



CONSERVATION COMMISSION MEETING MINUTES– April 22, 2019

Present: Laurie Freeman- Chair, Paul Hall- Vice Chair, Bob Mosher and Bob Hidell- Commissioners, Loni Fournier- Conservation Officer, and Sylvia Schuler- Administrative Secretary

Absent: Frank Gaul, John Mooney, and Jacqueline Zane

The meeting was called to order at 6:28 PM.

Approval of Minutes

Motion: Commissioner Hall moved to approve the draft minutes from the March 25, 2019 and April 8, 2019 meetings.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Certificate of Compliance

16 Marshall Road – DEP 034-0741, continued to 6/3/19

Applicant: Mark Patroia

16 Great Rock Road – DEP 034-0695

Applicant: Gerry Cosgrove

Excerpts from the staff memo:

Staff visited the site on 4/11/19. The current conditions largely adhere to the as-built plan submitted for the COC issued in September 2012. Staff noted that a trampoline had been installed in the wetland to the south of the house, with a short set of stone steps leading off the corner of the driveway to the trampoline. In addition, there was a large amount of trash in the wetlands, in the vicinity of the trampoline. Staff requested that the trampoline and trash be removed, and the area be allowed to naturally revegetate. Staff received confirmation and photos showing that these materials have been removed. During the site visit, staff also attempted to locate the wetland replication area. No other information was available in the file, however the adjacent lot, 14 Great Rock Rd., which contained a portion of the proposed replication area, has received a COC (DEP 034-0694). Due to site conditions, the lack of landmarks, and the length of time since work would have been completed, it was difficult to determine whether the replication area had been constructed. Staff noted that the existing wetland and adjacent upland were largely intact and healthy, with minimal invasive plant growth or trash observed.

Meeting Documents & Exhibits: Staff memo

Kerrin Rowley, Real Estate Agent, was present. The C.O. explained that this file had a complicated history but in the end the current owners have carried out everything asked to by staff. Commissioner Freeman noted that from the staff memo it seemed as if previous Commissions had handled the problems and already approved the replication area. The C.O. confirmed that the trampoline and trash in the wetland had been removed.

Motion: Commissioner Hall moved to issue a Certificate of Compliance for 16 Great Rock Road, DEP 034-0695.

Second: Commissioner Mosher

In Favor: All

Opposed: None

90 Chief Justice Cushing Highway – DEP 034-1021

Applicant: Paul Iaria, Steam Shovel Farm LLC

Representative: Gary James, James Engineering

Excerpts from the staff memo: An Order of Conditions was issued in April 2010 for the construction of a cranberry bog and an associated access roadway, outlet channel, and shallow well; clearing around the bog, presumably for access and operations; and maintenance of an existing cart path and stream crossing for site access. The Commission approved the addition of a 16ft x 24ft pump house as a field change in 2015. The pump house was mentioned in the original narrative and noted, but not shown, on the plans. Plans from 2015 were not found in the file. The Order was automatically extended to April 2017 due to the Permit Extension Act. The applicant requested and received another extension to April 2019.

The approved plans show a discrepancy between two wetland delineations on the site. The delineation for the filing shows an intermittent stream running along the southern side of the site, roughly parallel with Justice Cushing Way. An older delineation from 1998 shows wetland resource areas extending significantly further, with bordering vegetated wetlands both along a portion of the stream and into the central and northern portion of the property. The property is bisected north to south by a stone wall and

neither wetland delineation extends west of this wall, nor is topography shown in this area. The original narrative states, "The resource areas on the entire parcel were not identified for this filing. The limits of the flagging were established specifically to the limit of the 100' buffer for the proposed activity area." The minutes from the Notice of Intent hearing note the discrepancy in the delineations and subsequent minutes note that staff at the time walked the wetlands line with the consultant who delineated the property for the filing. No issues are noted and no further mention is made of the 1998 delineation. The current MassDEP wetlands data layer shows wetlands extending throughout most of the western side of the site, matching current aerial imagery.

