



CONSERVATION COMMISSION MEETING MINUTES– May 20, 2019

Present: Laurie Freeman- Chair, Bob Mosher, John Mooney, Jacqueline Zane and Bob Hidell- Commissioners, Loni Fournier- Conservation Officer, and Sylvia Schuler- Administrative Secretary

Absent: Paul Hall- Vice Chair

The meeting was called to order at 7:00 PM.

Approval of Minutes

Motion: Commissioner Zane moved to approve the draft minutes from the May 6, 2019 meetings.

Second: Commissioner Hidell

In Favor: All

Opposed: None

Certificates of Compliance

12 Whiting Street – DEP 034-1112, continued from 10/29/18

Applicant: TD Bank

Representative: Randy Miron, Bohler Engineering

Excerpts from the staff memo: This discussion is continued from the 10/29/18 meeting, where staff noted that the sloped sides of a detention basin were not fully stabilized and the representative indicated that the area would be reseeded in the spring. The representative has confirmed that reseeding took place and the basin is now stabilized. Photos provided by the representative show a significant improvement in vegetated conditions since the fall. However, there are a lot of leaves present in the bottom of the basin. These should be cleaned out as soon as possible, in accordance with the O&M plan, which requires preventive maintenance twice a year. Staff relayed this concern to the representative and the applicant has indicated they will be cleaning out the leaves.

Meeting Documents & Exhibits: Staff memo

Motion: Commissioner Mosher moved to issue a Certificate of Compliance for 12 Whiting Street, DEP 034-1112.

Second: Commissioner Mooney

In Favor: All

Opposed: None

90 Chief Justice Cushing Highway – DEP 034-1021, continued from 4/22/19

Applicant: Paul Iaria, Steam Shovel Farm LLC

Representative: Gary James, James Engineering

Excerpts from the staff memo: This discussion is continued from the 4/22/19 meeting, where staff's observations regarding an expanded limit of clearing and filling, beyond that depicted on the final approved plans, were discussed. The Commission acted on staff's recommendation to 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. The representative agreed to survey the limit of clearing and filling, and work with a wetlands scientist to delineate the wetlands.

Since then, a wetlands scientist flagged the wetlands, outside of the limit of clearing and filling. The wetlands scientist noted that there were existing site alterations, including the removal of vegetation and excavation of soils, within the vicinity of a number of wetland flags and that these alterations were not part of the approved Order. Subsequently, the applicant pulled back material (stones, gravel, wood chips, soil, etc.) so the limit of fill would be farther from the wetland flags and east of the stone wall that roughly bisects the property, but still not in line with the original, approved limit of clearing. Staff visited the site on 5/16/19 and verified the current conditions. Staff has two significant concerns at this point. First, although pulling material back from the wetland is an improvement, site alterations still extend far beyond the original, approved limit of clearing. Second, although the recent wetland flagging is helpful, it does not necessarily depict the historic wetlands present on site since none of the fill was removed prior to flagging. Staff recommends that the Commission require the applicant to obtain an accurate wetland delineation in any areas that were altered, which would entail the wetlands scientist returning to the site and checking soils in conjunction with fill removal in any questionable areas. This would help determine how the area should be restored. Staff continues to recommend that the Commission require adherence to the original, approved limit of clearing, however any areas outside the 100ft buffer zone, based on an updated wetland delineation, could remain in the current condition.

Meeting Documents & Exhibits: Staff memo, Wetland Flagging report from P. Shea, and plan from Gary James distributed to Commission 'As-Built Site Plan on Chief Justice Cushing Highway, Hingham, MA' revision dated 5/10/19- Added Wetland Flags'

Gary James, James Engineering and Paul Iaria, property owner, were present. G. James stated that since the last meeting, the wetlands were flagged. Commissioner Freeman asked G. James if a wetland scientist had been out since the staff memo had been written. G. James had not read the staff memo and stated that no, a wetland scientist had not been to the site since the staff memo. Commissioner Freeman reviewed the staff memo. The C.O. explained that it's unlikely that the fill and the wetland line would be coincident. She added that the wetland scientist noted that he thought the fill did encroach within the original wetland line in some locations, so ideally the way to figure that out is to remove the fill and test the soils to see if they're hydric or not. She added that the fill had been removed only to the wall.

