



SUDBURY CONSERVATION COMMISSION MINUTES

Meeting Minutes of Monday, October 7, 2024

Present: David Henkels, Chair; Ken Holtz, Vice Chair; Jeremy Cook; Luke Faust; Bruce Porter; Mark Sevier; Harry Hoffman, Associate Member; and Lori Capone, Conservation Coordinator

Absent: Kasey Rogers

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

Minutes:

September 9, 2024

On motion by Comm. Cook to accept the minutes of the September 9, 2024 meeting, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

September 23, 2024

On motion by Comm. Faust to accept the minutes of the September 23, 2024 meeting, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

Wetland Applications:

Request for Determination of Applicability: 24 Goodnow Road, RDA #24-16

Chair Henkels resumed the meeting for the project to alter grade within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Goodnow Partners, LLC was the applicant. This meeting was continued from July 1, 2024.

On motion by Comm. Faust to continue the Hearing to October 24, 2024, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 87 Moore Road, DEP #301-1424

Chair Henkels resumed the Hearing for the project to construct a garage with associated driveway and drainage, relocate an existing fence, and remove trees within the 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Dwight D. Henderson was the applicant. This Hearing was continued from August 26, 2024.

On motion by Comm. Sevier to continue the Hearing to October 21, 2024, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.

Request for Determination of Applicability: 18 Wolbach Road, RDA #24-26

Chair Henkels began the meeting for the project to repair and construct retaining walls associated with the greenhouse within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Sudbury Valley Trustees was the applicant.

On motion by Comm. Porter to continue the meeting to October 21, 2024, seconded by Comm. Sevier, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 9 Southwest Circle, DEP #301-TBD

Chair Henkels began the Hearing to remove trees and plant shrubs within the 100-foot Buffer Zone and 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. John Bleuer was the applicant.

Mr. Bleuer introduced his property at 9 Southwest Circle, noting that it had two streams flowing adjacent to both sides of the house. He explained that the project involved the removal of several trees that posed a threat to his house. He mentioned that he had previously discussed the project with Coordinator Capone and that she had examined the trees in question.

Mr. Bleuer provided an overview of his property, emphasizing the natural beauty and the growing size of the white pines. He pointed out that several of these trees were now dangerous and leaned toward his house. He explained that similar trees had already caused damage to a neighbor's property during a recent storm. He referenced a proposal from New England Tree Masters for the removal of 12 to 15 trees, all within the identified area, and indicated his intention to plant native species in their place.

Mr. Bleuer expressed his commitment to continuing his efforts in managing invasive bittersweet and maintaining the natural beauty of the property.

Coordinator Capone agreed with the proposed tree removals, noting that the trees would only become more problematic over time as they leaned towards the house. However, she recommended increasing the number of plantings beyond the proposed 17 shrubs. She explained that the Commission typically required four shrubs per removed tree, and more shrubs would help offset the removal of the trees.

Coordinator Capone also highlighted the importance of adhering to an existing Order of Conditions from 1996, which required the installation of bounds at the edge of the lawn to prevent encroachment into protected areas. She suggested that addressing the bounds and completing the plantings would allow for the closure of the existing Order, which had not yet been officially released.

Chair Henkels opened the floor to the Commissioners for further questions and discussion.

Comm. Holtz asked for clarification regarding the original Order of Conditions, which had required the installation of concrete bounds or pipes. He wanted to confirm whether the suggested replacement plantings and shrubs would take the place of these markers or if actual physical markers were still necessary. Coordinator Capone stated that physical markers were indeed required. She had asked Mr. Bleuer if he was aware of any existing markers, but neither he nor she had observed any during their visits to the property.

Mr. Bleuer explained that, according to his research, the previous owner, who had purchased the property from the builder, was likely unaware of the requirement, and it seemed the builder had not passed this information on. Coordinator Capone noted that this was a common occurrence when properties transferred ownership without closing out Orders of Conditions. She reiterated that the original Order had required concrete bounds or iron pipes but suggested that there were alternative options available, such as boulders or FENO stakes. She expressed her willingness to work with Bleuer on choosing a permanent demarcation solution.