Staff visited the site on 4/11/19 and observed a large bordering vegetated wetland on the western side, extending north to northeast and south on either side of at least a portion of the stream. The wetland is a wooded swamp and staff observed both standing water and wetland vegetation. The wetland extends far beyond the stream/BVW that was flagged for the filing, and is closer to the 1998 delineation, though very likely not as extensive as that delineation. Currently there is a large elevated gravel area adjacent to the bog, with stockpiles of woodchips, sand, and boulders near the edges. This altered area and the limit of clearing extend into the wetland. Staff compared the approved plans with the as-built plan. The approved plans show a much smaller limit of clearing than the approximate limit of clearing shown on the as-built plans. The engineer confirmed that the approximate limit of clearing was based on aerial imagery, however this analysis was done much earlier than the as-built date of March 2019. Staff notes that current aerial imagery, as well as staff's observations on site, indicate that the limit of clearing has extended even further. For example, clearing and filling now extends over and beyond the stone wall that roughly bisects the site. See aerial imagery and photos below.

There are a number of other differences between the approved and as-built plans, however staff does not believe that these changes are detrimental to the wetland resource areas. The changes include a smaller bog that was moved slightly farther from the wetlands, a relocated pump house and well farther from the wetlands, and a recovery pond to collect water drained from the bog as opposed to discharging to an outlet channel, which would have connected to the stream. Finally, staff noted that the bog is currently not operational or growing cranberries.

Staff recommends that the Commission require the applicant to comply with the original, approved limit of clearing and restore the area that was cleared and filled beyond that limit, prior to issuing a Certificate of Compliance. This will entail removing stockpiles and fill, and replanting the altered area. Work will need to be done in conjunction with an engineer and a wetland scientist. If any portion of the altered area falls outside of the 100ft buffer zone to wetlands currently on site, as determined by a wetland scientist and confirmed by staff, that area could remain cleared and in use. Staff notes that the approved limit of work is clearly shown on one of the approved plans (a portion of which is included below). A copy of the 2015 approved plan that is missing from the file was obtained from the engineer and although the approximate limits of clearing were erroneously left on the plan, the same approved limit of clearing is shown.

Meeting Documents & Exhibits: Staff memo, As-Built plans, and half size plans submitted by Gary James at the meeting.

Gary James, James Engineering, was present. He explained that the project had been filed in 2010, amended in 2015, and extended more recently in 2016. Commissioner Freeman asked if he had any response to staff comments. He stated that there was a line from 1998 he can't make sense of and he can't recall what they did in 2010. G. James agreed that the work did go beyond the limit of the original clearing, beyond the stone wall, and a machine will be brought down to pull it back and clean it out. He added that there was a berm added to the front side that is within the 50 ft buffer at about 45 ft off the wetland line and he would like that to stay. The C.O. asked what the purpose of the berm was and he responded that it was a good buffer between the agricultural use and the street.

The C.O. confirmed with G. James that he agreed to survey the limit of clearing and work with a wetlands person to figure out where the wetlands are and pull back. He stated that continuing to May 20 would give them enough time.

Motion: Commissioner Hall moved to continue the hearing for the request for Certificate of Compliance for 90 Chief Justice Cushing Highway, DEP 034-1021, to May 20, 2019.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Commissioner Freeman read the Public Hearing Notice of Intent.

Notices of Intent

247 Leavitt Street – DEP 034-1313, continued from 1/28/19, **withdrawn**

Applicant: Jim Magner

Representative: Jeff Hassett, Morse Engineering Co., Inc.

Proposed: Construction of new driveway

52 Union Street – DEP 034-1339

Applicant: Matt Falconeiri

Representative: Brad Holmes, ECR

Proposed: Addition

Excerpts from the staff memo: The applicant is proposing to add two 4ft x 4ft landings and steps, with one off the front of the house and the second off the rear of the house, a 6ft x 6ft covered entry to the front door, a 14ft x 20ft deck on sono-tubes off the rear of the house, resurface and regrade an existing asphalt driveway, repair and upgrade the septic system, and remove a number of trees. A portion of the driveway, the rear landing, and a portion of the tree removals are within the 50ft buffer zone to a BVW. The remaining work is within the 100ft buffer zone, with only a portion of the new septic system within the buffer zone. The BVW borders a tributary to the Weir River. There is associated Bordering Land Subject to Flooding on the parcel, but no work is proposed in this area.

