



SUDBURY CONSERVATION COMMISSION MINUTES

Meeting Minutes of Monday, February 5, 2024

Present: David Henkels, Chair; Luke Faust (7:02PM); Bruce Porter; Kasey Rogers; Mark Sevier; and Lori Capone, Conservation Coordinator

Absent: Ken Holtz, Vice Chair; Jeremy Cook;

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

Minutes:

On motion by Comm. Rogers to accept the minutes of the December 18, 2023 meeting, seconded by Comm. Porter, via roll call the vote was unanimous in the affirmative.

Minor Modification:

Eversource Underground Transmission Line, DEP 301-1287:

Chair Henkels began the meeting regarding a minor modification for the Eversource underground transmission line. Being an abutter to the project, Comm. Rogers recused herself from the discussion. Comm. Faust entered the meeting and introduced himself at this time.

Marc Bergeron from Epsilon Associates presented on behalf of Eversource, requesting permission to proceed with a minor design change for a culvert just east of Sudbury Lumber. He explained that the culvert, originally a stone box section, had been modified with a ductile steel pipe and a clay pipe at different times. He proposed adding a 12-foot extension to better address the area's drainage issues. This would involve removing additional trees outside the work limits.

Coordinator Capone supported the change, emphasizing its importance for long-term stability. She expressed concern about potential water issues due to the current setup and highlighted that the modification was requested by the town for the trail's stability. Comm. Sevier and Comm. Porter raised questions clarifying the changes and the materials involved. Coordinator Capone confirmed that the modification would be minor and involved extending beyond the previously approved limits.

Chair Henkels made a request for comments from the audience, to which there were none.

On motion by Comm. Porter to issue the minor modification, seconded by Comm. Faust, via roll call the vote was unanimous in the affirmative.

Certificate of Compliance:

Loughlin, 68 Willard Grant Road, DEP #301-1408:

Coordinator Capone provided an update, stating that this property had been reviewed by the Commission recently, approximately a month prior. The purpose of the review was to address the removal of five large pine trees located at the top of a slope, which were within the Riverfront Area. She confirmed that the trees had been removed as per the conditions set forth in the Order, and the required mitigation, including the removal of burning bush in the understory, had also been completed.

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

Malavasic: 4 Southwest Circle (Lot 14 Peakham Road), DEP #301-384:

Chair Henkels began the discussion concerning the outstanding Order of Conditions for the construction of a single-family house. Coordinator Capone provided a brief background, noting that the property had undergone changes over the years, resulting in a deviation from the original plan. The Order of Conditions from the 1990s was still open, but restoration was needed before a Certificate of Compliance could be issued.

Karen Sebastian, a landscape architect from Karen Sebastian LLC representing the property owners, introduced herself and shared a screen to present the restoration plan. She explained the history of the property, showing photographs of the property condition in 2003 and 2019, highlighting the area where trees were removed without authorization. Ms. Sebastian presented three restoration plans: one which established a meadow, followed by a second which added a few native trees and shrubs, and finally, a more comprehensive plan that revegetated the entire area.

Comm. Sevier inquired about the maximum height of the trees that would be planted, expressing concern about potential future tree removal applications. Ms. Sebastian clarified that the proposed trees would grow to about 50 feet, with the tallest being river birches, but they were strategically placed away from houses to avoid causing issues.

Chair Henkels then asked about the timeline for the plants to establish themselves and the percentage of survivorship expected. Coordinator Capone mentioned that typically, two years are required for establishment, but given the plant sizes, one year might suffice, with a survivorship rate of around 90% being acceptable for native species. There was also discussion about the irrigation system's condition after installation and whether it should be allowed to remain temporarily to aid in plant establishment.

Comm. Porter suggested allowing the irrigation system to continue until the plants were well established, with a set expiration date for its use based on the success of the plantings. Comm. Sevier and Coordinator Capone discussed the practicality of allowing the irrigation system to remain and the need for ongoing monitoring for a couple of years to ensure the plantings' success.

Chair Henkels sought clarification regarding the process after the Commission makes a recommendation on one of the three proposals, emphasizing the need for a letter outlining the expectations for property restoration since a Certificate of Compliance cannot be issued before the closing. Coordinator Capone confirmed this and expressed willingness to draft such a letter to ensure clarity for all parties involved.

During the audience participation phase, Justine Drabicki, one of the buyers, inquired about whether the other two proposals were still being considered or if they were off the table. Chair Henkels clarified that no motion had been made yet, so all options were still on the table pending further discussion.