Mr. Bleuer responded positively to this, expressing his willingness to comply with the requirement for permanent markers. He also affirmed that no lawn encroachment had occurred since 1996, and he was eager to add more shrubs.

Coordinator Capone reminded Mr. Bleuer that the Department of Environmental Protection (DEP) had not yet issued a project number for his application, so the Hearing would need to be continued. She suggested working with him on a plan during the interim so that the project could move forward once the DEP number was received. Mr. Bleuer agreed.

Chair Henkels initiated a discussion regarding the old Order of Conditions, asking Coordinator Capone if it needed to be closed out before making decisions on the new Order. She confirmed that the two-week continuance would allow time to address this issue. Since the old Order was no longer active, the work to install the bounds

would be covered under the new Order of Conditions. She suggested that the Commission could incorporate this work into the new Order and close out the old one prior to the next meeting.

Chair Henkels expressed approval of this approach, which Comm. Ken Holtz echoed.

Comm. Holtz then asked a question about one of the trees marked for removal, referencing a dead tree that Coordinator Capone had suggested topping rather than completely removing. Comm. Holtz was curious as to why the Tree Masters' bid didn't reflect this. Mr. Bleuer explained that Tree Masters would return for a second pass to finalize the details of the work once decisions had been made. He acknowledged that Tree Masters may have proposed removing the tree, but it was Coordinator Capone's recommendation to top it.

Chair Henkels asked Bleuer if he had any plans to expand his driveway, to which Bleuer responded that he did not.

After ensuring that no one from the audience had questions, Chair Henkels asked for Mr. Bleuer's permission to continue the hearing until October 21, 2024, without further discussion. Mr. Bleuer agreed, mentioning that his landscaper was prepared to plant 50 shrubs before winter if the timeline allowed. Chair Henkels assured him that Coordinator Capone would also work to keep things on track with the DEP.

On motion by Comm. Cook to continue the Hearing to October 21, 2024, seconded by Comm. Porter, via roll call the vote was unanimous in the affirmative.

Notice of Intent: 47 Stonebrook Road, DEP #301-1427

Chair Henkels opened the Hearing for the project to upgrade and expand the existing driveway and install a new culvert within the 100-foot Buffer Zone and the 200-foot Riverfront Area, pursuant to the Wetlands Protection Act and Sudbury Wetlands Administration Bylaw. Jianquan Liu was the applicant.

Ian Ainslie, an engineer from Meisner Brem Corporation, shared a site plan and described the property's location near Horse Pond Road and the surrounding wetlands. He highlighted the presence of an isolated wetland and a large Bordering Vegetated Wetland near the driveway, with Dudley Brook nearby, triggering a 200-foot Riverfront zone. He explained that their work would avoid the floodplain and be focused on regrading and paving the driveway, adding additional paved areas for parking and a turnaround space.

Mr. Ainslie emphasized the issue of ponding from the isolated wetland near the garage, which overflows onto the driveway. To address this, he proposed installing overflow pipes to drain excess water into the Bordering Vegetated Wetland without affecting the water elevation of the isolated wetland.

He pointed out that the driveway's elevation was close to the wetlands, which necessitated raising it by about a foot. Two four-inch PVC pipes would be installed as overflow measures. He also mentioned that a small section of the project fell within the Riverfront Area, and as mitigation, they planned a replanting effort in the inner riparian zone.

Coordinator Capone commented that the isolated wetland likely formed in the 1950s when the driveway was constructed without consideration for the wetland, resulting in ponding that spills over the driveway during heavy rain. She acknowledged the need for the proposed culverts but requested clearer details on their elevations. Mr. Ainslie clarified that the culverts would be set three to four inches above the wetland's bottom to avoid altering the wetland's capacity.