The C.O. explained that the site had been cleared and fill was extended into an area beyond what was approved; not only did it go into the buffer zone but there's a good chance it went in to the wetland itself. Staff had recommended removing the fill back to what the original limit of work was, which would be outside the 50 ft buffer; fill has been removed to a stone wall on the property that is still within the 50 ft buffer, only about a third to halfway of what was expected. In the process of removing the fill, it's unclear if the original wetland line has been determined. Commissioner Freeman agreed that knowledge would aid in determining how and where the area is restored. G. James stated that he thought that the material had been removed prior to the wetland scientist, Paul Shea, flagging it. P. Iaria stated that he had removed the fill before P. Shea flagged it.

Commissioner Freeman and Commissioner Hidell stated that the fill had still only been removed to the stone wall and was still within the 50 ft buffer. G. James stated that he would like to leave the fill pretty much at the rock wall. He stated that he understood that it's inside the buffer in one spot and it's not coincident with the limit of work as proposed. G. James added that this is an allowed use within the limits of the buffer and that, even within the limits of the act, there isn't a requirement to file because it is an agricultural use and it's their intent to maintain that stone wall. They also want to bring the fill right up to the MBTA tracks. He stated that the intent is to add more area for the agricultural use and because of the large stones in the area the only way to get the area is to create the fill over the top. He further stated that the purpose is to maintain an agricultural use and he doesn't know if that's another bog, or greenhouses or some kind of silviculture, and is unsure if it would require some other kind of filing. Brief discussion followed regarding filing options, with the C.O. pointing out that the Order of Conditions is expired and the only option is to get a Certificate of Compliance for this project. If they want to do more work in the buffer zone, it would require a new filing.

The C.O. read from the report submitted from P. Shea which stated that he flagged it April 30th. He used the term 'excavation of soils' and the C.O. was uncertain if he could possibly be referring to the pulling back of the fill. The Commission discussed the specific flags called out in the wetland scientist's report and located the flags, the 50 ft buffer line, the rock wall and the approved limit of clearing on the plan and discussed where the encroachment occurred. G. James stated that they got carried away and extended the berm to the left and extended up to the wall. Commissioner Mooney asked who got carried away and G. James responded that it was the owners. The Commission examined the plan further and clarified further details with G. James.

Commissioner Hidell asked if the bog had been planted and G. James stated that it was. Commissioner Freeman confirmed with G. James that nothing had been planted in the area of encroachment, asked what the area of encroachment was being used for and why did they want to keep it. G. James stated that it was just a working surface and that they are not sure if there'll be greenhouses and or extension of the bog and so all they really wanted was another working surface. Commissioner Mosher commented that they might do nothing and G. James agreed and said it could be they just leave the bog as is and do nothing.

Commissioner Hidell asked what the soils are outside of the bog area. G. James stated that the soils are actually pretty good but the problem is the large erratics (*boulders*). He commented on how difficult it was to get the bog to hold water and that they had finally got enough clay in there to seal it. G. James stated that the pond outside of the discharge is about 7-8 ft down and typically has standing water but did dry up last year and so the water table is below the pond and below the bog. Commissioner Hidell stated that he would like to go and see the site. P. Iaria stated that the fill is still there and that Landers was going to pick up just the rock. Brief discussion followed regarding specific flags and soils. Responding to a question from Commissioner Hidell, G. James stated that part of the wall is missing and will be reestablished; the C.O. clarified that the wall is missing where the fill was removed. G. James described areas where B horizon soils were evident near the wall and that the entirety of the left side was a B horizon soil.

