

CONSERVATION COMMISSION MEETING MINUTES
October 9, 2019
TOWN ROOM, TOWN HALL
7:00 PM

Conservation Commission members present: Brett Butler, Chair; Jenn Fair, Vice-Chair; Fletcher Clark, Laura Pagliarulo, Lawrence Ambs, Ana Devlin Gauthier.

Comments from the Chair (Brett Butler)

- *None.*

Director's Report (Dave)

- *Tomorrow close on the Szala property 190 acres.*
- *Hickory Ridge is going to the Town Council on October 21st*
- *Capital planning underway*
- *Waiting on Fearing Brook grant*
- *Clean up at Markers Pond*
- *Meetings with Commissioners*
- *Ag. RFP – Amethyst Brook*

Wetland Administrator's Report (Erin Jacque)

- *Amherst College Gooding Field*

Communication with Amherst College regarding permit filing. Looking for confirmation from the Commission on the permit filing. Former administrator advised no permit necessary. Jacque advised a permit filing. Commission recommended an RDA be filed.

- *South East Commons – Enforcement Order*

Jacque reported that there was damage to the wetland, rutting, and that material had been put into the wetland. Butler wanted an Enforcement Order issued. Jacque asked for what the Commission wanted as part of Enforcement. Butler said Amir needs to come before the Conservation Commission to explain what is going on, EO should reiterate removal of material, need for mulch and seed. They need to stay out of that wetland area.

Fair mentioned that as part of the permit approval there was supposed to be an "in-kind donation" to the Town for Fearing Brook Restoration. Jacque to follow up.

7:10 PM Conservation Land Management

Carol Gray presented on Bluebird Meadow Conservation Area. Gray received an Eco Grant on Bluebird Meadow Conservation Area and developed signage. Gray has a quote with Fossil Graphics for printing on 5-signs. Trail comes from the rail trail and is adjacent to Mill Lane. Gray said there is a drop box. Quote expires at the end of the month. Needs to be on the agenda for the next meeting.

7:15 PM Discussion – SWCA for Pulpit Hill planting plan & wildlife enhancements

Christin McDonough of SWCA updated the Commission on the Pulpit Hill Solar Development. McDonough noted that the plantings had been installed, and the Commission still has to install bat boxes and bird houses. McDonough would rather see the boxes on trees on that on posts. Noted that the kiosk location had not been finalized. McDonough said that she could go out on the site and designate the locations for the bird boxes and bat boxes, if the Commission is okay with it. The applicant is waiting for guidance on the kiosk, purchase and placement. They would like guidance on the kiosk in the next 2-weeks. The Commission gave permission for the wildlife biologist to determine the bird and bat box locations. The Commission advised that Jacque will follow up on the kiosk.

7:25 PM Abbreviated Notice of Resource Area Delineation – UMASS Campus Planning for confirmation of resource area boundaries on Massachusetts Avenue (Map 8C, Parcel 13A).

Hearing opened by Brett Butler. Doug Marshall, Campus Planning, Christin McDonough of SWCA. SWCA submitted ANRAD for a portion of the UMass Campus south of Massachusetts Avenue. They are looking for confirmation of Bordering Vegetated Wetlands and Bank. McDonough reviewed the resource areas on the site. McDonough said Tann Brook is designated as intermittent on the USGS and the watershed size was evaluated in steam stats and was found to be intermittent. Jacque reviewed the site visit, and noted that material was dredged from the culvert and left on the grate above the steam to dewater. Jacque said the delineation of the stream looked great, there were a few very minor adjustments. Butler reviewed the BWV delineation, identified a trash pile in the wetlands and noted that there is a storm catch basin that needs to be added to the plan. Butler asked to review the DEP file number comments. One comment from DEP noted that the bank on the inside of the culvert should be indicated on the plan. According to McDonough there is a drainage area of .45 acres. Fair asked about NHD high resolution dataset, and whether it was checked. Butler asked if we are being asked to determine whether the stream is intermittent. McDonough said yes. Fair wants to see what the design flow is for the culvert system to get ball park range of expected flows. We have a lot of evidence that the stream flows year round. Jacque said she would review the BVW line prior to the next meeting and get comments to McDonough. Butler brought up the trash pile and asked if there was plans to clean it up. Marshall brought up issues with debris getting into the stormwater system, and it is a maintenance problem that needs to be corrected.

No public comment.

Moved by Fair, seconded by Clark to continue the public hearing to 7:45 October 23, 2019. 5/0.

7:30 PM Notice of Intent – Tofino Associates Inc. for construction of a single family house with associated driveway, utilities, and landscaping within buffer zone to bordering vegetated wetlands at Lot #1 Concord Way (Map 21D, Parcel 139).

7:35 PM Notice of Intent – Tofino Associates Inc. for construction of a single family house with associated driveway, utilities, and landscaping within buffer zone to bordering vegetated wetlands at Lot #2 Concord Way (Map 21D, Parcel 138).