The septic system repair/upgrade was previously approved by staff with an Administrative Review Decision issued in August 2018, which will expire in August 2019. Staff confirmed that the scope and details of this work have not changed with the current application.

Staff visited the site on 4/11/19. The lot is relatively flat, except where the land slopes down to the wetlands on the northern and northeastern side of the lot. The landings, entry, and deck are all proposed in locations that currently consist of lawn or brick (front walkway). The driveway currently pitches to a low point roughly in the middle, so runoff does not flow into the street. Staff has requested additional information on how the driveway will be regraded to ensure water will not flow into the street or be mitigated, if it will run to the street. With regard to tree removals, the purpose is to allow more sunlight to reach the garage, house, and yard, and to remove non-native invasive species such as Norway Maples and Black Locusts. A letter from a certified arborist indicates that the dominant trees have begun to encroach on the garage and house, and the shade cast by the trees is causing severe rot to the structures, and no grass or other vegetation is present under the trees. During the site visit, staff observed that the garage and house roofs were in poor condition, that there was a large area of bare dirt in a portion of the rear yard, and that a number of trees are leaning towards the garage and house. Some of the trees proposed for removal did not appear to be in poor health. Although many of the trees are non-native invasive species, some are native species such as Red Maple and American Elm, and staff notes that a mature stand of invasive trees still provides some value, particularly in comparison to a non-wooded or naturally vegetated area. Staff recommends that the Commission require a review of all proposed tree removals by staff and a certified arborist to determine if any trees can be pruned or saved as opposed to being removed. The applicant has proposed to replace all trees within the 50ft buffer zone with mitigation plantings at a 2:1 ratio. Native trees of a smaller stature are proposed for replacements. Staff also recommends that the Commission require that there be no expansion of the existing lawn, which the representative has confirmed is not the intent.

Wetland flags were not present on the site, though the wetlands had previously been delineated by McSweeney Associates in July 2018. The representative for the current application is Environmental Consulting & Restoration. Staff asked whether they had reviewed the wetland delineation and subsequently they visited the site in April 2019 and reflagged the wetlands. There is a discrepancy between the two wetland delineations, with the former delineation being more conservative overall. Staff intends to make another site visit prior to the hearing to review the current delineation. Staff notes that the prior delineation was confirmed and approved with the issuance of the Administrative Review Decision for the septic repair/upgrade in August 2018, thus the Commission could choose to continue to use this delineation regardless. With the prior delineation, a corner of the rear landing would be within the 50ft buffer zone. The representative has indicated that this landing will accommodate a new door from the kitchen to the rear yard and the existing bulkhead location restricts the placement of this door, thus the proposed location is the only feasible location. With the more recent delineation the landing would be outside the 50ft buffer zone. In addition a few trees would be in the 100ft versus 50ft buffer zone, reducing the number of mitigation plantings.

If the questions/issues related to the wetland delineation and the driveway grading are resolved and the Commission is satisfied with the remaining scope of work, the Commission could vote to issue an Order as follows:

Meeting Documents & Exhibits: Staff memo and Site plans received April 4 and April 17

Brad Holmes of ECR, and Matthew Falconeiri, Falconeiri Construction, were present. B. Holmes described the proposal (an improvement project) and the resource area (Bordering Vegetated Wetland and Bordering Land Subject to Flooding). He stated that the driveway will be rehabbed and not extended in any way. B. Holmes added that a septic system upgrade had already been reviewed and approved administratively, but they had included it also with this Notice of Intent application. All of the renovation work will take place in the 100 ft buffer.

The C.O. explained that the Asst. C.O. had asked B. Holmes about the wetland delineation as there were no flags in the field when she did her site visit. It was determined that for the previous septic plan application a line had been used from a database in a computer. Brad Holmes explained that he went out to flag the wetlands. His revised delineation took into consideration an area that looked like it had fill pushed into it a long time ago. The C.O. stated that in the end, the difference in delineation wouldn't affect the full scope of the work; the more conservative delineation would impact only a portion of the landing and some trees. The Asst. C.O. had recommended using the more conservative wetland delineation as submitted originally and with the Admin Review.

