

Sudbury Conservation Commission
Minutes of the Meeting Held March 13, 2017

Present: Tom Friedlander, Chairman; Beth Armstrong, Vice-Chairman; Mark Sevier;
Dave Henkels; Charlie Russo (6:50 arrival)
Absent: Kasey Rogers; Bruce Porter

Minutes

On a motion by D. Henkels; 2nd B. Armstrong; the Commission voted unanimously in favor of approving the Minutes of Feb. 27 as drafted.

Certificate of Compliance: #301-1159 USFW Great Meadows NWR Boardwalk & Platform

Present: Jared Green and Tim Poupolo, USFW

T. Friedlander, D. Henkels, and D. Dineen visited the site earlier in the day. The boardwalk and viewing platform were built on helical piers, which resulted in minimal disturbance.

On a motion by D. Henkels; 2nd B. Armstrong; the Commission voted unanimously in favor of issuing the COC.

WPA & Bylaw Notice of Intent (cont.) 47 Bigelow Dr., J. Shanamugan, applicant

Present: Scott Goddard, Goddard Consulting, Inc.; Steve Poole, Lakeview Engineering; and applicant

Mr. Goddard stated that the reason for the continuance was to allow time for the applicant's representatives to evaluate the amount of additional fill needed for alternatives to the current driveway configuration. Gary Bogue and Rachel Freed of DEP agreed they would be retroactively amending the Administrative Consent Order to allow a new NOI to be filed with the Commission for work in violation of the original Order and for new requested alterations. D. Dineen questioned if amending the ACO and allowing the new work would be circumventing the public hearing process for DEP. S. Goddard replied that all the work, including that pertaining to the WPA-only work, is now part of the Commission's hearing process. DEP could issue a Certificate of Compliance on their superseding Order once the outstanding work under that Order was incorporated in the Commission's new Order and the new Order is recorded.

Mr. Goddard asked if the Commission wished to review the engineer's analysis of the driveway issues. T. Friedlander stated that the Commission must uphold the Wetlands Protection Act, not the Driveway Protection Act. Commissioners agreed to hear the options for driveway maneuvering. Mr. Poole presented several options for 3-point and 7-point turns for the restricted garage bay. T. Friedlander stated he felt the reason for these alternatives was the result of poor engineering. Mr. Poole stated the original engineering was done by Scott Hayes of Foresite Engineering.

D. Henkels clarified that the request before the Commission seeks approval for three "layers" of wetland alteration - the originally approved 220 sq. ft. of bordering vegetated wetland (bvww) fill; the additional 108 sq. ft. of wetland filled in violation, and another 128 sq. ft. of fill requested to realign the driveway. D. Dineen noted that the current request more than

doubles the original amount of fill approved. The house foundation was shifted without conservation approval of the change and resulted in greater impact to wetland.

Mr. Poole replied that the house shift was only a minor impact to the additional wetland alteration and was done to eliminate the need to pour an additional foundation wall to meet septic setbacks.

D. Henkels asked for details on the restoration planting of 7,000 sq. ft. for mitigation. T. Friedlander added that much of that 7,000 sq. ft. restoration was required under the bylaw Order for mitigation for other alteration already accomplished on site and to restore areas approved for temporary disturbance. These temporarily disturbed areas have not been restored and are now a violation.

Options that were discussed as possible actions now included: 1) Removing all the illegal fill; 2) allowing raising of the grade in the area already filled illegally and relocating the retaining wall to the edge of the fill; extending the fill area with more fill in bwv and relocating the retaining wall further out; and, 4) leaving current conditions with the illegal fill in place but not permitting any additional fill.

S. Goddard, in response to D. Dineen, stated that DEP has not yet determined if wetland replication would be required for the current amount of illegal fill.

C. Russo and B. Armstrong both agreed that options that provide solutions to garage access should be considered. Commissioners discussed what would be necessary to allow the existing illegal fill to remain in place. T. Friedlander added that more mitigation would be required. D. Dineen stated that the opportunity for additional on-site mitigation was very limited. She suggested looking off-site, such as drainage improvements that might be an option.

All parties agreed to continue the hearing to April 3 to allow the applicant time to present further mitigation.