Coordinator Capone also noted the increase in asphalt area near the wetland and the absence of two wetland flags (3 and 4), which she asked Mr. Ainslie to reestablish for boundary confirmation. She expressed concern about a large tree near the driveway turnaround and asked Mr. Ainslie to assess if the tree would be impacted by the driveway regrading.

Additionally, Coordinator Capone mentioned that the culverts are within the Town's Right of Way, requiring approval from the Department of Public Works (DPW). She requested Mr. Ainslie to consider incorporating infiltration measures to manage runoff from the new asphalt. She also highlighted invasive species on the

property, particularly in the mitigation area, and asked for an invasive species management plan, as well as an increase in the mitigation effort.

Coordinator Capone identified debris, such as branches and metal objects, dumped near the wetland edge, asking for its removal as part of the project.

Chair Henkels asked Mr. Ainslie if daylighting provisions or stream-crossing standards applied to the project, to which Ainslie replied they did not, given the absence of endangered species or stream crossings. Chair Henkels requested a brief summary from the Wetland Scientist regarding the potential vernal pool status for further clarity.

Henkels then opened the floor to questions from the Commissioners.

Comm. Holtz raised concerns about the proposed tree located near Wetland Flag 3 on the isolated wetland side, as well as the proximity of the driveway extension to the wetland. He questioned whether the driveway extension on the isolated wetland side was necessary, especially given the large parking area already planned in front of the house, which he estimated could fit three cars. He suggested that reducing or eliminating this extension would be better for the wetland.

Mr. Ainslie clarified that the size of the proposed paved area was intended to allow vehicles to back out and turn around, especially if other cars were already parked. He explained that the area in question was about 2.5 feet from the isolated wetland, and agreed to reassess whether the space in front of the house alone would be sufficient to meet the homeowner's needs.

Comm. Holtz suggested that turning maneuvers might be possible using the existing space in front of the garage without needing the additional extension. Mr. Ainslie noted that it could be tight but potentially feasible, and added that part of the homeowner's motivation for the extension was to provide space for a basketball hoop for their children.

Comm. Sevier expressed concern about the size and maintenance of the proposed culverts, noting that the 4-inch pipes, each 25 feet long, seemed prone to clogging. Mr. Ainslie acknowledged the issue and suggested that gratings, like trash racks, could be installed to prevent debris from entering the pipes. He explained that the small pipe size was chosen due to the limited height between the driveway and the wetland. Using larger pipes would require significantly more fill, which would increase the height and width of the driveway to accommodate the necessary cover over the pipes.

Comm. Sevier asked about the need for additional grading if larger pipes were used, and Mr. Ainslie confirmed that increasing the pipe size would require more fill, leading to a wider and more elevated driveway.

Assoc. Comm. Hoffman then raised concerns about winter maintenance, particularly the use of salt on the newly paved areas and its potential impact on the wetlands. Mr. Ainslie noted that the existing driveway, partially gravel and partially concrete, was likely salted already. He suggested that restrictions on salt usage could be included in the plan and that an infiltration trench might be installed to capture runoff before it reached the wetland.

Chair Holtz asked Mr. Ainslie to elaborate on the proposed mitigation measures. Mr. Ainslie explained that the mitigation plan aimed to create a 100-foot natural buffer along the river, addressing a small gap between this buffer and the existing lawn. He proposed filling this gap with vegetation, matching the area of pavement being added in the riverfront. The area would be planted with a seed mix suitable for conservation and species conducive to riverfront environments, such as highbush blueberry, dogwood, and sheep laurel, which have been successfully used in other projects.

Chair Holtz sought clarification on the square footage of the mitigation area compared to the new impervious surface. Mr. Ainslie confirmed that the proposed area exceeded the square footage of the added pavement in the Riverfront Area, specifying that the mitigation area was approximately 598 square feet, while the impervious surface being added was 498 square feet. However, Coordinator Capone indicated that she wanted to see an increase in the mitigation area to cover all pavement within jurisdictional areas.