Commissioner Freeman summarized that it seems that G. James is wanting to do something more on the property and it is significant enough to concern the C.O. and would require another filing. The C.O. stated that the only option with the project before the Commission now is to either issue or deny a Certificate of Compliance; if they don't feel like either of those is possible at the moment, then they could continue it.

Motion: Commissioner Hidell moved to continue consideration of a Certificate of Compliance for 90 Chief Justice Cushing Highway, DEP 034-1021 to June 3, 2019.

Second: Commissioner Mosher

In Favor: All

Opposed: None

28 Crowes Lane - DEP 034-1248

Applicant: Daniel and Christine Rodriguez

Excerpts from the staff memo: An Order of Conditions was issued in February 2016 for the construction of two additions and a porch, and the conversion of an existing porch to living space on an existing single family house. Subsequently, staff was informed that one of the additions would not be constructed, and the conversion of an existing concrete walkway to pavers was approved as a field

change. The as-built plan largely adheres to the final approved plan. Staff visited the site on 5/13/19. A paver walkway was constructed to connect the new porch to the existing driveway, but was not shown on the final approved plan. The walkway is partially within the 50ft buffer zone, however it was constructed within an area that was previously lawn and is separated from the wetland by the existing driveway. The as-built plan shows a sump pump drain discharging directly to the edge of the wetland. Staff located the outlet on site and did not observe any scouring. Although sump pumps typically discharge clean groundwater, there is potential for pollution from chemicals, petroleum products, or other materials that may be stored and could leak onto a basement floor. Discharging to a wetland is not recommended, though this practice is very common, and new drain pipes should receive permission from the Commission. The as-built engineer confirmed with the builder for this project that the sump pump and drain pipe were present prior to this project. A large pile of leaves and yard waste has been dumped near the edge of the wetland off the southern corner of the property. These leaves should be removed and the practice discontinued.

Meeting Documents & Exhibits: Staff memo

Commissioner Freeman reviewed the staff memo aloud, noting that occasionally a sump pump might contain contaminants and that the Commission would prefer to discourage the practice. The C.O. pointed out that the sump pump drain was there before they filed for the project and Commissioner Freeman confirmed with the C.O. that there was nothing in the Order of Conditions referring to the sump pump drain. The Commission concluded that they would not require any action regarding the sump pump drain as it was existing prior to the NOI submittal, but would, along with staff, try to be more aware of these situations with future projects. The Admin. stated that the applicant had submitted photos to the office that day showing that the leaves and yard waste had been removed.

Motion: Commissioner Zane moved to issue a Certificate of Compliance for 28 Crowes Lane, DEP 034-1248.

Second: Commissioner Mooney

In Favor: All

Opposed: None

Request for Extension of Order of Conditions

24 Shipyard Drive – DEP 034-1263

Applicant: Hingham Shipyard Marinas, LLC

Excerpts from the staff memo:

The current Order of Conditions for 24 Shipyard Drive was issued in June 2016 for dredging approximately 10,800 cubic yards of sand and fine materials within two areas of the Hingham Shipyard Marina. The Order is set to expire on June 20, 2019 and the applicant is requesting a three-year extension. The majority of the work has been completed, however the applicant has observed several areas of high accretion within the approved dredging areas and would like to continue to monitor and clean-up these areas. Additionally, the state and federal permits issued for this project have expiration dates of 2022 and 2020, respectively. The applicant intends to request an extension of the federal permit, which would set the expiration date of all permits (local, state, and federal) to 2022. The state and local regulations list five scenarios under which a Request for an Extension can be denied; this request does not match any of those scenarios.

Staff recommends issuing one, three-year extension for the project. The justification for the request is reasonable, however staff notes that the dredged areas will always be filling in and, at some point, that process will need to take place and the project will need to be formally closed out. The new expiration date for the Order will be June 20, 2022.