B. Holmes described the area of trees behind the garage/house as severely shading and leaning in to the house degrading the condition of the house. He stated that other than a cluster of red maples and an elm the remainder of the trees indicated for removal on the plan are Norway maples and black locust so the majority are non-native invasive plants. There is one black cherry tree at the edge of the house also proposed for removal that is full of black knot galls. Ten trees are proposed for removal in the 50

ft buffer and 16 in the 100 ft buffer. The proposal includes revegetating the area with a 2:1 ratio of mixed native trees so there would be 20 new saplings. B. Holmes stated that he was amenable to the staff request for a certified arborist to inspect the trees with staff prior to removal. The C.O. explained that staff was interested to see if there was an opportunity to prune some of the trees versus removal. A replacement planting plan will be submitted.

The C.O. commented that there were pieces of asphalt noticed around the wetland and in the lawn and she wondered if the applicant was interested in removing some of that as restoration; one larger section has more embedded pieces that would cause more disturbance if removed and those could remain. M. Falconeiri stated that he hadn't noticed them but would be willing to remove.

The C.O. explained that the draft condition #8 reflected the Commission's interest in replanting for tree removals in the buffer zone, and asks for a 1:1 planting ratio for the trees lost in the 100 ft buffer. She added that with it being a small lot, smaller species such as bushes or perennials would be acceptable. Brief discussion followed regarding the plantings. M. Falconeiri and B. Holmes were amenable to the additional plantings. The C.O. reviewed the change to draft condition #8 to read '1:1 plant ratio'. The C.O. also adjusted the language of condition #23 to remove 'tree' and to read 'mitigation plantings shall survive at least two full growing seasons with a minimum of 75% survival rate.'

In response to questions from Commissioner Hidell regarding groundwater and the wetland, B. Holmes stated that he hadn't done test pits, and stated that the wetland is a source of drainage, with a pipe that discharges from the street, and, with the recent rain, flooded. B. Holmes added that there is a drop in elevation from the upland area to the wetland; the upland is 28, 29 and 30 and the wetland starts around 25 and 26. Commissioner Hidell expressed his preference for plantings, not necessarily trees, that would allow for more recharge to go into the groundwater.

The C.O. stated that expanding the lawn is not part of the proposal, the regulation prohibits it and therefore had not included any condition referencing lawn.

Commissioner Freeman summarized that within the Commission's discretion, they want to allow people to deal with trees that are damaging a house, as it seems these are, or to allow for light, but to the extent that these things can be accomplished through pruning or reducing the trees in a healthy way, that would be desirable. Once within the 50 ft buffer, the Commission has to be really careful about what it's permitting and with ten trees proposed for removal, it starts to get up there in terms of impact. She added that she defers to the C.O.'s recommendation to have staff and an arborist play a role in making the removal determinations.

The C.O. noted that the most recent plan submitted detailed a silt sock rather than the previous staked hay bale as depicted on the original plan.

Commissioner Freeman invited any comments from the public. With no comments from the public, Commissioner Freeman closed the hearing to public comment.

Motion: Commissioner Hall moved to issue an Order of Conditions for the proposed work at 52 Union Street (DEP 034-1339), as shown on the submitted plans, and adopt the findings of fact a and b, and special conditions 1 through 23, as amended, of the staff report.

(The conditions below reflect the changes to draft conditions #8 and #23 as discussed at the meeting).

Findings:

- a. The project meets the submittal requirements for issuance of an Order of Conditions under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.

