Joel Gordon was the applicant. This Hearing was continued from July 10, 2023, and October 2, 2023

On motion by Comm. Sevier to continue the Hearing to January 8, 2024, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance.)

Notice of Intent: 25 Bridle Path, DEP# 301-1407

Chair Henkels re-opened the Hearing for the after-the-fact removal of trees and installation of a playset, and to replant trees and shrubs, remove invasive plants, prune trees, rebuild an existing deck, remove a hot tub, install a new deck, replace existing patio, and expand porch within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Chair Henkels & Eva Watson were the applicants. This Hearing was continued from November 13, 2023.

On motion by Comm. Rogers to continue the Hearing to January 8, 2024, seconded by Comm. Porter, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance.)

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. Richard Albee was the applicant. This Hearing was continued from October 17 and December 12, 2022.

On motion by Comm. Holtz to continue the Hearing to February 26, 2024, seconded by Comm. Rogers, via roll call the vote was unanimous in the affirmative. (Comm. Faust was not in attendance.)

Notice of Intent: Lot 2 Brimstone Lane, DEP #301-1409

Chair Henkels opened the Hearing to construct a new single-family home with associated pool, shed, stormwater management system, yard and landscaping within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Carrie Maciel was the applicant.

Chair Henkels expressed confidence in Vito Colonna's involvement, mentioning that Mr. Colonna is acting on behalf of the applicant. Mr. Colonna, representing Cornerstone Engineering, shared detailed information about the project during a screen share presentation. The vacant lot was recently.

Mr. Colonna described the wooded 3.7-acre undeveloped site subdivided from 137 Brimstone Lane, emphasizing its slope from Brimstone Lane. He highlighted regulated resources in the bottom area, including a perennial stream and associated wetlands leading to Carding Mill Pond. Mr. Colonna pointed out the presence of rare species and priority habitat in specific areas.

The proposed project outlined by Mr. Colonna included a new 5-bedroom home, driveway, septic system, patio, accessory shed, and various stormwater features. Most of the work was situated outside the Buffer Zones, with specific attention to the 200-foot Riverfront Area and the 100-foot Buffer Zone. Mr. Colonna discussed compliance with the Bylaws and the upcoming Planning Board Hearing for the stormwater permit.

Details about stormwater features such as a rain garden and a dry well were provided, with a focus on blending them into the natural environment. Mr. Colonna addressed Buffer Zone impacts, specifying 4,300 square feet of clearing for the berm and rear slope. He quantified alterations to the Riverfront Area, amounting to approximately 2.7% of the total site.

Mr. Colonna mentioned receiving a DEP file number and expressed readiness for comments and questions. Chair Henkels then invited comments from Coordinator Capone.

Coordinator Capone requested Mr. Colonna to display the GIS map for further discussion. Upon viewing the map, Capone observed a stream just north of the proposed development, accompanied by associated wetlands (BVW). She pointed out that these features were not incorporated into the delineation, indicating a potential change in the Buffer Zone and associated impacts.

Capone emphasized the need for a determination on the stream's status, specifically whether it is perennial, as this would require a 200-foot offset. Mr. Colonna acknowledged this concern and expressed intent to check and confirm the stream's status.

Moving on to the delineation, Capone generally commended the on-site delineation but identified areas, particularly numbers 10 and 11, along the stream edge where adjustments might be necessary. She noted that these areas were so close to the river that following one line to the other would place someone in the river. Capone recommended modifying these areas for accuracy on the ground, even though she believed it wouldn't significantly alter the location of the Riverfront.

Mr. Colonna acknowledged the suggestion, specifically addressing the issue between points 10 and 11 and expressing a willingness to make the necessary modifications.

Coordinator Capone recommended a site visit for the proposed development, citing its steep slope and the presence of priority habitat and wetlands. Despite most of the work being outside jurisdiction, Capone expressed concerns about potential negative impacts on the rear due to erosion from the steep slopes.

She acknowledged that soil testing and test boring were exempt under the Wetlands Protection Act but emphasized that under the Bylaw, approval from the Commission is required if testing occurs in the Buffer Zone or Riverfront Area.