Michael O'Brien, attorney representing the buyers, noted that the buyers expected a backyard with less obstruction and were worried about potential impacts on existing structures due to future tree growth. He suggested that the buyers would prefer options one or two or a combination of both.

Karen Sebastian provided a summary of the first two proposals, highlighting the differences in terms of installing bounds, reseeding, and adding trees and shrubs.

Chair Henkels then invited additional comments or questions from the Commissioners.

Comm. Sevier expressed confusion about the second and third plans and asked Ms. Sebastian to explain how these plans were developed. Karen explained that the first plan was based on initial information, the

second plan added trees and shrubs after discussions with Coordinator Capone, and the third plan was a more comprehensive approach suggested after further consultations.

Comm. Sevier also questioned Ms. Sebastian about whether she worked for the potential buyers or the sellers. She clarified that she was working for the sellers to rectify the property before selling it, as they couldn't sell it without a clear title. Comm. Sevier expressed his preference for a plan that involves input from potential buyers to ensure everyone's satisfaction.

Comm. Porter agreed, highlighting the importance of mutual agreement between buyers and sellers to avoid a situation where buyers have to accept or walk away from a predetermined plan.

Chair Henkels outlined five potential pathways that could be taken to address the situation. These options ranged from letting the buyers continue with the property despite the open Certificate of Compliance and lien on the property until the work was completed, to allowing the new buyers to take on the responsibility of fulfilling the restoration obligations in the future.

Amy Weil, the real estate attorney representing the seller, emphasized the critical need for clear guidance from the Commission to facilitate the sale. She pointed out that the elderly sellers had already purchased another home and were eager to resolve the situation swiftly.

Comm. Faust and Comm. Sevier shared their preferences and considerations regarding the proposed restoration plans. Comm. Sevier raised a crucial question about the buyers' willingness to proceed based on the Commission's likely approval of a plan between options 2 and 3.

Atty. O'Brien stressed that the buyers were hoping for Plan 1 (meadow) but were open to a compromise between options 2 and 3 if that aligned better with the Commission's expectations.

Comm. Rogers expressed that, from her viewpoint, the dispute between the buyer and seller seemed somewhat irrelevant in the context of the Commission's decision regarding the land. Comm. Rogers noted that the Commission had already shown willingness to negotiate down from Plan 3.

Chair Henkels, reflecting Comm. Rogers's sentiments, suggested that Plan 2 could be enhanced to meet the Commission's requirements, including the installation of bounds and decommissioning irrigation as needed. The other commissioners, Comm. Faust, Comm. Sevier, and Comm. Porter, expressed agreement with this direction, settling on what they referred to as "Plan 2 and a half."

Ms. Drabicki, expressed interest in a plan between 2 and 3 but raised concerns about the approval process and potential future issues. Chair Henkels and Comm. Sevier reassured her that the Commission aimed to find a solution that met everyone's needs while adhering to regulations.

Comm. Rogers added that the responsibility could fall on either the current homeowners or the potential buyers, depending on how the situation unfolded. Comm. Sevier emphasized the importance of the buyers taking on the responsibility as it aligned with the property's future ownership.

Coordinator Capone clarified the next steps, explaining that a Request for Determination would need to be filed with the Commission once a plan was agreed upon. This plan would undergo review and possibly modification, with a permit issued for implementation by a set deadline.

While no formal motion was required during the meeting, the Commission's direction was to work collaboratively to develop a plan that met both conservation requirements and the buyers' preferences, ensuring a successful restoration of the property.

Vigener: 36 Plantation Circle, DEP #301-578:

Chair Henkels began a discussion involving an outstanding Order of Conditions for the construction of a single-family house. He explained that this request was related to an order issued back in 1997.

Coordinator Capone then provided details, noting that despite being an unusual case, it mirrored the previous discussion. The issue arose when the prior owner, just before selling the property in 2011-2012, cleared trees within the Conservation Restriction and buffer zone without informing the current owner, who is now trying to sell the property. She highlighted specific issues, including a brush pile, a landscape pile, and the cleared area, along with the homeowner's efforts to rectify the situation.

Niklas Vigener, the current owner, expressed his difficulties with the situation, seeking assistance from the Commission to resolve the issues promptly due to an impending closing. He presented a proposed remediation plan, explaining the current state of the property and his efforts to address the violations.

Chair Henkels then opened the floor for comments and questions from the Commissioners, with Comm. Sevier inquiring about a restoration plan. Mr. Vigener responded with an overview of his situation and the proposed remediation plan, including photos of the property and a timeline for addressing the issues.