Meeting Documents & Exhibits: Staff memo

The C.O. emphasized that she advises that this project is only extended this one time.

Motion: Commissioner Hidell moved to issue one Extension Permit for the Order of Conditions issued to the Hingham Shipyard Marina, 24 Shipyard Drive, DEP 034-1263.

Second: Commissioner Zane

In Favor: All

Opposed: None

Other Business

Commissioner Freeman prefaced the discussion of the regulations with an update on the composition of the Commission. Commissioner Zane has signed up for another term as Commissioner. Commissioner Hall, Vice Chair, will not be renewing his term when it expires in a month. The Selectmen's office is aware of the need for two new commissioners, ideally with science or engineering backgrounds.

a. Discussion of changes to Wetland Regulations: Part 1, Section 4.0 Exceptions; Part 2, Section 23.0 Tree Replacement/Site Restoration; Part 2, Section 23.1 Septic Systems

Meeting Documents & Exhibits: Memorandum from Commissioner Hidell and written comments from Commissioner Zane

Commissioner Zane explained that she had looked at the state's language regarding Exceptions, and had written comments alongside the state's 'minor activities' of possible language changes to adapt them for Hingham; those where she hadn't included comments she thought were probably okay. She'd also looked at several other south shore towns and noted that most did not use the state's 'minor activities' but that Plymouth had and she'd included a page showing those.

Commissioner Freeman spoke of trying to work in the Commission's concerns about particularly sensitive environmental areas, special zones in Hingham where the Commission gives greater protections; and work in language to

exclude those areas from the 'minor activities'. It was agreed that the Commission would need to take time to evaluate and designate these areas.

Commissioner Hidell stated that the Commission has the authority to regulate coastal and inland wetlands and read aloud parts of his memorandum on critical elements he thought the Commission could focus on and prioritize during the regulations discussion. Commissioner Hidell asked the Commission and staff if there was an urgency for the regulations changes.

Commissioner Freeman stated that there was some urgency as the C.O. and Asst. C.O. had identified specific things that could be improved. She stated that she also feels urgency to be proactive in regards to the climate issue and agreed with Commissioner Hidell's suggestion to look at it policy wise to provide those protections. She commented that the bylaws may be fine the way they are but possibly the Commission has to be a little more strict on given properties. Commissioner Freeman added that more guidance is needed from an expert on how to identify where those are and be proactive on finding out about climate mitigation. Commissioner Hidell stated that he's been using the 2000 GZA Environmental Weir River Watershed Report as a reference in regards to water resources and background data.

Commissioner Freeman returned to the three items that the C.O. had specifically raised for consideration; minor activities, tree protection (Commissioner Freeman stated that she liked the example of Braintree and thought they could work off of those), and sewer & septic. Commissioner Hidell stated that all three of those come into play with his concern about recharge and the degradation of the groundwater resources. He stated that the purchase of the Lehner property was critical to the recharge of the aquifer that the water plant actually draws on. He added that these are the kinds of things the Commission has to monitor and needs to monitor development so that they do not give up any potentially important recharge areas.

Discussion followed about the Commission's ability to create and implement changes to both the Town bylaws and Wetland regulations to protect these sensitive areas. Commissioner Hidell suggested that for proposed zoning changes, the Conservation Commission could partner with Zoning and Planning. Commissioner Mosher stated that to get that done will be a long involved process and he thinks the Commission should do it, but that it should take care of immediate problems at the moment, one of which is Commission membership and the other, to simplify regulations to make the C.O.'s job easier and to avoid people having to come before the Commission for something that is routine. He added that when these two problems are taken care of, then the Commission should have time to do what they should be doing in the long run. The C.O. clarified that if the Commission were making changes to the regulations, the process is public notification followed by public comment within one of the Commission's meetings; it would not have to go before Town meeting. The approval process for making changes to the regulations is much simpler than making changes to the bylaw.