Capone questioned the absence of an alternative analysis in the application, to which Mr. Colonna responded that it could be added, particularly focusing on the area where it would be challenging to have a rear yard.

Capone advised the development team to consider opportunities for development outside jurisdiction and raised specific concerns about drainage, suggesting potential alternatives such as underground systems to avoid impacting sensitive areas.

Mr. Colonna mentioned exploring drainage options, including more underground features, to move away from natural lid solutions. Capone acknowledged the consideration but expressed the need for a more constructed stormwater scenario given the site's characteristics.

She also expressed concern about directing water to a neighbor's already saturated area to the north, emphasizing potential negative impacts from the proposed design.

Coordinator Capone emphasized the need for mitigation in resource areas, pointing out the absence of any mitigation measures in the presented package. Mr. Colonna acknowledged the concern and suggested locating and counting trees in the relevant areas before proceeding with the project.

Coordinator Capone brought attention to the landscaping aspect, urging that any future landscaping on the site should involve native species. She acknowledged the limited control outside jurisdiction but emphasized maintaining the pristine nature of the area.

The Board of Health's pending review of the septic design was mentioned, with Coordinator Capone noting the potential for changes on the site based on their comments. Mr. Colonna confirmed the submission to the Board of Health and mentioned plans to present to the Planning Board for stormwater management, acknowledging the initial comments received.

Coordinator Capone strongly recommended efforts to stay out of jurisdiction where possible, particularly given the history of multiple lots being developed from the original mother parcel. She highlighted the need to quantify Riverfront impacts on all three lots and raised the possibility of prior regulations not applying to 137 Brimstone, depending on its date of establishment. The need to quantify Riverfront impacts for compliance with the 5,000 square feet threshold was also emphasized.

Coordinator Capone raised concerns about the accuracy of the endangered species layer based on GIS data, noting that the proposed development is close to that line. She suggested reaching out to Natural Heritage to obtain more precise mapping data, acknowledging that the current approximation may not be definitive.

Following her comments, Coordinator Capone concluded her input, and Chair Henkels expressed gratitude for her observations and comments. Henkels then invited Commissioners to share their comments on the presented project.

Comm. Holtz raised concerns about an unflagged stream on private property. He suggested seeking permission to flag the wetland and, if not possible, taking a conservative approach by considering the wetland edge at the lot line.

Comm. Holtz then requested Mr. Colonna to zoom in on the pool line that borders the potential endangered habitat species (NHESP) line. He inquired about the proximity of the pool and associated structures, such as

fencing and patio, to the designated limit. Mr. Colonna confirmed that all elements, including a fence, would need to fit within the specified limit, and any equipment or structures must be contained outside that boundary.

Comm. Holtz inquired about the natural vegetation island proposed in the project. Mr. Colonna explained that the island is currently wooded with undergrowth, resembling the natural landscape of the area. Mr. Colonna mentioned the possibility of keeping the island and assured that if it stays, they will identify the trees within it to demonstrate what would be preserved.

When asked about invasive species on the site, Mr. Colonna stated that he didn't identify any invasive species during the delineation. He noted that the wetland consultants might mention invasives if found during their delineation.

Comm. Sevier inquired about the slope of the site, noting the 20% drop-off from the road. Mr. Colonna confirmed the 20% grade and explained that the project would involve a cut-and-fill process, with a walk-out basement on the lower side. Mr. Colonna mentioned a slope in the back, approximately 10 feet in height.

Regarding water collection, Sevier asked if all the water from the site would flow to the created basin. Mr. Colonna affirmed this, explaining that they planned to let the water sheet flow overland, with the driveway directed through a trench drain and around the edge of the rain garden. Mr. Colonna acknowledged the potential for soil erosion during construction and suggested using erosion netting or similar measures to stabilize the site.

Sevier expressed concern about potential soil erosion during heavy rainstorms and the need for stabilization. Mr. Colonna agreed, emphasizing the importance of stabilizing the site during the construction period, and mentioned using hydro seed with netting for better root growth.

Comm. Sevier raised a point about water flow during the construction of the driveway, expressing concerns about soil runoff. Mr. Colonna acknowledged this concern and assured that stabilizing the site would be crucial during construction.