Chair Henkels asked for further comments from Coordinator Capone, who emphasized the importance of restoring the land to its natural condition due to the Conservation Restriction. She recommended a decision on the brush pile and outlined a timeline for the homeowner to submit a landscape plan for approval.

Chair Henkels summarized the process, similar to previous cases, and asked the Commissioners for any additional comments or questions.

Comm. Sevier inquired about the expectations of the potential buyer and whether they were aware of the proposed changes to the property. He highlighted the importance of considering both the conservation requirements and the practical aspects of real estate transactions. He emphasized the need for clarity to ensure all parties involved understood the implications of the restoration plan.

Comm. Porter echoed Sevier's concerns, seeking clarification on how the proposed plan aligned with previous discussions and whether there were any violations or significant differences to address.

Comm. Faust raised questions about the specific requirements for the planting plan and suggested that Vigener's proposal could be feasible with appropriate documentation and approvals.

Comm. Rogers emphasized focusing on the land's restoration rather than individual real estate transactions, highlighting the commission's responsibility to uphold conservation standards.

Comm. Faust expressed support for restoring the area as closely as possible to its original state, suggesting leaving the brush pile as a wildlife habitat but removing lawn clippings.

Chair Henkels intervened at various points to steer the discussion and seek consensus among the Commissioners. He requested audience comments.

Jan Pitzi, representing the seller Mr. Vigener, mentioned being the previous listing agent when Mr. Vigener purchased the property, and shared information about the previous owners and their interactions with the Commission regarding the property's restrictions. Ms. Pitzi also mentioned that she believed authorization was provided to the previous owner, Nancy Sexton, for tree removal and planting blueberry bushes.

She highlighted the buyer's perspective, confirming their awareness of the property's condition and restrictions. Ms. Pitzi emphasized that the buyer was eager to move into the property despite the restoration discussions.

Chair Henkels thanked Ms. Pitzi for her comments and acknowledged the importance of her input.

Ms. Pitzzi clarified that she represented the seller but had a good rapport with the buyers, which facilitated smooth communication and understanding between all parties involved.

Chair Henkels then requested any further comments or questions from the audience. Upon receiving none, he ended this discussion.

Chair Henkels called for a 3-minute recess.

On motion by Comm. Porter to recess for three minutes, seconded by Comm. Sevier, via roll call the vote was unanimous in the affirmative.

On motion by Comm. Rogers to reopen the meeting, seconded by Comm. Faust, via roll call the vote was unanimous in the affirmative.

Westbrook: 27 Fairhaven Circle, DEP #301-295:

Chair Henkels began the discussion which pertained to an outstanding Order of Conditions for the removal of fill to address an Enforcement Order. Coordinator Capone explained that an Enforcement Order had been issued in the 1990s due to a pile of dirt being placed on the Westbrook property, likely related to subdivision work on adjacent parcels. She confirmed that the fill pile was no longer present, and the purpose of this agenda item was to clean up the title for the property as they had filed a Request for Determination of Applicability for later discussion.

Chair Henkels then opened the floor for questions from the Commission regarding this issue.

On motion by Comm. Faust to issue the Certificate of Compliance, seconded by Comm. Rogers, with Comm. Porter abstaining due to technical issues, via roll call the vote was unanimous in the affirmative.

On motion by Comm. Faust to lift the Enforcement Order, seconded by Comm. Sevier, with Comm. Porter abstaining due to technical issues, via roll call the vote was unanimous in the affirmative.

Westbrook: 27 Fairhaven Circle, DEP #301-354:

Chair Henkels began the discussion pertaining to an outstanding Order of Conditions for the house construction. Coordinator Capone explained that this was related to a construction project from the early nineties on the same lot. The construction of the house had been done according to the plan, but there was one perpetual condition that required clarification regarding the area of clearing or natural vegetation that needed to be maintained adjacent to the property. She mentioned that Mr. Westbrook was present in the meeting to discuss this matter.

Coordinator Capone recommended issuing the Certificate of Compliance with a modification to the condition. The revised condition stated that on the east side of the house, a minimum of a 15-foot naturally vegetated area shall be maintained. This area would correspond to the down-gradient area of the retaining wall and extend 20 feet beyond the east side of the foundation.

Chair Henkels opened the floor for questions from the Commission regarding this matter. Mr. Westbrook confirmed that he found the proposed language acceptable.

