



## SUDSBURY CONSERVATION COMMISSION Meeting Minutes of January 27, 2020

Present: David Henkels, Acting Chair; Bruce Porter; Mark Sevier; Richard Morse; Charlie Russo; Kasey Rogers (via remote participation); and Lori Capone, Conservation Coordinator

Absent: Thomas Friedlander and Ken Holtz, Association Member

D. Henkels opened the meeting under the State Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw at 6:45 PM.

### **Minutes:**

On motion made by R. Morse, seconded by B. Porter, the Commission voted unanimously, by roll call vote, to approve the minutes of the January 13, 2020 meeting.

### **Other Business:**

#### **137 Brimstone Lane – Land Transfer Proposal**

Attorney Josh Fox attended tonight's meeting with Ben Aronson to request that the Commission consider submitting a Warrant Article for Town Meeting to transfer a 1,033 s.f. parcel of Conservation Land along Brimstone Lane to the Aronson family in exchange for a 16,000 s.f. parcel adjacent to Nobscot Conservation Land to be conveyed from the Aronson family to the Conservation Commission. Atty. Fox explained the history of the conveyance of the 1,033 s.f. parcel to the Commission, noting that the survey plan developed by the Town Engineer at the time of conveyance contains a note that the 1,033 s.f. parcel was to be conveyed to David Aronson. David has recently passed and Ben is managing the estate. Atty. Fox explained that this conveyance would provide adequate frontage that create two lots out of this 6-acre lot.

Coordinator Capone walked the property with Attorney Fox that morning. The trail in the area where the land swap would be located is in good shape but it would provide a 20-foot buffer to this trail. The 1,003 s.f. parcel is located along Brimstone Lane, between the road and a stone wall. The Deed states that the original conveyance to the Conservation Commission is for watershed protection and questioned whether this land swap, which will result in the construction of a new single family house, is in keeping with this purpose. Any development on this new lot would also be within wetlands jurisdiction. Coordinator Capone explained that this land swap would require vote of the Commission, 2/3 vote of Town Meeting, and 2/3 vote of State Legislature.

C. Russo asked why this was just being brought to the Commission now for consideration and requested more time to obtain an opinion from the Town Assessor. Atty. Fox stated that they only recently learned that this land was under the jurisdiction of the Commission and suggested that the Commission could postpone this decision to next Town Meeting or could vote tonight to support this request and pull the Warrant Article at any point before Town Meeting, if warranted. Mr. Aronson said that if the Commission is not in favor of the land swap, he will petition for a Special Permit or Variance to allow for a second lot.

The Commission discussed the fact that the land swap provided the opportunity to protect 15 times more land and the Commission would evaluate impacts from any proposed new construction under a Notice of Intent.

M. Sevier made a motion to support submitting a Warrant Article to Town Meeting for approval of this land conveyance. R. Morse seconded the motion. The motion passed 5-1, by roll call vote (C. Russo opposed).

**Sudbury Valley Trustees, Memorial Forest Prescribed Burn:**

Laura Mattei, Director of Stewardship at Sudbury Valley Trustees (SVT), attended tonight's meeting to discuss their Prescribed Burn Plan for the Memorial Forest and request consideration to expand the burn area.

Ms. Mattei explained SVT's project, working in conjunction with the City of Marlborough and US Fish and Wildlife, to restore Pitch Pine-Scrub Oak Barren Habitat in the Memorial Forest using a prescribed burn. SVT has been working since 2009 to restore the habitat through both selective thinning of the White Pine trees and with prescribed burn. Ms. Mattei showed before and after photos of the area that had been burned, showing how quickly the area regenerates. Ms. Mattei is working on submitting a Notice of Intent for the Commission to consider expanding the burn area into the wetland buffer and riverfront area to Cranberry Brook and Hop Brook. The burn would be conducted over 2-3 days. Ms. Mattei sought input from Joel Carlson of Fish & Wildlife on the negative impacts prescribe burn can have on wetlands. He reported that Fish and Wildlife has numerous burn sites in and near wetlands and feel the burn have had neutral to positive impacts on wetlands, through improved forest structure in the buffer zone. Ms. Mattei stated that SVT conducts breeding bird surveys, moth surveys, and vegetation plots to monitor to effectiveness of the program. The site is home to three state-listed moth species.

Ms. Mattei reviewed the Prescribed Burn Plan with the Commission, discussed the considerations that go into determining when the burn can happen and the outreach to the neighborhood that SVT conducts prior to the burn.

Dave Burke, Wetland Resource Specialist, asked how the thinning operation was conducted without a prior permit from the Commission. Ms. Mattei explained that the forest thinning work was conducted under a Forest Management Plan. Mr. Burke asked why the large White Pine were left as a seed source. Ms. Mattei explained that they do anticipate removing them in the future.

Chris Simollardes, 49 Carriage Way, asked if Pitch Pine seedlings were planted. Ms. Mattei responded that they are not. There are enough mature pitch pine to regenerate the population.

Ms. Mattei anticipates filing a Notice of Intent for the next Conservation Commission meeting.