Chair Henkels acknowledged that there's still much to review and then referred to a point made by Comm. Holtz. Henkels inquired whether there is any additional impervious surface in the back that hasn't been identified on the current plan. Mr. Colonna responded that, at the moment, there is nothing specified. He explained that they have designated an area for a pool and patio, but the exact details haven't been fully defined yet, and it is currently a reserve area.

Chair Henkels continued with his questions, asking about the substance that would be used to keep the pool in place. He then inquired about the location and proposed limits of work, questioning whether they were marked or staked. Mr. Colonna responded that the limits of work were not staked but could be if needed, especially for a site walk, and they would do so if informed of the specific date.

Mr. Colonna acknowledged that there could be changes based on further discussions and efforts to keep everything outside the resource areas.

Chair Henkels expressed concerns about the potential impact of tree removal during construction, especially considering the denuded area's vulnerability to erosion and sedimentation during rain events. He questioned the anticipated removal of several hundred trees and emphasized the need for erosion control measures, considering the sensitive resource areas on the property.

Chair Henkels inquired about post-construction stabilization plans, including retaining the integrity of the remaining vegetation and how the site would remain stable during and after construction. He also asked if the stormwater report considered pre and post-construction drainage impacts on watershed areas.

Mr. Colonna suggested deferring detailed discussions on stabilization until after the site walk and verifying details with the town. He acknowledged the need for further discussion on proposed changes.

Chair Henkels raised a final question about NHESP (Natural Heritage and Endangered Species Program) input, asking if they needed notification. Mr. Colonna clarified that notification was not technically required.

Chair Henkels requested clarification on any potential input from NHESP and expressed his uncertainty about his availability for the site walk. Mr. Colonna assured that they would seek further information and address concerns at the next meeting.

Chair Henkels initiated the conversation by addressing Comm. Faust and requesting him to introduce himself. Comm. Faust responded by providing his name and mentioning his affiliation with the Commission, having joined the meeting halfway through. When Chair Henkels asked if Comm. Faust had any questions or comments, Comm. Faust expressed his discomfort in making comments without having heard the entire presentation.

Chair Henkels then opened the floor for questions from the audience. He encouraged individuals to raise their hands, state their names and addresses, and limit their comments to approximately 3 minutes.

Coordinator Capone identified Abigail Aronson as the first participant and prompted her to unmute. Abigail expressed gratitude to everyone for their knowledge and concern. She clarified her identity as Abigail Zocher, formerly Abigail Aronson of 125 Brimstone Lane, and shared her connection to the property. Mrs. Zocher, a new homeowner, inquired if the decision would be made that night and expressed relief upon learning there was more time for her to educate herself on the matter.

Chair Henkels responded, indicating that the decision would not be finalized that night. He explained the need for further discussions, involving Mr. Colonna and Oxbow Associates. Chair Henkels mentioned the intention to seek a continuation until January.

After expressing gratitude for Abigail's questions, Chair Henkels opened the floor for additional inquiries. Mrs. Zocher, concerned about the potential impact on the land, mentioned her worries and discussed the active nature of the area.

Chair Henkels assured her that, weather permitting, he would make an effort to visit the site the next morning. However, he couldn't provide a specific time due to other commitments. Despite this, Chair Henkels appreciated Mrs. Zocher's comments and offered assistance. Mrs. Zocher, appreciative of the caring approach towards the land, shared her connection to the property and expressed her intention to educate herself further as a first-time homeowner.

Chair Henkels thanked Mrs. Zocher for her comments, and she reciprocated the appreciation before concluding her participation in the discussion.

Chair Henkels addressed Denise Dunne-Fushi of 109 Brimstone Lane, Mrs. Dunne-Fushi began by expressing concern about the rain retention area, highlighting the significant water flow down the slope beyond a stone wall into an unmarked stream. She reminisced about the area being used for ice-skating during colder weather and suggested converting the rain retention area into a wooded, natural space to absorb water naturally.

Mrs. Dunne-Fushi expressed apprehension about creating a flat land that requires hedging and trimming, emphasizing the importance of preserving trees as a natural means of water absorption. She raised concerns about the historic stone wall, suggesting the need for mitigation to comply with regulations prohibiting the removal of scenic wall stones.

