

SUDBURY CONSERVATION COMMISSION
Minutes of the Meeting Held Monday, March 11, 2019

Present: Tom Friedlander, Chairman; Dave Henkels, Vice Chair; Bruce Porter; Mark Sevier; Kasey Rogers; Charlie Russo; Richard Morse (via Remote Participation), Debbie Dineen, Conservation Coordinator; and, Ken Holtz; Associate Member.

The Chairman called the meeting to Order at 6:45pm with a quorum present.

Minutes

On a motion by Bruce Porter, seconded by Dave Henkels, the Commission voted (roll call vote) unanimously in favor of approving the minutes of January 28, 2019.

WPA & Bylaw Request for Determination of Applicability: 509 Boston Post Road

Mike DiModica of M. J. DiModica Excavation presented the proposal for a partial replacement of a septic system, on behalf of the applicant. Mr. DiModica explained that the existing leach field is close to failure. The proposed design conforms with Title V and about half of the work is within 100 feet of wetlands. There is no change to impervious cover. Charlie Russo questioned if there would be fertilizers, pesticides, or any invasive species. Mr. DiModica stated no. Coordinator Dineen, recommends Negative Determination. On a motion to issue a Negative Determination by D. Henkels, second by Bruce Porter, the Commission voted unanimously, by roll call vote, to grant a Negative Determination.

WPA & Bylaw Request for Determination of Applicability: 172 Horse Pond Road

Mr. & Mrs. Brodeur, applicants, presented proposed work, to remove five Pine trees near the house that are in danger of falling. The Applicant explained the position of trees, showing a plan of trees to be removed. Coordinator Dineen stated that according to Rusty's Tree Service, all trees are leaning, and rotting and one is dead. Coordinator Dineen recommended issuing a Negative Determination. On motion by D. Henkels to issue a Negative Determination; seconded by B. Porter, the Commission voted unanimously, by roll call vote, to grant a Negative Determination.

WPA & Bylaw Notice of Intent: Tanbark Road

Sudbury Water District applicant, Vin Roy, Superintendent presented. As the result of a Water Main break on New Year's Eve, a significant amount of silt overflowed, resulting in overflow of catch basin with siltation into wetlands. The proposed removal was to be done in two parts: 1. by hand and 2. by backhoe. Staging included silt fence, hay bales, sand bags downstream if necessary. Mr. Roy stated that there was sufficient space to work with minimal disturbance of area. They want to isolate the area to be fixed and have the Coordinator review staging. Clean up should take about ½ hour to 1 hour.

Coordinator Dineen stated that silt was observed 100 feet downstream, questioning how far will Mr. Roy go, and how would he stabilize the channel after work is done. The proposed area is 60 feet.

Mr. Roy stated that he would put ¾-inch stone in the channel. Debbie questioned replacing with rock, rather than using coir logs and forebay in order not to disrupt activity in area of stream. Also it could slow down velocity. The Commission discussed where the flow of silt was going. Mr. Roy wanted to

remove some trees to be able to get to the silt. Coordinator Dineen concurred with removing tree as it blocked flow.

Silt has collected over years due to lack of maintenance, Coordinator Dineen said removal of old silt would be detrimental to area. She mentioned that a back hoe has to be careful when digging as not to overdig.

D. Henkels asked about Cold Water Fisheries, questioning the impact from turbidity and loss of life. Some may be unavoidable, but intent is to proceed with caution. B. Porter asked about minimizing the amount of material taken out. R. Morse agreed with tree removal, but cautioned against unintentional damaging of vegetation. Mr. Roy explained that he went out as the result of the water main break, damage occurred during that. Prevention is not a priority when these things happen. Hard to plan, when typically time is of the essence in these situations. Unavoidable damage happens, but filing for Notice of Intent is not possible every time this occurs. Bob Sheldon, Sudbury Water District Commissioner, stated that water main breaks require personal safety, community safety, getting pipes fixed as soon as possible. There are considerations required by law, like asbestos cement pipe compliance and other protocols. When emergencies, happen we need an established plan with Conservation. Tom Friedlander responded that discussions are taking place relative to a general Order of Conditions for events like this. Coordinator Dineen explained that protocols have been put in place to deal with these types of emergencies, as result of this particular violation, which triggered a better plan going forward.

M. Sevier asked how the applicant would determine the depth of silt that needed to be removed so that the existing silt is not disturbed. K. Rogers asked about stabilizing the ground from disturbance from the back hoe. All agreed that Special Conditions would be included in the Order to address these concerns.