Chair Holtz inquired about the Buffer surrounding the isolated wetland, asking if there was a 50-foot buffer. Mr. Ainslie clarified that while isolated wetlands are not protected under state regulations, they are safeguarded under Sudbury's Bylaws, which establish a local 100-foot buffer around them, generated by both the bordering wetland and the isolated wetland.

Chair Holtz concluded that all proposed work fell within the Buffer Zone according to local bylaws. Coordinator Capone added that the work also fell within the 100-foot Buffer Zone of the Bordering Vegetated Wetland under the Act.

Chair Holtz then asked Mr. Ainslie about the focus of the mitigation efforts, noting that it only addressed the corner of the driveway. Mr. Ainslie explained that the mitigation plan was based on the riverfront performance standard, which requires the naturalization of areas within the 100-foot inner riparian zone, independent of town requirements.

Comm. Faust expressed interest in exploring additional mitigation ideas if the Commission were to request mitigation for the entire area. Mr. Ainslie suggested focusing on increasing the mitigation area near the stream, as he considered it the most environmentally significant part of the site, aiming to enhance the natural buffer.

Chair Henkels invited further questions from the Commissioners and asked if any audience members had comments. After confirming that there were no immediate questions from the audience, he mentioned the need for the project to involve discussions with the Department of Public Works.

Chair Holtz emphasized his discomfort with the proposed driveway extension near the Isolated Wetland and requested any alternate views on that matter. He mentioned wanting to ensure that his concerns were clear, especially since a continuation of the discussion seemed likely.

Michael Laporte identified himself as the representative from Premier Asphalt Services and indicated he had questions related to the driveway's proposed expansion near the Isolated Wetland. He asked for clarification on any specific preferences from the Commission regarding this area, expressing a willingness to adjust plans to alleviate concerns.

Chair Henkels responded, agreeing with Chair Holtz's observation that protecting the resource area was a priority. He asked for confirmation from Coordinator Capone about the designation of the wetland as a presumed vernal pool, to which she clarified that it was an Isolated Wetland needing evaluation but presumed to be a vernal pool.

Chair Henkels noted the importance of protecting the area and suggested reconfiguring the proposed expansion to either eliminate it or move it away from the isolated wetland. Chair Holtz concurred, stating that the existing parking and turnaround space on the left side of the drawing appeared sufficient without needing the extension adjacent to the isolated wetland.

Chair Henkels then asked the Commissioners for their thoughts or comments regarding this proposed reconfiguration.

Comm. Sevier expressed his agreement with Chair Holtz regarding the proposed driveway expansion near the Isolated Wetland. He noted that a 45-foot space should be sufficient for vehicles to maneuver, emphasizing that if the extension were located elsewhere, there wouldn't be concerns about its size. However, given the proximity to the isolated wetland, he recommended keeping the area as minimal as possible. He indicated that the requested 48 by 30-foot space should adequately accommodate reasonably skilled drivers.

Comm. Faust voiced his strong agreement with the suggestion to eliminate or minimize the area on the right side of the driveway. He supported the idea of maintaining the existing space and proposed the possibility of adding a small basketball court off the 30 by 48 area, ensuring it would be located further from the wetlands.

Chair Henkels encouraged further discussion among the Commissioners.

Mr. LaPorte addressed the Commission, providing context regarding the parking area for the homeowner's large work van, which is currently parked on Stonebrook Road. He noted that the proposed expansion on the side of the

isolated wetland was intended to accommodate this vehicle, ensuring it does not occupy space in the existing driveway. He explained that the grade of the lawn prevented significant alterations, which influenced the design of the proposed area.

Mr. LaPorte mentioned that the expanded space would not only serve the van but also create a safe area for the homeowner's children to play. He sought guidance from the Commission regarding acceptable distances from the Isolated Wetland for the proposed expansion.