Mrs. Dunne-Fushi inquired about the approval process for altering the stone wall and mentioned the impact of tree removal on the tree barrier between the new home and theirs. She anticipated flooding issues, especially considering the perennial stream and the diverse wildlife in the area.

Chair Henkels thanked Mrs. Dunne-Fushi for her comments, acknowledging the various concerns raised regarding water flow, tree removal, and potential impacts on the environment and wildlife.

Chair Henkels expressed gratitude for the comments and then turned to Coordinator Capone for further inquiries. Mrs. Zocher interjected, expressing concern about the potential removal of trees around her house. She emphasized the importance of the existing trees providing protection from the wind. Mrs. Zocher anticipated a significant loss of trees in the area if the protective barrier was removed. She highlighted the vulnerability of the tall, skinny trees to storms, citing the adverse weather conditions experienced that day.

Chair Henkels acknowledged Mrs. Zocher's concerns, expressing gratitude for her comments.

Mrs. Dunne-Fushi addressed Coordinator Capone, referencing a previous conversation about a specific lot and inquired about Coordinator Capone's thoughts after checking the area. Coordinator Capone responded, noting that the area was very steep and expressing significant concerns with the presented project.

Chair Henkels emphasized the need for a continuation until January, citing ongoing department reviews, the necessity of a site walk, and the gathering of further information. Chair Henkels anticipated additional questions from the Commission, particularly from Coordinator Capone, as they continued to discuss the project. The conversation suggested a collaborative and thorough examination of the proposed development.

Chair Henkels asked Mr. Colonna about a specific date for the continuation of the discussion. Mr. Colonna suggested the 8th, clarifying that the 22nd would be more suitable due to the holidays and the substantial amount of work that needed to be addressed.

On motion by Comm. Sevier to continue the Hearing to January 22, 2024, seconded by Comm. Rogers, with Comm. Faust abstaining due to late arrival, via roll call the vote was unanimous in the affirmative.

Certificate of Compliance:

Mizeracki, 4 Confidence Way, DEP #301-1372:

Chair Henkels introduced a request for a partial Certificate of Compliance for single-family house.

Coordinator Capone provided details, explaining that the property was located on the corner of Union and Confidence, with only one house on that street. She mentioned the demolition of an existing house and the construction of a new one further from the resource area, primarily occurring during the summer.

Coordinator Capone noted that due to the timing of the construction, there was no opportunity to do plantings, and the outstanding work was related to mitigation planting of about 8 shrubs. The area designated for planting was previously a lawn. The site was stabilized, and markers were in place to define the space, with the actual planting scheduled for the upcoming spring. A partial Certificate of Compliance was being requested to confirm the appropriate completion of construction, leaving only the mitigation planting outstanding.

Chair Henkels commended Coordinator Capone for the information and asked about the expiration date of the Order. Coordinator Capone clarified that the Order wouldn't expire until the following year, providing two growing seasons for the plantings.

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

Guyen, 139 Powers Road, DEP #301-1354:

Chair Henkels introduced a request for a Certificate of Compliance for restoration of Adjacent Upland Resource Area violation.

Coordinator Capone presented before-and-after visuals for the audience, highlighting a site that had undergone almost complete removal of the understory and around 24 trees, all within the Buffer Zone and partially within the Riverfront Area.

Coordinator Capone explained that after two growing seasons, the site had substantially restored itself, with a stable understory. The homeowners had worked on removing invasive species, including buckthorn, bittersweet, burning bush, and Japanese barberry. While the site still needed further growth, it met the requirement of having native species, and the homeowners wished to continue invasive removal work. Coordinator Capone recommended that the Commission issue a Certificate of Compliance for the restoration.

Comm. Holtz inquired about the majority of the new growth and the survival of shrubs. Coordinator Capone clarified that native seed mix had been used, leading to herbaceous growth, and confirmed the survival of shrubs, although they were currently 2 to 3 feet tall.

Chair Henkels acknowledged Coordinator Capone's explanation and opened the floor for any additional comments or questions from the Commissioners.

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

Other Business:

Bruce Freeman Rail Trail, DEP #301-1362: Culvert Replacement near Concord Town Line

Chair Henkels moved on to a request for a minor modification for a culvert replacement near the Concord Town line. He inquired if Matt Taylor from Fuss & O'Neill was present.