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

Wetland Applications:

Notice of Intent: 6 Old Coach Road, DEP #301-1412

Chair Henkels re-opened the Hearing for the project to construct an addition and deck within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Julie Dereshinsky was the applicant. The Hearing was continued from January 22, 2024.

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

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

Notice of Intent: 87 Cudworth Lane, DEP #301-1411

Chair Henkels re-opened the Hearing for the project to construct a garage within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Jehangir Jungalwala as the applicant. This Hearing was continued from January 22, 2024.

Mr. Jungalwala explained that they had consulted with Bill O'Rourke and were working on a plan for approval by Dan Nason regarding property easements. He anticipated approval from the Select Board, aiming to present a formal proposal at a later meeting.

Mandy Hicks, representing the applicant, clarified that they were meeting to discuss easement voting and mentioned ongoing discussions about mitigating runoff. Chair Henkels advised them to present all details at the next meeting for comprehensive review by the Commission. Mr. Jungalwala confirmed his request for a continuance.

On motion by Comm. Sevier to continue the Hearing to February 26, 2024, seconded by Comm. Faust, with Comm. Porter abstaining due to technical difficulties, via roll call the vote was unanimous in the affirmative.

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

Chair Henkels re-opened the Hearing for the project 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. This Hearing was continued from December 18, 2023.

Vito Colonna from Connorstone Engineering, representing the applicant, explained the major changes in the plan. They had identified additional wetlands through a delineation process by Oxbow Associates, which affected the layout of the property. They rotated the house, shifted the septic system, and adjusted stormwater management to comply with regulations and minimize environmental impact. Mr. Colonna outlined the alterations in detail, including the use of technology for septic treatment and underground stormwater systems.

He also discussed re-vegetation plans for disturbed areas within buffer zones and sought feedback from the Commission on vegetation choices. Mr. Colonna mentioned the need for further testing with the Board of Health before finalizing the plan. He addressed concerns about natural heritage lines and adjustments made to ensure compliance and safety.

Coordinator Capone expressed her concerns about the amount of disturbance in jurisdictional areas and the need for justification for such disturbances. She suggested potential solutions, such as using retaining walls to minimize disturbance and reduce slope steepness, as well as exploring options like a front-loading garage or relocating the leach field to minimize grading. She also emphasized the importance of ongoing maintenance for vegetated slopes.

Mr. Colonna responded by explaining the challenges and limitations they faced with various proposed changes due to groundwater elevations, lot slopes, and regulatory requirements. He presented sketches of alternate layouts they had considered and discussed the owner's preferences and architectural constraints.

Coordinator Capone also pointed out that approving the current plan would mean approving potential future alterations to the Riverfront, such as replacing the septic system. Mr. Colonna mentioned the need for permission to conduct testing within the riverfront area and sought authorization from the Commission for this.

Coordinator Capone indicated that, given the site's openness and her familiarity with it, she would be comfortable with the Commission authorizing the testing without a separate filing.

Comm. Rogers inquired about the pool, to which Mr. Colonna responded that while there's no current plan to build it, they have accounted for potential impervious area in the stormwater system design. The owner wanted to reserve a spot for a pool in the future but might only construct a patio instead.

Chair Henkels then asked about the potential need for blasting due to the significant bedrock in the area. Mr. Colonna mentioned they didn't encounter much ledge during testing and didn't anticipate blasting, although it couldn't be guaranteed.

Chair Henkels also noted the reduction in canopy disturbance with the new plan and asked about erosion control measures and the use of wood chips. Mr. Colonna discussed the erosion control plan, temporary measures like erosion mats, and the potential use of wood chips as berms to prevent erosion during clearing.

Chair Henkels expressed concerns about the steep slope and the need for a robust erosion control plan. He also mentioned the potential use of wood chips and asked if they would remain and if fill would be laid on top of them. Mr. Colonna explained that while some wood chips could be spread, a high volume would need to be removed to avoid settlement issues.

Finally, Chair Henkels opened the floor to questions from the audience.

During the meeting, Carrie Maciel, the applicant for the project, took the opportunity to introduce herself and provide some insights into her perspective on the construction endeavor. She conveyed the significant emotional and financial investment that she and her family had made over the past 15 years to realize their dream project. She expressed her dedication to understanding the process and meeting the expectations outlined in the meetings.

Chair Henkels then guided the discussion toward scheduling the continuation of the hearing. He proposed potential dates, and after some deliberation, they settled on March 11, 2024, as the suitable date for the next meeting.