T. Friedlander asked for public comments.

Sue Brennan, 8 Tanbark Road, asked if all four drains go into this area of the stream. The Commission responded yes. Ms. Brennan stated that water accumulates at the base of the road. The Commission responded that this issue is a DPW issue. Ms. Brennan stated that the stream has gone dry in the past four years and asked if the area would be revegetated, post project.

C. Russo asked if the ground thawed, will they use steel plates. Mr. Sheldon responded that it could be possible if it thaws, but so far is still frozen. M. Sevier asked that a wheeled excavator be used.

There was a brief discussion about other open Orders from the same applicant, without this particular Order, they cannot go forward due to this being the same applicant. Coordinator suggested Orders be issued at same time. (Horse Pond/Codjer Rd.)

C. Russo moved to close the hearing; seconded by K. Rogers; unanimously voted by the Commission, by roll call vote, to close.

On motion made by C. Russo to issue an Order of Conditions, with special conditions recommended by Coordinator Dineen, with the additional special condition to allow for field changes by representative of

Conservation Commission; seconded by R. Morse, the Commission unanimously voted, via roll call vote, to issue an Order of Conditions.

WPA & Bylaw Notice of Intent: 87 Cudworth Lane

Dan Wells of Goddard Consulting presented work to be completed under an expired Order including: existing wooden bridge and retaining wall were removed, but additional grading needed to be completed. Native species were to be installed but invasives started growing in. Project is to complete grading, remove invasives, planting of native species, and remove remaining timbers. A total of 24 plants will be planted in area.

Coordinator Dineen stated that a Conservation Restriction has been placed on the property and recorded as mitigation for the violation.

D. Wells stated that the Order is only to complete the outstanding work from the previous Order.

There was no public comments.

D. Henkels moved the hearing be closed; seconded by K. Rogers. Roll call vote unanimously.

D. Henkels moved to issue an Order of Conditions with Special Conditions; seconded by M. Sevier, by roll call vote; the Commission unanimously voted to issue an Order of Conditions.

Hop Brook Dissolution: Sue Collins of the Hop Brook Protection Association presented that with the dissolution of the Association, the Town will be taking over responsibility of harvesting weeds. Originally, the Organization was started, to fight Easterly Waste Water Treatment Plant. This evolved into maintaining the ponds in Hop Brook. The consideration is whether to dissolve the Association and the Association wanted to start a conversation about going forward. If no new Board members come forward this possibly will happen. Funds have to be considered. The Courts need to approve any change.

Coordinator Dineen discussed accepting funds that could be transferred to the Conservation Commission from the Hop Brook Association. T. Freidlander asked about the position of the Ponds and Waterways Committee. Marjorie Keenan- Ponds and Waterways, said they would like to use funds for harvesting weeds. The Commission discussed the law and use of funds and what Town Legal Counsel envisions. B. Porter asked about any conditional uses of funds remaining. S. Collins stated courts want funds to be used for similar projects. Coordinator Dineen stated that the Conservation could be the entity to hold the monies since Ponds and Waterways are not a state mandated entity, but ConCom is.

Frank Lyons, President of HPBA, stated that in speaking to other towns like Lexington and Concord, major pollution of pond issues, suggest the Town should run this type of issue rather than private entity.

Commission agreed that the use of Hop Brook funds is something that they are interested in. More discussion will take place in the future.

Bylaw Notice of Intent; 137 Mossman Road:

Dan Wells of Goddard Consulting and Vito Colonna of Sullivan, Connors and Associates presented the plan for the construction of a new single family house. Mr. Wells explained that under the Wetlands Protection Act, they have received a Superseding Order of Conditions from DEP. They are here with a new Notice of Intent under the Bylaw Only. The plans have been amended since this previous application to include a boulder wall along for limit of work, which will extend beyond the Sudbury Wetlands Administrative Bylaw (SWAB) jurisdictional area. The dry well system was a concern, as to how it would work for runoff from impervious surfaces. A trench drain in driveway is now proposed, designed for 100 yr. storm.

T. Friedlander asked several questions about limit of work in Adjacent Upland Resource Area (AURA). Vito Colonna stated there would be about 6,000 s.f. of disturbance. T. Friedlander asked why the Commission should permit that amount of disturbance to the AURA. D. Wells in response explained that there are not significant wildlife features within the limit of work as it is already open and cleared and there will be considerable forest left (about 31 trees).