Coordinator Capone mentioned that there was a representative from Mass DOT, but it seemed they were no longer on the line. Chair Henkels then directly addressed Mr. Taylor.

Mr. Taylor informed the Commission about the recent heavy rainstorms causing substantial water retention on the Bruce Freeman Rail Trail just west of the project area. He mentioned an 8-inch iron culvert with a dash line representing an overflow for a pond. Mr. Taylor explained that the recent pipe inspection revealed cracks in at least two places, causing it to fail in its original purpose.

To address this issue, the plan involved replacing the culvert with a new 9-inch PVC pipe, connected with head walls to absorb the energy of the incoming and outgoing water. Erosion control measures and a coffer dam would be implemented to manage the excavation process, which required digging down to a considerable depth of about 12 feet. Mr. Taylor emphasized that the contractor had the flexibility to choose between a trench box or another method to minimize impact.

Chair Henkels requested Mr. Taylor to explain how the work would be completed. He specifically inquired about any dewatering processes and the placement of any removed material.

Mr. Taylor explained that the contractor would likely isolate the water by building a coffer dam, potentially using sandbags. Dewatering would be necessary for initial maintenance, but any residuals should not be significant. The intent was to put the water back into the pond.

Regarding the excavation process, Mr. Taylor mentioned that the contractor would operate from the top of the bank, reaching down with an excavator. Due to the topography, they wouldn't be able to operate on the lower ends, emphasizing the need to stay on the upper part during construction. The discussion provided insights into the construction methodology and considerations for minimizing environmental impact during the culvert replacement project.

Chair Henkels inquired about the street drop, asking if it was a 12-foot drop. Mr. Taylor confirmed that it was indeed a significant drop of about 12 feet. He explained that the contractor would work from the higher elevation, extending the excavator's arm to perform the necessary tasks. The process would involve installing one end of the pipe, working towards the other end, and implementing different staging strategies to efficiently replace the culvert. Mr. Taylor provided a clear description of how the construction would be carried out considering the topography of the area.

Chair Henkels inquired about the head walls, asking if they would be pre-cast. Mr. Taylor confirmed that the intention was to use pre-cast head walls. This choice was made to minimize the time the site would be open, allowing for a more efficient process of connecting the pipes and stabilizing the area. The use of pre-cast head walls contributes to streamlining the construction process while maintaining stability and functionality.

Chair Henkels asked about a feature in the illustration, specifically in the lower right-hand side, inquiring if it was riprap. Mr. Taylor clarified that it was not riprap but rather for the pipe bedding. He mentioned that the illustration might exaggerate the size, and in reality, it would be around 6 to 8 inches. This material would be placed underneath the pipes for support and stability during the construction process.

Chair Henkels inquired about the discharge location, asking Mr. Taylor to remind the Commission where it led. Mr. Taylor explained that the discharge flowed towards the east side of the trail. To provide more precise information, he mentioned consulting Google Maps.

Coordinator Capone interjected, confirming that the water runs through their conservation land at Frost Farm and exits underneath Route 117.

Chair Henkels thanked Mr. Taylor and opened the floor to the Commissioners for any questions they might have.

Comm. Holtz addressed Chair Henkel's inquiry about the de-watering plan. Mr. Taylor responded by stating that there are various ways to handle it, suggesting consultation with the contractor. Comm. Holtz expressed concern, noting that the contractor wasn't present, and based on his experience, they usually follow the design instructions.

Comm. Holtz sought clarification on whether Mr. Taylor would explicitly instruct the contractor on the coffer dam's construction or leave it open-ended. Mr. Taylor clarified that for de-watering, they would instruct the construction of a coffer dam. He mentioned the flexibility for trench excavation methods, either shoring or trench boxes, leaving it to the contractor's discretion for stabilizing within the expected excavation limits.

Comm. Holtz acknowledged the clarification, apologizing if he misunderstood earlier. He then inquired about the pipe material. Mr. Taylor confirmed that plastic (PVC) is a common choice, explaining its suitability for the application. Comm. Holtz asked about the pipe's surroundings, and Mr. Taylor explained the use of crushed stone, specifying that it has a bedding with special compacting material that is more granular than rocky.