7:40 PM Notice of Intent – Tofino Associates Inc. for construction of a single family house with associated driveway, utilities, and landscaping within buffer zone to bordering vegetated wetlands at Lot #5 Concord Way (Map 21D, Parcel 135).

7:45 PM Notice of Intent – Tofino Associates Inc. for construction of a single family house with associated driveway, utilities, and landscaping within buffer zone to bordering vegetated wetlands at Lot #6 Concord Way (Map 21D, Parcel 134).

7:50 PM *Notice of Intent – Tofino Associates Inc. for construction of a single family house with associated driveway, utilities, and landscaping within buffer zone to bordering vegetated wetlands at Lot #7 Concord Way (Map 21D, Parcel 133).*

7:55 PM *Notice of Intent – Tofino Associates Inc. for construction of a single family house with associated driveway, utilities, and landscaping within buffer zone to bordering vegetated wetlands at Lot #8 Concord Way (Map 21D, Parcel 132).*

Butler opened all associated Tofino Associates Inc. hearings at 8:05 pm for lots 1, 2, 5, 6, 7 and 8. Ted Parker was present on behalf of Tofino Associates. Parker provided background on the subdivision approval, noted that the subdivision has a current active Order of Conditions. Parker noted that there are obligate vernal pool species that have taken residence in the wetlands since the original permit was issued. Parker noted that the current Notice of Intent applications are for single family homes on each of the approved lots. Fair asked Jacque to review the bylaw setbacks from the local bylaw regulations.

Jacque noted for residential lots there is a 30-foot “No-work Distance from a Resource Area”, a 50-foot “Building set-back Limit”. Jacque noted there is a regulated 100-foot buffer from wetlands (bordering vegetated wetlands), and vernal pools have a 100-foot “No-work Distance from a Resource Area” and a 100-foot “Building set-back Limit”. Jacque noted that there are 25-foot “No-work Distance from a Resource Area” for driveways, utilities, and roads. Fair noted that all of the houses and buildings are outside of the 50-foot. Butler asked about the grading and lawn. Parker noted that lot 5 has a specific house plan and the other lots there is a building envelop in which any house will have to fit. Parker said the grading on the lots has not been determined. Butler asked about an additional envelope, Parker noted that the dotted line is the zoning setbacks. Butler asked if there was proposed grading. Parker said they are going to do their best to maintain the original grade. There will be grading around the house. Butler asked if there was grading within 100-foot. Parker said yes, because the houses are within 100-feet. Parker said the siltation barrier will be the limit of work. Fair said on all lots the house is within 100-foot buffer and up to the 50-foot buffer, but outside the 30-foot no disturbance. Butler asked if there are questions on the plans, and in the original order. Fair said for single-family homes the commission typically requires a full plan set with grading and erosion and sediment control. Jacque pulled up photos. Parker said he could provide those plans. Jacque walked the commission through the photos. Jacque pointed out the rebar markers, and noted some of the markers were missing. Jacque noted the pink flagging was located outside of the wetland boundary, and was told there was a separate study done on the site. Jacque noted that lot 8 was missing rebar. Parker said someone went on the lot and pulled all of the rebar out. Butler asked if the flags were surveyed. Parker said yes.

Butler brought up the original Order of Conditions and asked if the replication was completed and certified. Jacque asked about the replication and if a partial Certificate of Compliance was received. Parker said he is not sure, but he is researching the question. Parker noted the original developer passed away and he is sorting through paper files to find answers. Parker said that he will likely be reviewing meeting minutes. Parker noted Phase I was complete in 2004. Parker noted that the wetland replication was completed in 2004, and it is possible the conservation commission may have never looked at. Butler asked about monitoring on the replication. Parker was not sure of the answer. Butler asked about substantial changes to the original order. Parker said no, some lot lines have changed, but structures have not changes.

Butler opened up questions to the questions, Devlin Gauthier said she observed plant life and hydrology that looked like vernal pool rather than BVW. Parker said that the moisture content on the site changes year round, and noted he has heard frogs and suspected a vernal pool. Parker said that SWCA has gone out to do a vernal pool study and obligate species were found on the site. Butler said does the presence of obligate vernal pool

species on site now indicate a change in site conditions. Parker said he is not sure what trumps what. Parker noted changes to NHESP mapping shows the entire area as box turtle habitat and since plan approval predates the mapping of species, it is not applicable to the project. Butler said that there is a condition in the order that makes it clear #25 the commission reserves the right to amend the permit if new information or conditions arise. Pagliarulo asked if Parker has looked at redesigning the lots based on the vernal pool study and required set back. Pagliarulo asked if the applicant would keep the proposed lots exactly the same knowing there is a vernal pool behind them. Parker said yes, there is enough upland area to provide habitat and it would impose a significant financial hardship on the owner of the property. Butler asked, do we know how big of impact the change would actually have? Parker said he would come back and present some data on that, and the extent of the vernal pool is not beyond the original wetland boundary. Parker said that all of the lots are impacted by the vernal. Fair said that there is a question in her mind and the vernal pool information would be helpful. Fair said she would like to look into whether the permit can be revised. Parker noted that this is a change and permit can be revisited. Parker said the construction of the road created the vernal pool, and if the lots were lost he would apply for a variance. Parker said he is open to sharing the information and wants to do this in a responsible way. Butler asked for public comment.