WPA Notice of Intent: Route 20 (west) Drainage Upgrades; Mass DOT Highway, applicant

Present: Andrea Kendall of LEC Environmental; Brian and of MassDOT

A site walk on was held on 3/9/17. This project is intended to install stormwater best management practices (bmps) to the extent feasible within the MA DOT budget for the project to reduce pollutants entering impaired waterbodies. Six bmps are proposed along Rt. 20 from the Marlborough line east to the Wayside Inn. 3 on north side, 3 on south side. As was noted on the site visit, the bmps will not deal with treating all runoff along this stretch of Rt. 20. Some areas closest to the wetlands will not have treatment due to the cost associated with relocating underground utilities that are buried between the roadway pavement and the bwv. The project is a statewide project to address impaired waterbodies throughout the state. The project plans are the best that could be done within the confines of the funding that will allow these stormwater upgrades to occur in as many areas as possible. The bmps were chosen as the best bmp for the specific pollutant in the area. In the case of Rt. 20 and the Hop Brook watershed, the pollutant of most concern is phosphorous and the bmps were chosen for their ability to treat phosphorous. We suggested some berming along Rt. 20 to channel more water to the bmps, however that will not work as the bmps can only handle the design volume of runoff. Anything additional will just overtop the structures. The structures were sized for the

site conditions to keep mature trees, minimize clearing, and provide a safe and required setback of the structure to the travel lanes.

B. of Mass DOT noted that the greatest improvement in the quality of runoff is in capturing and treating the first one-inch of runoff. Although it is not a complete solution to runoff entering the Hop Brook wetlands, the intent is some improvement in the quality of runoff. If this project was associated with new development or redevelopment, you could require more, but it is only a wetland enhancement project with a scope that fits available resources and maximizes the areas retrofitted with some level of treatment.

On a motion by B. Armstrong; 2nd M. Sevier; the Commission voted unanimously in favor of closing the hearing.

On a motion by C. Russo; 2nd D. Henkels; the Commission voted unanimously in favor of issuing the Order as discussed and to include the maintenance requirements.

D. Dineen suggested the Commission might want to work with the Hop Brook Protection Association or Town to do some before/after phosphorous testing to see if there is a measurable difference post bmp install.

Violation Status Update:

267 Landham Rd., Safar –

Due to the recent snow cover, the Commission voted unanimously in favor of extending the date for NOI submission for thirty days. Motion C. Russo; 2nd D. Henkels. One of the tickets has been paid.

0 Washington Dr.-

Commissioners wanted the Coordinator to check the 2013 plan to be sure it is not take more than the approved 600 sq. ft. and fence area out of the restriction as approved in 2003.

Bruce Freeman Rail Trail Task Force- Request for Comments

Present: Beth Suedmeyer, Sudbury Environmental Planner; Tracie Lenhardt and Gene Crouch of VHB, Inc.; John Drobinski, chairman of the BFRT Task Force

T. Friedlander stated that public comments on the options would not be permitted tonight. He stated that this forum is for the Conservation Commission to provide comment to the Task Force. If any public has comments, they should be made directly to the BFRT Task Force.

B. Suedmeyer stated that the project is advancing; however, it is still in the pre-25% design stage. A cross-section of the current design in two challenge areas does not allow avoidance of wetland impacts. A meeting with public and abutters was recently held to look at possible street alternatives to avoid wetland fill. Abutters were not receptive to having a multi-use path in their front yard. The town does not believe there is enough room for the rail trail along roadways within the roadway layout. The Task Force is still considering the roadway option.

T. Lenhardt stated that VHB has been working to keep the bordering vegetated wetland alteration to under 5,000 sq. ft. to avoid the need for a variance from the state. Alteration of bank and land under water body does not trigger variances but will require a state water quality certification permit.

D. Dineen questioned if boardwalks supported by helical piers could support emergency vehicles and be considered an option. T. Lenhardt stated the Fire and DPW Departments have requested H2O loading. Retaining walls could contain fill in these areas and the width of the path could be reduced to 8'. B. Suedmeyer noted that an 8' wide path with 2' shoulders might not be practical for safety equipment.

T. Friedlander noted that the matrix provided only addressed alteration of bordering vegetated wetland. There is significant alteration proposed to other resource areas as well. D. Dineen noted that none of the information provided sums up the total of all wetland alteration for all resource areas in the two challenge areas. Commissioners agreed it would be helpful to have all resource area disturbance shown on the matrix with totals for each type of resource and overall totals. She questioned what the minimum width of the trail is in other towns where the trail has been constructed or gone to 75% design. No one could answer the question.