Comm. Holtz expressed readiness for further questions and invited comments from Coordinator Capone or other Commissioners.

Comm. Sevier raised a concern about the potential disruption of the slope while installing the culvert. He inquired about the possibility of boring to minimize disturbance. Mr. Taylor responded by explaining the plan to limit exposure and disturbance between specific dash lines. He suggested the use of shoring, sheeting, or trench boxes

to contain the disturbance within those limits. Mr. Taylor also mentioned the current presence of modified rock fill on the site, which would be disturbed in small sections during installation.

Comm. Sevier sought clarification on whether the drawings explicitly instructed the segmented installation. Mr. Taylor confirmed that it wasn't specified in the drawings but explained that it would make the most sense from a practical and cost-effective perspective. He highlighted the challenges of bringing in equipment down the trail and the difficulty of excavating the entire length at once.

Comm. Sevier acknowledged the explanation, understanding that installing the culvert in segments would be more practical. Mr. Taylor drew a parallel with installing culverts under roadways and the need to keep traffic open during construction.

Comm. Holtz expressed his curiosity about Coordinator Capone's thoughts on the project and requested to speak after her. Coordinator Capone began by discussing her initial concern about setting the new pipe at the same elevation as the existing one. She explained her investigation into historical aerial photos, showing changes in the pond size due to beaver activity. While she initially worried about the pipe being blocked by beavers, she expressed less concern now and mentioned discussions about installing a beaver deceiver at the inlet to prevent blockage.

Her primary concern shifted to slope stabilization. Coordinator Capone presented images of beaver activity and highlighted the exposed bank due to the lowered water level. She expressed concern about the modified rock fill and the steep embankment, emphasizing the need for a plan to re-stabilize it after pipe replacement. Coordinator Capone suggested inclusive measures like removing modified fill and revegetating both sides, emphasizing the importance of clarifying these expectations with MassDOT and the contractor.

Coordinator Capone's final point addressed MassDOT's preference for a 12-inch culvert instead of the proposed 8-inch one, along with their reluctance to install head walls. She stressed the need for the Commission to establish clear expectations to ensure stability and restoration to existing conditions.

Chair Henkels asked Mr. Taylor for comments. Mr. Taylor responded to Coordinator Capone's previous concerns, addressing the question about the pipe size. He explained that they already had a 12-inch RCP (Reinforced Concrete Pipe) in the contract, making it challenging to add new items. Mr. Taylor clarified that they aimed to match the size of the existing pipe and inverts.

Regarding the hydraulic difference between 8-inch and 12-inch pipes, Mr. Taylor mentioned that, hydraulically, there might not be a significant difference when set to the desired invert. He explained that a 12-inch pipe might drain more efficiently during heavy rain, reducing water retention in the pond.

On the topic of head walls, Mr. Taylor argued that they were necessary to pull the pipe back from delineated wetlands and minimize disturbance while stabilizing side slopes. He expressed support for head walls, seeing them as beneficial for stabilization.

Concerning the invert elevation, Mr. Taylor highlighted potential issues with raising the pipe without survey data around the pond. He questioned whether it might cause flooding in other areas. Mr. Taylor emphasized the need for coordination and consideration of engineering aspects.

Coordinator Capone responded, addressing concerns from the Engineering Department about increasing the pipe size without a hydraulic study. She suggested coordination with Engineering to ensure an appropriate pipe size, accounting for increased flow during storm events.

Chair Henkels sought clarification, trying to understand the situation. He asked Mr. Taylor if he was seeking a minor amendment to the current order, to which Mr. Taylor confirmed positively.

Chair Henkels expressed his perception that the plan needed tightening up. He listed key considerations such as the type of pipe to be used, erosion control measures, and the need for coordination with the engineering department to ensure appropriate sizing. He sought the commissioners' opinions on the matter, emphasizing the need for a minor amendment to the existing Order of Conditions for the new drainage system.

Coordinator Capone responded, acknowledging the need for clarity in the plan. She mentioned the environmental monitor's presence on-site during the work to ensure protection and clarified that efforts were made to have the contractor attend the meeting. However, the contractor preferred a fully vetted plan before providing remarks.