Discussion continued briefly with Commissioner Hidell expressing his concern that the Commission has decisions forced on them, like the cranberry bog, and stated that he doesn't feel that trees and replication are always the best answer to addressing recharge or scouring. Commissioner Freeman stated that the value of trees, especially old trees, includes not only their root systems but also help with carbon emissions and the Commission is charged with their preservation and she, personally, would prefer to be more strict with the tree preservation.

Commissioner Freeman summarized that she now had a better understanding of Commissioner Hidell's concerns regarding groundwater recharge and protection and realizes that it's more of a longer term objective for the Commission.

The Commission turned its attention to the comments submitted by Commissioner Zane. Commissioner Zane suggested that it might be helpful for the Commission to look at each exception in the state regulations and see how they feel about adopting it and/or making any edits to the language. She agreed with Commissioner Freeman that the Commission should consider if they want to limit the exceptions; for example, to the 50 to 100 ft buffer zone. Commissioner Freeman stated that she thought that there would likely be some minor activities that they might consider acceptable in both buffer zones and others that they might want to keep separate (okay in the 100 ft buffer but not in the 50 ft buffer). Commissioner Hidell commented that he considers the 50 ft buffer zone sacrosanct. The Commission and the C.O. discussed whether it made a difference if the 50 ft buffer is lawn or otherwise disturbed. Commissioner Mosher stated that he can accept that people can't touch the 50 ft buffer that hasn't already been touched but that he doesn't see that they can tell people they can't touch the 50 ft buffer that already has a walk, a lawn, and a swing set. Commissioner Hidell stated that generally he doesn't have a problem with that because it doesn't have a net effect on changing anything and used the example of the flagstone steps within the 50 ft buffer of 28 Crowes Lane heard earlier in the meeting. The C.O. stated that Commissioner Hidell's statement is what she's trying to get at in terms of exemptions from the office standpoint. For very minor work or alterations in an altered area of the buffer zone, how can the exemptions be better defined so that when someone wants to put flagstone steps to their front door in the 50 ft buffer and it's not going to hurt anything, office staff knows what to tell them. Commissioner Zane summarized that the exemptions would be only in previously altered areas.

The Commission and the C.O. proceeded to discuss generally, and then more specifically, the state's 'minor exemptions' and how they felt about different aspects of the language and how specific they might be. Commissioner Freeman suggested that the Commission could use this opportunity to encourage the design and use of materials with the

least detrimental impact on the resource area, for example, specifying that a particular design / material for a fence would not trigger a filing requirement (as it does now). The C.O. commented that the state regulations get at that by stating a fence will not constitute a barrier to wildlife. Commissioner Mooney cautioned against being so specific that the Commission can't adjust on the fly, as it could be a point of appeal. Commissioner Freeman agreed that any minor activities exceptions should be rationally based on scientific consensus.

Responding to comments from Commissioner Mooney, the C.O. clarified that peer reviews are paid for by the applicant with the peer reviewer being selected by the C.O. She makes it clear from the start that a peer reviewer would be required to help the Commission, and so the applicant knows when they file that it's a possibility. She explained that a peer review is most helpful for the larger, more complex projects such as a subdivision or commercial project where a lot of impervious is being added, as she does not have the expertise to evaluate the stormwater standards and review drainage calculations. That is when a peer reviewer is most commonly called in.

The Commission proceeded to discuss customizing Section 1 of the state regulations, followed by discussion of the state's 'minor activities', one by one, a thru q. The lengthy discussion concluded with Commissioner Freeman stating that she would take the edits home and write up all the suggested changes.

b. Discussion of establishing environmentally sensitive areas within the Wetland Regulations

The Commission did not discuss this topic.

Commissioner Freeman adjourned the meeting at 9:27 pm.

Submitted, _____
Sylvia Schuler, Administrative Secretary

Approved on June 3, 2019

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