**Conservation Restriction:**

Coordinator Capone explained that she has been working with Michael Precourt to complete his Conservation Restriction on Union Avenue associated with an Order of Conditions from 1998. The CR has received legal and EOEEA preliminary approval, she has worked with Mr. Precourt to develop the required Baseline Documentation Report, and the CR is now ready for the Commissions acceptance and approval.

On motion by B. Porter, seconded by M. Sevier, the Commission voted to approve and accept the Union Station CR #21 pursuant to M.G.L. Chapter 184, Section 32 and Chapter 40 Section 8C.

**Wetland Applications:**

**Notice of Intent – Buddy Dog Humane Society, 151/183 Boston Post Road, DEP File #301-1261:**

D. Henkels reopened the Notice of Intent hearing for the construction of a new animal shelter building and parking lot with associated grading and drainage within the 100-foot Buffer Zone, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

Coordinator Capone explained that the applicant is moving forward with Plan A, with support from the Planning Board. They are working on finalizing the plans, including proposed mitigation, and have requested a continuance to the February 10<sup>th</sup> Conservation Commission meeting.

On motion by C. Russo, seconded by R. Morse, the Commission voted unanimously, by roll call vote, to continue the hearing to February 10, 2020.

**Notice of Intent – 22 Buckmaster Road, DEP File #301-1277**

D. Henkels reopened the Notice of Intent hearing for the construction of a swimming pool and patio within wetland jurisdiction, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

Coordinator Capone explained that she has finally received a surveyed plan for this project, but not in time to be reviewed for this meeting, so the applicant has requested a continuance to the February 10<sup>th</sup> meeting.

On motion by C. Russo, seconded by B. Porter, the Commission voted unanimously, by roll call vote, to continue the meeting to February 10, 2020.

**Notice of Intent: Stearns Mil Pond, Carding Mill Pond, and Grist Mill Pond, DEP File #301-**

D. Henkels opened the Notice of Intent hearing for the proposed herbicide treatment of Grist Mill, Carding Mill, and Stearns Mill Ponds with Clearcast for the management of water chestnut, pursuant to the Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

B. Porter recused himself from this discussion, as an abutter to Hop Brook.

Jeff Winston, President of the Hop Brook Protection Association (HBPA), presented the proposed use of Clearcast to manage water chestnut in the three ponds within the Hop Brook system. He explained that he has obtained a favorable recommendation from the Community Preservation Committee to support their grant proposal at Town Meeting to conduct a three-year herbicide management program. Mr. Winston provided a background on management efforts that the Hop Brook Protection Association has employed to manage water chestnut, including using a harvester and hand harvesting. Both of these methods have been found to be ineffective, and in the case of the harvester, unsafe. He explained that the Hop Brook Protection Association has evaluated all options in order to manage the water chestnut. He has reviewed documentation on the use of Clearcast, as well as discussed use of this chemical with other municipalities and organizations. He has collected support from the Pond and Waterways Committee, SVT, and the residents around the ponds. They have also talked to the Water District to see if there was any concern of Clearcast getting into the water supply.

Glen Pransky, 102 Barton Drive and member of the HBPA, has a background in occupational and environmental health and has worked with toxicity studies and evaluating chemical safety. He explained that Clearcast has been evaluated by the Department of Agriculture and has been used on food crops for decades. Clearcast has been used in water systems since the early 2000s and is registered in 16 states. It works by inhibiting enzymes in plants, that aren't present in animals. The chemical binds and is absorbed quickly by the plants. Photosynthesis shuts down and the plants die back. Any Clearcast not taken up by the plants will photodegrade. Testing has found that Clearcast can cause acute toxicity to animals at 10,000 times the recommended dose. It is the most effective herbicide for water chestnut and does not pose widespread toxicity to non-target plants. In the Midwest, groundwater contamination has not been found to be a problem, even though they are applied at much higher concentrations than being proposed with this application.

Mr. Winston said that if we do nothing, with 80% of the ponds currently covered, water quality will continue to decline, the ponds will become shallower, dissolved oxygen concentration will decline, and wildlife will decline. Mr. Winston also advised the Commission that the stagnation of water in the ponds, due to the impact the water chestnut have had on water flow, could impact the amount of mosquitoes, and therefore the risk of EEE.

Gary Christelis, 181 Dutton Road and President of the Wayside Inn Foundation, expressed support for the proposal, noting that the water chestnut are negatively impacting the use of the Grist Mill at the Wayside Inn.