Chair Henkels requested Mr. Taylor to clarify the recommended pipe size. Mr. Taylor reiterated that the recommended size is the 8-inch PVC, and it was the result of collaboration with the Engineering Department. Chair Henkels then opened the floor for any further questions or comments.

Comm. Holtz raised concerns about potential changes to the pipe diameter in the plan. He pointed out that if the diameter were to change, adjustments would be needed in the plan, including the depth of the pipe from the finish grade of the rail trail. Comm. Holtz expressed uncertainty about the procedural aspect and whether these changes would still qualify as a minor modification.

Coordinator Capone responded, explaining that procedurally, any modifications would be included in the vote, and she would ensure implementation before the start of the work. She emphasized that the proposed modifications didn't impact additional wetlands beyond the previously approved Order. Coordinator Capone clarified that it wouldn't add new conditions but would be verbalized in the motion.

Comm. Holtz then brought up the issue of beaver activity and the potential need for a beaver deceiver. He suggested ongoing discussions with the contractor and MassDOT during their monthly meetings and indicated that the responsibility for installing a beaver deceiver might fall on the town after the project's completion, at the town's cost.

Chair Henkels invited comments from the Commission. Comm. Sevier provided a summary of Mr. Taylor's design, highlighting that it involves replacing with minor changes. He mentioned that Mr. Taylor is not recommending changing the size from what it is, aligning with the Engineering Department's preference for the 8-inch pipe. Comm. Sevier expressed that, based on this, it seems like a minor modification to the plan.

Coordinator Capone agreed, stating that the only outstanding item would be how the embankments are stabilized, and she suggested that this could be worked out with the contractor.

Comm. Holtz inquired if the need for a beaver deceiver should be incorporated into the plan. Coordinator Capone responded, suggesting that at the very least, a note regarding the beaver deceiver could be added to the plan's notes list.

Comm. Sevier inquired about the timetable for the proposed work. Coordinator Capone responded that they aim to start as soon as possible, preferably before the ground freezes.

Chair Henkels then asked if anyone wanted to make a motion. Comm. Sevier made a general motion to permit the proposed work in coordination with Coordinator Capone as a minor modification to the Order of Conditions. Comm. Holtz suggested a more specific motion, proposing to permit the work as discussed and shown on the plan presented. He added a requirement for a note regarding slope stabilization and any modification to the pipe diameter. Comm. Holtz specified that any modification would require a stamped engineering plan to be presented to Coordinator Capone before work commences.

On motion by Comm. Holtz to approve the minor modification, seconded by Comm. Rogers, with Comm. Porter abstaining due to technical difficulties, via roll call the vote was unanimous in the affirmative.

Discuss Bylaw Fee Structure

Coordinator Capone presented proposed adjustments to the existing fee structure outlined in the Bylaw. The suggested changes are aimed at better aligning fees with the operational costs associated with processing various types of applications.

In essence, the proposed adjustments cover a range of project types, each with its specific fee considerations. For example, for single minor projects such as additions and swimming pools, Coordinator Capone recommended a base fee of \$100, with an additional charge of \$0.50 per square foot for AURA impact. Similarly, new single-family houses could incur a base fee of \$300 plus an additional \$0.50 per square foot of AURA impact.

For larger projects like new roadways and utilities, the existing fee structure of \$500 along with \$2 per linear foot of roadway within a resource area was suggested to remain unchanged. The same approach was proposed for detention basins, with the current fee of \$500 and an additional \$2 per 100 cubic feet of detention basin in a resource area.

However, for multi-family and commercial projects, a more substantial adjustment was recommended, with a proposed increase to a \$1,000 base fee plus \$0.50 per square foot of disturbance in AURA. Enforcement Order fees, already doubled, were suggested to remain unaltered.

Regarding Determinations of Applicability (RDAs), an entirely new fee was proposed at \$75, as currently, there are no State or Bylaw fees associated with RDAs.

In the realm of contaminated site remediation, the existing fee of \$25 was considered insufficient. Coordinator Capone suggested a notable increase to \$500, subject to potential adjustments.

Abbreviated Notice of Resource Area Delineation (ANRAD) inspections would incur a proposed fee of \$500 plus \$2 per linear foot, without capping fees.