Comm. Sevier discussed the dimensions indicated on the plan, noting that there is a 20-foot section and a 10-foot section depicted in a trapezoidal shape. He clarified that the 20 feet measured from the edge of the driveway toward the wetland, while the 10 feet extended toward the wetland. He suggested that if the 10 feet were removed from the 20-foot section, there would still be sufficient space for a vehicle, specifically mentioning that most vehicles average around 9 feet in width. Mr. LaPorte confirmed that the proposed design aimed to accommodate a dual rear-wheel van, indicating that a 10-foot space would be adequate.

Comm. Sevier proposed including a depiction of the vehicle on the plan with minimal paving to illustrate the intended use, rather than filling the entire area with asphalt. Mr. Ainslie agreed to explore the vehicle's dimensions to determine an appropriate fit.

Coordinator Capone suggested considering alternative materials for the parking area, such as permeable pavers or gravel, to minimize environmental impacts. Comm. Sevier acknowledged the discussion but pointed out that they were addressing an asphalt contractor, Mr. LaPorte, who confirmed they do offer permeable asphalt options. However, he noted that he would need to consult the homeowner regarding cost considerations.

The conversation then shifted to the maintenance requirements for permeable asphalt, with Mr. LaPorte explaining that proper upkeep would involve keeping the surface clean of debris. Mr. Ainslie mentioned that maintenance requirements could be specified as part of the Order of Conditions if the homeowner agreed.

Chair Henkels steered the discussion toward the need to clarify if the Department of Public Works (DPW) would permit the proposed culverts within the Right-of-Way, which was identified as a crucial factor before proceeding. He emphasized the Commission's concerns regarding the proximity of the proposed pavement to the Isolated Wetland. He expressed interest in visiting the property to gain a better understanding of the site and asked if Mr. Ainslie could arrange that. Mr. Ainslie affirmed that it would not be an issue.

Chair Henkels then invited any further questions from the Commissioners. He then opened the floor to the audience, inviting anyone with questions or comments to raise their hand.

After ensuring there were no immediate inquiries, he requested permission from Mr. Ainslie to continue the hearing. Mr. Ainslie confirmed that he would like to continue the Hearing on October 21. He mentioned that he would address the plan-related questions before the next meeting and provide the updated plans a week in advance, as suggested by Coordinator Capone. However, he noted uncertainty regarding the timeline with the Department of Public Works (DPW) due to staff changes, stating he would try to expedite the process. If he couldn't secure a definitive answer from DPW by the next Hearing, he would likely request a further continuation.

On motion by Comm. Porter to continue the Hearing to October 21, 2024, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Certificate of Compliance:

Bagnall, 173 Union Avenue, DEP #301-1390

Coordinator Capone reported that the project involved a septic system, a deck, a patio, and landscaping within the Buffer Zone. She confirmed that all work had been completed in compliance with the Order, and the two-year period for the mitigation plantings had elapsed, with all plantings surviving. She concluded that the site looked great and was ready for the issuance of a Certificate of Compliance.

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

Other Business:

22 Bowditch Conservation Restriction:

Dave Henkels began the meeting to discuss the Conservation Restriction for 22 Bowditch. Henkels invited Coordinator Capone to provide her comments.

Coordinator Capone explained that she was working on completing a Conservation Restriction for an Order of Conditions issued in 1997. She noted that several modifications had occurred on the site over the years, complicating the interpretation of the original agreements and current conditions. Capone shared visuals to illustrate the property and the intended Conservation Restriction area.

Coordinator Capone explained that in 2002, a new Order of Conditions was issued to allow for a pool installation in the backyard, which affected the original Conservation Restriction area. The Commission at that time agreed to modify the Restriction, reducing it by approximately 4,208 square feet to accommodate the pool and associated landscaping.