D. Henkels questioned how contamination along the trail will be handled. B. Suedmeyer replied that Mass DOT has specifications for contamination. D. Henkels questioned if other surface options are being considered, especially in areas of close proximity to vernal pools. B. Suedmeyer replied that DOT, Fire and safety all have a preference for pavement. T. Friedlander suggested using an ATV for emergencies. G. Crouch replied that response time would be increased due to the need to transport the ATV to a trail access point. D. Henkels asked if stone dust was a consideration. G. Crouch replied it would be inconsistent with the rest of the trail. T. Lenhardt stated that stone dust requires more maintenance. Boardwalks have a 40-year life and may be funded for replacement through state or federal funds.

T. Friedlander stated that his concern is for the proposed amount of total wetland disturbance. B. Armstrong stated that good information was presented but only for limited areas and options. It is only one piece of the puzzle.

M. Sevier and C. Russo expressed concern that the Commission was not providing the Task Force with enough guidance. He noted that the Commission could re-review any further information that may be presented. T. Friedlander replied that the Commission is now being asked to look at only two sensitive areas and they are not at the point where the Commission has seen the entire project. There is no overall context for the comments at this point. C. Russo agreed that there is a limited scope of options in front of the Commission now but as the project develops, the Commission can provide alternative preferences.

D. Henkels stated that what he has heard is that the Commission wants the smallest possible footprint to reduce disturbance to natural resources, including wetlands. A mix and match of options should be considered in the sensitive areas.

M. Sevier noted that the right-of-way is not an undisturbed area. Reasonable design standards should be applied after all issues are considered to reduce project complexity. He would not like to see a great deal of infrastructure. The trail should be narrowed where this can be done. T. Friedlander preferred the boardwalk option to reduce the invasive nature of the project.

D. Henkels again voiced his concern for the possible movement or release of contamination when soils are disturbed for construction.

D. Dineen added that during permitting, the Commission must look at the wetland values and functions pre and post construction. Post construction should have a positive impact on wetlands, especially if this is considered a redevelopment project.

J. Drobinski thanked the Commissioners for their time and added that any input that can be provided is appreciated.

Violation Status Update (cont.)

38 Willard Grant Rd. and 321 Peakham Rd. -

The Commissioners agreed that if wetland filings are not received by 4/3/17, citations will be considered.

Homeowners Brochure

Commissioners reviewed the new draft from Meg Armstrong. They commended her the great job and the professional appearance of the new brochure. Some changes to the layout of information and font colors were suggested. A new draft will be presented at a later meeting.

Warrant Article Ban on Plastic Bags and Bottles

The LS Environmental Club has placed 2 articles on the warrant for banning many types of plastic bags and bottles. It was noted that these could clog waterways and pollute water quality. Commissioners did not take a position on the articles, as they would like to know more about the manufacture process for alternatives.

Landham Brook Marsh Conservation Restriction

The EOEAA requested a limit on agricultural structures be added to the CR. Commissioners decided 1,000 sq. ft. was a reasonable limit for a one-acre farm field.

Town Counsel Meeting - Executive Session and Violation Questions

T. Friedlander and D. Dineen met with Barbara St. Andre to discuss several items.

Atty. St. Andre confirmed that Executive Session was permitted if litigation has not yet been filed but has been clearly threatened.

Atty. St. Andre stated that in most cases, she preferred violators file a Notice of Intent to correct a violation rather as opposed to the Commission allowing restoration or mitigation work under the Notice of Violation or Enforcement Order. She stated that the NOI process requires the Order to be recorded, the Order has specific dates for action, and a clear plan needs to be provided so all involved understand the scope of the work required to bring the property into compliance.

Under the new Open Meeting Law, the Minutes must list (but not include) all documents that were received by the Commission as part of their deliberations.

MACC Annual Meeting

T. Friedlander, K. Rogers, and C. Russo attended various workshops and seminars on assorted wetland and land stewardship issues.

Eagle Scout Candidate Project – Bat Boxes

Eight bat boxes are proposed to be installed on conservation lands as part of an Eagle Scout project. D. Henkels suggested several areas as well as the Wayside Inn property. Commissioners were all in favor of this project.

Arboretum Way Conservation Restriction

At the request of the Chairman, the conservation office had sent letters to all six property owners on Arboretum Way to advise them of the conservation restriction on their land and to prevent future encroachments, or cure possible current violations.

Three of the six owners responded and were pleased to find out about the protections of the various lands in close proximity to their homes. One owner sought permission to keep bluebird boxes in the restricted area. Permission granted.

On a motion by D. Henkels; 2nd B. Armstrong; the Commission voted unanimously in favor of adjourning the meeting. 9:19pm.