T. Friedlander asked about mitigation. D.Wells, stated that planting native shrubs are not likely to be successful under white pine trees. He has observed the vernal pool over two years. He has recorded wood frogs and spotted salamanders, which indicated a small population of species. Forest protection is important, so 100 feet of forest is remaining to support existing population. Coordinator Dineen stated mitigation provided is significant. The denitrification plan is a good improvement; the quality of effluent post-construction is significant. However, loss of upland habitat is not satisfied with this improvement. A border wall will not contain any total runoff and asked if soil testing had been performed in the area of the trench drain. Coordinator Dineen stated dead trees would create concern by homeowners who will ask to remove trees. She had many concerns about the site as is, vs. what will be.

D. Henkels asked what the Commission's options are moving forward. Coordinator Dineen explained that a Denial will go to Superior Court. There is no guarantee on appeal and the Commission could possibly lose mitigation. M.Sevier said the Commission has to factor in what will be lost if appeal is not successful. Discussion about options took place, weighing the pros and cons of the proposed project.

Coordinator Dineen asked if the footprint of garage could be reduced in size. There are no real alternative locations, due to Zoning. R.Morse asked if the home could be changed from a 4- bedroom to 3. Vito stated not really, due to size of septic, house could be shrunk possibly by 12 feet.

T. Friedlander asked if there were any public comments.

Jack Gans, 16 Silver Hill Road, expressed tree concerns relative to drainage, shading and falling trees. Mr. Gans asked how will the construction effect overall drainage and how can the project address additional runoff as mitigation. Coordinator Dineen stated that all runoff will be infiltrated from house and driveway, and with fewer trees, other trees can be at risk of falling.

Nick Chigas, 151 Mossman Road, expressed concerns about runoff and what areas will be affected, suggesting the lot was too small for what they are trying to do.

D. Henkels stated that he was impressed with the work Dan Wells has done; placement of boulders, septic, trench drain, but it does not provide sufficient mitigation.

K. Rogers, asked if there had been any hydrologic analysis of drainage and water issues. R. Morse stated that a hydrology report only would signify that runoff would get either worse or stay the same. Would there ever be a positive impact?

Applicant asked that the Hearing be continued in order to re-evaluate the plan based on tonight's discussion. He feels that this plan has gone beyond bylaw requirements.

The Commission discussed then whether anything would change their vote by continuing the hearing. M. Sevier said nothing would materially affect outcome of vote. D.Henkels believed the applicant met most of the requirements under the Bylaw and felt that the Commission should not close the Hearing.

M. Sevier moved to continue the Hearing to April 22, 2019; seconded by K. Rogers, by roll call vote, the Commission voted unanimously to continue.

WPA and Bylaw Request for Amendment of Order of Conditions (cont.): 12 Maynard Road

Dan Wells of Goddard Consulting, and Vito Colonna of Sullivan, Connors and Associates, on behalf of the applicant, Shkben Dev. LLC, who was also present, asked the Commission to review the scope of changes and determine if a new public hearing is required, or review the work and act on material submitted as a minor change. Also to review request to trim branches over roof of house.

T. Friedlander requested a motion to allow for Amendment to Order of Conditions be discussed in public session. C. Russo moved to open the Hearing, abutter notification having been satisfied, abutter was present, and level of change was minimal; seconded by M. Sevier seconded, by Roll Call vote, the Commission unanimously voted.

Vito Colonna explained two changes to the plan. One for a foundation drain which will not have any flow. It was initially not required, but during construction, one was installed. They have not observed any flow over several months. Proposal was to leave drain in place. He stated it couldn't hurt to leave it unplugged. Coordinator Dineen stated that typically, an outlet should be designed as if there was a flow, and asked what would be done, suggesting a small forebay, riprap or screening of the drain.

Second, the approved plan showed a 1,936 s.f. foundation. The As-Built plan shows the foundation is 84 s.f. larger, but, they believe it is within the limit of work. Coordinator Dineen asked about additional impervious surface. R. Morse asked why is design not the same and why they did not come back to Commission.

Mr. Wells. discussed additional mitigation and developed an Invasive Species Management Plan (ISMP) for a 1,600 s.f. area. Bittersweet and burning bush were in the plan to be removed. Other than that, the area is pristine. Coordinator Dineen stated that the mitigation was not well defined. In 2016, grass was visible as open field but not now questioning why that area was not included as new mitigation. This

area needs to be managed by the homeowners, without the use of chemicals, asking he clearly draw out area for homeowners. D. Wells agreed to label area clearly on plan. M. Sevier asked if plan would specify plant spacing in new area, using native shrubs.

D. Wells stated CR has granite markers in place when M. Sevier asked if CR line would be moved.

Sebouh Arakelian of 4 Maynard Road, asked for clarification on the proposed mitigation and said that water from 12 Maynard Road, due to higher elevation, is draining water on to his property.