For existing developed sites, the current fee of \$25 was recommended to be retained, with an additional \$2 per linear foot.

A new addition was suggested for follow-up inspections. Currently applicable only when tied to an enforcement action, Coordinator Capone proposed introducing a fee for follow-up inspections not linked to enforcement.

Administrative fees were also discussed. Proposed fees for tree inspections included a \$25 charge per tree. Amendments to permits would incur costs equivalent to standalone projects. Additionally, Extensions would potentially have a fee of \$50.

Certificates of Compliance, however, were not proposed to have an additional fee, as they are considered part of the original application cost.

In summary, the proposed fee adjustments were presented as a means to cover operational costs and encourage thoughtful consideration of project impacts, particularly for larger endeavors. Coordinator Capone urged the Commission to review the proposed fee structure and provide feedback. No immediate decision was sought during the meeting, with the topic scheduled for further discussion at an upcoming Conservation Commission meeting.

Comm. Faust inquired about the frequency of reviewing the fee structure and when it was last assessed. Coordinator Capone clarified that the fees in the Bylaw were established in 1996. She mentioned uncertainty regarding when the fees in the regulations were implemented and expressed the need for further research.

Coordinator Capone explained that if the fees remain in the Bylaw, any amendments must go through the Town Meeting process, making it a more involved and time-consuming procedure. However, if the fee structure is

incorporated into the regulations, the Conservation Commission gains flexibility to adjust fees through a Public Hearing process. While she acknowledged the importance of periodic reviews, Coordinator Capone suggested amendments no more frequently than every 5 to 10 years.

Comm. Porter suggested seeking assistance from the Finance Department to analyze different fees and assess increasing costs. He emphasized the need for justification when adjusting fees to avoid negative feedback. However, Coordinator Capone expressed doubt about the Finance Department having the resources for such a comprehensive analysis, given their current constraints. She suggested that they might provide a percentage increase since 1996. Coordinator Capone acknowledged the importance of thorough research on fee structures in other communities but stressed the need to handle this independently rather than burdening the finance department.

Comm. Holtz expressed concern about the potential imposition of stepped fees based on changes in the Adjacent Upland Resource Area (AURA) and its implications for individual homeowners. He sought clarification on how the definition of AURA might be applied and whether this could lead to additional costs for property owners.

Comm. Holtz also raised a critical point regarding tree removal fees, suggesting a nuanced approach. He proposed that fees should only be levied when tree removal necessitates Commission involvement, either through a Notice of Intent (NOI) or a Determination of Applicability. This proposal aimed to distinguish between routine tree removals, where homeowners contact the office for approval, and those instances requiring a more formal Commission process.

In exploring the potential challenges in charging per tree, Comm. Holtz highlighted scenarios where ambiguity might arise, such as cases where a tree has partially fallen or when dealing with multi-leader trees. These nuances, he pointed out, could complicate the fee structure and necessitate further clarification.

Furthermore, Comm. Holtz sought to ensure that the fee structure remains fair and comprehensible to residents. He emphasized the importance of making the fee structure transparent and easily understandable to the broader community.

Lastly, Comm. Holtz clarified a point related to the State fee structure, indicating that the proposed local fees, as discussed by Coordinator Capone, would be additional charges and not meant to replace or cover the State fees.

During the meeting, Chair Henkels summarized the next steps regarding the fee structure discussion. He acknowledged that Coordinator Capone would like the Commissioners to individually review the proposed fee structure, conduct their own research, and come prepared for further discussion on the eighth. The goal is to refine and finalize the fee structure, allowing Coordinator Capone to present the recommendations to the Town Manager by the end of the month for consideration in the Spring Town Meeting.

Chair Henkels confirmed with the Commissioners if they were all comfortable with this plan, and there was a consensus to revisit the topic on the eighth. No formal vote was taken during this meeting. The focus was on ensuring that Commissioners could provide additional comments, feedback, and research to enhance the proposed fee structure before the deadline.

Adjourn Meeting

On motion by Comm. Porter to adjourn the meeting, seconded by Comm. Faust, via roll call the vote was unanimous in the affirmative. The meeting was adjourned at 9:28 PM.