Coordinator Capone informed the Commission that while in Concord, she was involved with the partnership between the US Fish and Wildlife, the Towns of Concord and Lincoln, and their associated Land Trusts, and the Hop Brook Protection Association who all shared the harvester machine to manage the water chestnut problem in the Sudbury River and Hop Brook ponds. On the Sudbury River, the harvester was very effective, and control is managed through hand harvesting now. Control in the Hop Brook Ponds however, was never very effective due to the depth and rockiness of the ponds. The harvester was a very dangerous machine to drive and now requires special training to use. Now that the population covers 80% of the ponds surface, or 50 acres, it is not feasible to remove that much material manually, nor is there the ability to stockpile all of the plant material. If chemical control is not permitted, the ponds will fill in, which is the natural progression, though accelerated by water chestnut. There are no other feasible management alternatives. Coordinator Capone advised that chemicals should only be considered to bring the population down to a point where manual removal was feasible and there needed to be a commitment to that end. Coordinator Capone advised the Commission of experiences that other communities have found that timing and application have been done incorrectly and found ineffective. She also expressed concern with the presence of milfoil, whose population will quickly expand once the water chestnut is removed.

D. Henkels questioned whether there would be any interaction with the heavy metals in the pond sediment and asked whether there was consideration to phasing in the treatment program, starting with Grist Mill Pond. Mr. Winston responded that he feels that Clearcast has already been tested in other communities so there would be no benefit to waiting to treat all three ponds.

The Commission discussed the pros and cons of the proposal and thanked Mr. Winston for putting together a thorough application.

C. Russo expressed concerns with the use of herbicides and requested the following additional information be provided: 1) A letter from the Water District that there is no concern of Clearcast impacting the Town wells, 2) Information of what adjuvant would be applied; and 3) pre and post treatment soil samples be provided as part of any approval. In response to the request for soil samples, Mr. Pransky stated that the herbicide is sprayed on the surface of the water. Most is taken in by the plant or broken down when exposed to sun. A very small amount may remain in much lower concentrations than application.

Chris Simollardes, 49 Carriage Way, stated that he is in agreement with the objectives of the project and he has seen the Carding Mill Pond progressively worsen over the last 6 years. He requested more information on how the milfoil population would be managed. Mr. Simollardes felt that the idea that this project would have a positive impact with preventing EEE, was overstated.

Gary Christelis thanked Mr. Winston for the work of the Hop Brook Protection Association, a non-profit, and expressed the need for the Town to develop a long term solution to managing water chestnut.

Laura Mattei, Sudbury Valley Trustees stated that a long term plan could include dam removal.

C. Russo stated that he uses the precautionary principle when approaching issues with unknowns. C. Russo expressed concern with broad use of herbicides but appreciates the information that HBPA has compiled for consideration.

On motion by C. Russo, seconded by R. Morse, the applicant agreed to continue the hearing to February 10, 2020 to submit additional information requested and to allow time for a DEP number to be issued.

**Extension Request:**

**Nobscot Scout Reservation, 1 Nobscot Road, DEP File #301-1202:**

Coordinator Capone stated that this Order was issued in 2017 for trail improvements and resurfacing of the gravel parking lot. Work has not commenced yet and they have requested a three-year Extension. The Bylaw allows for a one-year Extension so to be consistent, Coordinator Capone recommended a one-year Extension be issued.

On motion by C. Russo, seconded by M. Sevier, the Commission voted unanimously, by roll call vote, to issue a one-year Extension to the Order of Conditions under DEP File #301-1202.

**Other Business continued:**

**Pantry Brook Farm Spring Walk:**

Coordinator Capone reported that Christa Collins from SVT has contacted her regarding the annual walk at Pantry Brook Farm. It is scheduled for May 8<sup>th</sup> from 8-10AM.

**Town Report:**

Coordinator Capone drafted and disseminated the Town Report for review and approval.

On motion by C. Russo, seconded by B. Porter, the Commission voted unanimously, by roll call vote, to approved the Town Report.

**Nobscot Scout Reservation 2020 Mass Trails Grant:**

Coordinator Capone reported that she had met with members of the Nobscot Reservation to review trail work that the Mayflower Council will be submitting a grant proposal under the Mass Trails program for. This trail work is permitted under the Order of Conditions that was Extended earlier in the evening. Coordinator Capone had disseminated a letter of recommendation from the Commission in support of this proposal for approval. The Commission endorsed the letter of recommendation.

**Town Meeting Warrant Articles:**

Coordinator Capone drafted and disseminated five Warrant Articles on behalf of the Commission. Three are for the reestablishment of revolving accounts for Wetland Filing Fees, Forestry, and Trail Maintenance.

The other two Articles are to convey the Libby and Dickson parcels, purchased with Community Preservation Act funds in 2003 and 2005 respectively for open space purposes, from the Board of Selectmen to the Conservation Commission. Following this conveyance, the Conservation Restriction will be finalized with the Sudbury Valley Trustees.

On motion by M. Sevier, seconded by R. Morse, the Commission voted unanimously, by roll call vote, to approve Town Articles as drafted.

**Bow Hunting Program:**

Coordinator Capone reported that the Bow Hunting Program was very successful this year: resulting in the culling of 13 deer from five conservation properties. The highest counts were at Nobscot and Lincoln Meadow which had four harvests each. Coordinator Capone also thanked Jerry Peters for coordinating this year's recreational component of the program.

On motion by C. Russo, seconded by M. Sevier, the Commission voted unanimously, by roll call vote, to adjourn the meeting at 9:30 PM.