One of the critical topics of discussion during the meeting was the choice between retaining walls and vegetated slopes. Mr. Colonna, during the meeting, presented the concept of a retaining wall to minimize grading in the riverfront area. However, some Commissioners expressed a preference for vegetated slopes due to their natural appearance and long-term stability. Coordinator Capone

particularly emphasized the importance of minimizing disturbance to the maximum extent possible, aligning with the regulatory guidelines.

On motion by Comm. Faust to continue the Hearing to March 11, 2024, seconded by Comm. Sevier, with Comm. Porter abstaining due to technical issues, 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 for the project 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. Faust to continue the Hearing to March 25, 2024, seconded by Comm. Sevier, with Comm. Porter abstaining due to technical issues, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 143 Union Avenue, DEP #301-1402

Chair Henkels re-opened the Hearing for the project to construct an addition to a single-family home within the 100-foot Buffer Zone and the local 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Faye Zou was the applicant.

On motion by Comm. Sevier to continue the Hearing to March 25, 2024, seconded by Comm. Faust, with Comm. Porter abstaining due to technical issues, via roll call the vote was unanimous in the affirmative.

Request for Determination of Applicability: 27 Fairhaven Circle

Chair Henkels began the meeting for the project to remove trees within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw. Alanson Westbrook was the Applicant.

Mr. Westbrook began explaining the situation with seven trees located within the Buffer zone. He mentioned the challenges posed by these trees, such as dead branches, leaning over the house and garage, and previous incidents of branches falling during storms.

Mr. Westbrook described each tree's condition and location using diagrams and photographs. He emphasized the urgency of removing these hazardous trees due to safety concerns, especially considering their proximity to the house and nearby properties.

Coordinator Capone provided additional context and affirmed the hazardous nature of the trees. She outlined the proposed method of removing the trees using a crane positioned on the driveway to minimize ground disturbance. She also mentioned leaving stumps intact and cutting one tree high to create a snag for wildlife habitat.

Chair Henkels thanked Coordinator Capone for her detailed summary of the discussion regarding the trees on Mr. Westbrook's property. He then invited the Commissioners to ask any questions they had.

Following that, there were no comments or questions from the audience regarding the issue.

On motion by Comm. Sevier to issue a Negative Determination of Applicability 2 and 3, seconded by Comm. Faust, via roll call the vote was unanimous in the affirmative.

Request for Determination of Applicability: 331 Hudson Road

Chair Henkels began the meeting for the project to remove trees within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw. Brian Huss & Dalana Bewley were the Applicants.

Mr. Huss confirmed his address and mentioned that they had submitted all necessary information to Coordinator Capone. He highlighted that they were facing issues with several large pine trees on their property, with one of them causing significant damage to their house in December. He explained that multiple trees or large branches had fallen previously, leading to concerns from their insurance company about potential cancellation if the situation wasn't addressed promptly.

Chair Henkels thanked Mr. Huss for his presentation and then turned to Coordinator Capone for her input on the matter. Coordinator Capone described the property as heavily wooded with large pine trees, emphasizing that its location next to a perennial stream. She mentioned that an arborist had identified several problematic trees due to their proximity to the house and the septic system, leading to the proposal for their removal.

Coordinator Capone also discussed the mitigation measures proposed by the homeowners, which included replanting with two dogwoods, one sugar maple, one red maple, and one striped maple. While this wasn't a one-to-one replacement for the removed trees, Coordinator Capone expressed her comfort with the mitigation provided considering the constraints of the property.

After Coordinator Capone's comments, Chair Henkels asked the Commissioners if they had any questions. After some discussion and agreement among the Commissioners, the Commission expressed approval of proposed work.

Coordinator Capone interjected to specify the special conditions related to the application, ensuring that the applicant was aware of them. She mentioned that the applicant should contact her when the tree company arrives, access all trees from the driveway, leave stumps in place, complete mitigation plantings by June 1st of the current year, and provide photo documentation after completing the work.

Chair Henkels thanked Coordinator Capone for the clarification and directed the question to Brian Huss, asking if he was okay with the outlined conditions. Mr. Huss expressed his approval, stating that it would give them peace of mind knowing their house would be safer.

On motion by Comm. Faust to issue a Negative Determination of Applicability 2 and 3, seconded by Comm. Sevier, via roll call the vote was unanimous in the affirmative.

Adjourn Meeting

On motion by Comm. Porter to adjourn the meeting at 9:52 PM, seconded by Comm. Faust, via roll call the vote was unanimous in the affirmative.