Conditions:

1. The applicant shall notify the Hingham Conservation Commission in writing of the name, address, and telephone number(s) of the project supervisor or contractor who shall be responsible for ensuring compliance with this Order and shall notify the Commission, by telephone or writing, at least 48 hours prior to commencement of work on the site.
2. This document shall be included in all construction contracts and subcontracts dealing with the work and shall supersede all other contract requirements.
3. The project supervisor or contractor in charge of the work shall have a copy of this Order available on the site at all times.
4. Prior to the start of any excavation or construction, there shall be a pre-construction conference on the site between the project supervisor or contractor responsible for the work and an agent of the Commission to ensure that the requirements of this Order are understood.
5. Prior to the start of any excavation or construction, erosion and sediment controls shall be installed, as shown on the final approved plan, and inspected by an agent of the Commission; straw wattles and/or hay bales will not be used as a form of erosion or sediment control.

6. Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
7. Prior to the start of any tree removals or landscaping work, there shall be a pre-construction conference on the site between a Massachusetts Certified Arborist (MCA) or arborist certified by the International Society of Arboriculture (ISA) and an agent of the Commission to review the proposed tree removals. Only the trees approved by the agent shall be removed.
8. Prior to the start of any excavation or construction, a planting plan shall be submitted to the Commission for review and approval. The planting plan shall include mitigation tree plantings at a 2:1 ratio for trees removed within the 50ft buffer zone and at a 1:1 plant ratio for trees removed within the 100ft buffer zone. All mitigation plantings shall be native species; no cultivars, non-native species, or invasive species shall be allowed. There shall be no expansion of the existing lawn.
9. During all phases of construction, all disturbed or exposed areas shall be brought to a finished grade and either a) loamed and seeded for permanent stabilization, or b) stabilized in another way approved by the Commission.
10. Any debris, which falls into any resource area, shall be removed immediately by hand.
11. Any on site dumpsters shall not be located within 50 feet of any resource area.
12. There shall be no stockpiling of soil or other materials within 50 feet of any resource area.
13. Issuance of these conditions does not in any way imply or certify that the site or downstream areas will not be subject to flooding, storm damage, or any other form of damage due to wetness.
14. Any dewatering activities on the project in which water will be released into any resource area or storm drain shall make use of a stilling pond or similar device to remove sediment before the water is released.
15. No vehicle or other machinery, refueling, lubrication or maintenance, including concrete washout, shall take place within 50 feet of any resource area.
16. All tree debris shall be properly disposed of at an off-site location; no chipped or mulched material shall remain on the property.
17. All yard waste, brush, leaves, and other materials disposed of in the wetland resource areas or buffer shall be removed by hand and properly disposed of at an off-site location. The practice shall be discontinued in accordance with Section 23.6 of the Hingham Wetlands Regulations.
18. Before executing any change from the plan of record, the applicant must have the Commission's written approval. Any errors found in the plans or information submitted by the applicant shall be considered as changes. Approval from other Town Agents or Inspectors does not relieve the applicant from obtaining approval from the Commission.
19. The use of de-icing chemicals, except for calcium magnesium acetate, a.k.a. CMA, or other alternative approved by the Commission, shall be prohibited on this property because of its proximity to the Weir River, which is a state-listed 303(d) impaired waterway, and the importance of the surrounding resource areas to the groundwater supply. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.
20. The use of pesticides, herbicides, and fertilizers shall be prohibited on this property because of its proximity to the Weir River which is a state-listed 303(d) impaired waterway, and the importance of the surrounding resource areas to the groundwater supply. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.
21. The applicant shall apply for a Certificate of Compliance as soon as work has been completed and prior to the expiration of this Order. If work cannot be completed prior to the expiration of this Order, the applicant shall contact the Commission in writing to apply for an extension at least thirty days prior to the expiration date.
22. The applicant shall submit an "as built" plan to the Commission upon completion of this project. The plan shall be signed by the professional engineer of record, who shall certify that the work has been done in accordance with the approved plans and this Order. This plan must be submitted prior to the issuance of a Certificate of Compliance by the Commission.
23. Prior to the issuance of a Certificate of Compliance, the mitigation plantings shall survive at least two full growing seasons with a minimum of 75% survival rate.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Commissioner Freeman adjourned the meeting at 7:00 pm.

Submitted, _____

Sylvia Schuler, Administrative Secretary

Approved on May 6, 2019

Meetings are recorded. To obtain a copy of the recording, please contact the Conservation Office.