Mr. Wells pointed out location of pump, and in relation to riverfront area; he stated that it is on neighbor's property. Coordinator Dineen was asked if this was allowed; her answer was no pumping allowed. He stated that no water is going into meadow. The Coordinator said that is good because the height is blocking water from going in to riverfront area. He then stated that a new homeowner and/or builder should be notified that a large mass of water separates property lines.

T. Friedlander discussed with the engineers the next steps, which were a planting plan, which identifies the species being used, with clearly marked location of plantings and a clear plan for homeowners, and screening of drain. Coordinator Dineen said the plan needs to be presented before this can go forward. Hearing will continue discussion until planting plan and invasive species area is delineated.

Chairman Friedlander then moved the discussion to address the tree removal.

Mr. Wells showed diagram of tree branches hanging over the house that need trimming.

Coordinator Dineen stated there is a cease and desist order on all work on the property. Applicants were told that only branches were to be trimmed. No removal allowed. Commission agreed to branch cutting.

D. Wells asked to have cease and desist lifted. Coordinator Dineen stated a planting plan needed to be presented. C. Russo stated he had no problem lifting cease and desist without a presentation of planting plan because the plan shown had enough information to satisfy the requirements. Others questioned if that was possible. He continued that provided the Commission had verification of planting plan he would suggest going forward with a vote to allow work to continue. D. Henkels concurred. Subject to subsequent confirmation, the Commission were comfortable with a vote.

Coordinator Dineen stated that erosion control still needed to be fixed. Under Enforcement Order, no work could be done other than fixing what the violation was.

On motion made by M. Sevier to allow for Administrative approval of the revised plan showing invasive species removal, and planting plan along with a site inspection showing the corrected erosion controls; seconded D. Henkels, the Commission voted, by roll call vote, unanimously in the affirmative.

Bylaw and Notice of Intent; 36 Hampshire Street

By request for continuation to a date certain, March 25, 2019, a motion was made by C. Russo; seconded by D. Henkels, and unanimously voted by the Commission by Roll Call vote.

Bylaw and Notice of Intent; 9 Trevor Way

By request for continuation to date certain, April 1, 2019, a motion was made by C. Russo, seconded by B. Porter, and unanimously voted by the Commission by Roll Call vote.

Certificate of Compliance, Lot 3 Elmwood Avenue

Coordinator Dineen reported that work never commenced under this Order. On motion made by D. Henkels, seconded by B. Porter, the Commission voted unanimously, by roll call vote, to issue a Certificate of Compliance.

Certificate of Compliance 26 Longfellow Road

Coordinator Dineen reported that work never commenced under this Order. On Motion made by D. Henkels; seconded by B. Porter, the Commission voted unanimously, by roll call vote, to issue a Certificate of Compliance.

Violations

Boermeester: 31 Beckwith Street: Clearing in Riverfront Area and Buffer Zone.

Coordinator Dineen reported that there has been no response from the homeowner. Tickets are being sent daily until response is received. K. Rogers moved to continue daily tickets until response is received; seconded by D. Henkels. The Commissioner voted so unanimously, by roll call vote.

Board Discussion

The Commission discussed a letter to landscaping companies on Orders of Conditions. T. Friedlander asked for purpose. Concerns were that SCC could be liable if there was interference by Town. Homeowner should have the responsibility to discuss Orders with landscapers. Commission tabled topic for future agenda item.

Invasive Plant Species Legislation Letter

Coordinator Dineen did not feel this proposed legislation went far enough. SCC could opt to sign letter (thereby co-sponsor the legislation), or write our own, or ignore. R. Morse, would like to express to legislature our concerns on use of pesticides, both statewide and locally. SCC decided not to sign on to the letter.

Comments by Commission

T. Friedlander noted the SCCs attendance at the most recent MACC conference. He, K. Rogers, R. Morse, and C. Russo attended various workshops. R. Morse said there were useful team activities, particularly in the workshop on plan review. K. Rogers took fundamentals courses and found them very useful. C. Russo took a Rail Trail and Power lines workshop, which was more applicant heavy. T. Friedlander took a very helpful class run by DeRosa Landscaping relative to invasive species management, who does work in Sudbury.

Future Agenda

Eversource use of herbicides application, Eversource Project manager suggested a meeting with the Commission to discuss their herbicide use.

Also, Kim Roth DEP Regional Circuit Rider, to speak to SCC about Wetlands Protection Act and updates.

April 1 meeting as the result of Coordinators absence needed to start early (6:00). K. Rogers and C.Russo will call in remotely.

D. Henkels moved to adjourn. B. Porter seconded. The Commission voted unanimously by, roll call vote.

The meeting Adjourned at 10:53 p.m.