Coordinator Capone then mentioned that the outstanding issue was a specific lawn area within the Conservation Restriction that was not in compliance with the Order of Conditions. She indicated that the draft Conservation Restriction proposed to classify this lawn area as a "special use area," allowing it to be maintained as it currently exists. However, she expressed her preference against this approach, stating it could lead to future encroachments and violations. She emphasized that having a clear boundary for the conservation restriction would provide clarity and align with the Commission's requirements.

Coordinator Capone sought direction from the Commission regarding how to address the lawn area—either restoring it to comply with the original restrictions or modifying the boundary for a third time to exclude the lawn area from the Conservation Restriction.

Comm. Sevier inquired about any mitigation measures that might have justified the substantial reduction in the Conservation Restriction. Coordinator Capone clarified that there was no indication of mitigation in the plan. She explained that the property had a history of violations and complex files. Originally, the driveway was approved to be constructed in a certain location, but it ended up being placed differently, leading to a requirement for extensive restoration. This restoration was not due to a reduction in the Conservation Restriction boundary but rather because of unauthorized clearing that occurred.

Coordinator Capone noted that the only area currently non-compliant with the Conservation Restriction was a small pocket of lawn, which was part of a broader habitat restoration effort to maintain a 100-foot offset from a nearby vernal pool. Comm. Sevier sought clarification about whether the area referred to as a "special area" was initially a cul-de-sac for the driveway. Coordinator Capone responded that she relied on aerial photos to assess the situation, indicating that there had been significant clearing in the front yard and this area around the time the property changed hands.

Comm. Sevier questioned whether there was a compelling reason to allow the lawn area to remain as it was. Capone stated there was no strong justification, explaining that the current owner wanted to keep it due to its prior existence before he owned the property and because he was looking to close out the Conservation Restriction before selling. Comm. Cook remarked that it seemed unfair to pass the issue on to the next owner.

Coordinator Capone explained that the owner aimed to resolve all outstanding Orders of Conditions, including obtaining Certificates of Compliance and completing the Conservation Restriction, before selling the property. Comm. Sevier then asked if this pocket of lawn was the primary concern. Capone confirmed that it was the only remaining issue, stating that they had a baseline report for the Conservation Restriction and that, aside from minor clearing, the lawn area was the sole violation of the proposed conservation restriction.

Comm. Holtz expressed his view that the lawn area should be restored to comply with the original Conservation Restriction, stating that there was no justification for a special use designation. Comm. Cook agreed with Comm. Holtz's stance.

Chair Henkels then asked Coordinator Capone about the three outstanding Orders of Conditions. Coordinator Capone clarified that all three Orders remained open, and while work had been completed on two Orders related to the house construction and pool, the Conservation Restriction was still pending. She explained that the first Order pertained to the house, the second was for restoring the incorrectly placed driveway, and the third was for the pool.

On motion by Comm. Holtz to restore the lawn area in accordance to the original Conservation Restriction line, seconded by Comm. Cook, via roll call the vote was unanimous in the affirmative.

Other:

Coordinator Capone then reported on a few matters, including that bow hunting had commenced and that they had encountered vandalism related to hunting, particularly at Tipping Rock. She noted a significant encroachment at Tipping Rock involving a party site with propane tanks and an ATV track that needed to be addressed.

Coordinator Capone also shared that she was working with OARS who had received a \$40,000 grant from the Sudbury Foundation to improve drainage and create a rain garden on the Bruce Freeman Rail Trail at Morse Road. The goal was to address drainage issues that arose during the trail's construction.

Coordinator Capone also proposed a discussion about the meeting schedule for 2025, noting that some nearby communities were moving to three-week intervals between meetings. However, she emphasized that hearings must occur within 21 days of receiving permit applications. Comm. Holtz preferred to maintain the current every-other-week schedule to keep meetings concise, a sentiment echoed by Comms. Porter, Cook, and Sevier.

Adjourn Meeting

On motion by Comm. Sevier to adjourn the meeting at 8:18 PM, seconded by Comm. Holtz, via roll call the vote was unanimous in the affirmative.