Public Comment:

John Hoover – 103 Concord Way, abuts lot 8. Living at the residence for 2-years. Familiar with the forest, not an expert but has 2 degrees in Environmental Science thinks the vegetation is indicative of a vernal pool and asked the commission to conduct an individual assessment of the vernal pool. Noted the spring peepers and all kinds of wildlife. Asked that the area is protected.

Blake Sparko – 53 Concord Way, original residents on the property, very familiar with the area. There was a comment made to him when that the “work had to be done with snow on the ground”, and he said there was a reason for that. When the house was being building, a comment was made, “I hope you like frogs”. There are a lot of frogs, including wood frogs, and the number has been significantly changed. He sent a recording of wood frogs. (Difficult to hear). Agrees the commission should get an independent assessment to document the change that has occurred on site.

Becky Schneider – 65 Concord Way, wanted to confirm what others neighbors had said. She has a degree in biology. They have recordings of wood frogs and have seen evidence of fairy shrimp in the wetland back there. She said she wants to make a plea for an independent assessment of the area to make sure it is protected.

Jim Masterelexis – 35 Lindenbridge Road. Lived there since 2005. Knows that the Commission is going to apply the laws of the commonwealth and town. If the applicant deserves the permit, they should get it. If they don't they should not. Stated that the project has been going on for so long that there are now problems that have developed. Pipes, infrastructure and drainage. Take the time to look back at what was done in 2002 and 2003, because there was a lack of oversight. Respects applicant, but the Commission needs to go back and look at the minutes. He looked back at the Planning Board minutes and learned a lot. Wants the Commission to do the right thing. Said there is a vernal pool back there and it is very wet.

Butler said that they have a lot of new information before them and also, the Commission may need additional information. Butler is looking for input from others but sees a few options. First Butler said the Commission could ask the applicant to go out and do an assessment and report back what is there and make a decision. Butler said at that point if the Commission decides they want a third party, we can have a third party at that point. Butler stated he does not know what the time-line is for the developer, but we could just go for a third party now as well. Third party is an independent voice to assess the land. Butler said we could do a 2-step

process or just go to a third party – asked the Commissioners. Ambs stated he wanted independent review. Parker stated that they can do both. Parker said he would share the information he had commissioned. Ambs stated he wants someone else to go look at it. Fair asked Parker, if they have already had someone look at it. Parker said yes. Butler stated that a third party would be an independent review coordinated by Jacque, and the applicant would cover the cost. Parker said, let me know what you want to do. Butler said it sounds like there are no objections from the applicant. Butler asked if the Commission sees another road forward. No comments from the board. Butler asked Jacque if she was comfortable with moving forward with a third party review. Jacque suggested that the Commission make a motion, to hire an independent third party reviewer of the site. Butler asked if there was any additional information needed as far as the scope of the work to be performed, like a reassessment of the wetland boundaries. Fair stated, it sounds like a vernal pool delineation. Parker stated this is not the time of year to evaluate the vernal pool. Christin McDonough interjected that the obligate species will not be in the vernal pool if there is no water. Butler asked if there was a change in the wetland boundary. Parker objects to changing/redefining the wetland (BVW) boundary, he said that we have an active permit and have satisfied the obligation to continue the permit. Parker stated that the presence of obligate vernal pool species is a separate issue because it changes the setbacks. Butler said that it is the board's decision as to what information they want to collect. Butler asked the board, do we just want to look at the vernal pool or also the wetland boundary. Jacque said she had some recommendations - that the surveyed wetland boundary pins be replaced, because that was confusing. It's difficult to render any judgement without the pins. Pagliarulo asked if Jacque is asking to replace the pins based on the original delineation. Jacque said yes, because then we could evaluate where the original line was and whether the line has changed as far as vegetation. Jacque suggested staking the house footprint to see where the houses will be, and those would be the main things in advance of future field work, to see if the wetland has expanded in related to houses. Jacque is not sure if there is anything that can be done, even if the line has changed. Butler asked if that should be done in advance of a vernal pool assessment. Jacque stated that maybe it could be done concurrently. Parker asked if once the original delineation is re-established in the field, if the Conservation Commission is going to go out and look at the boundary. Butler said yes, but if it looks like there are changes, we could have the third party look at it, at that point. Butler noted that none of the board are wetlands specialists. Parker just asked because of the comment about the moss. Butler said -- is there justification for getting an expert, that is what we are trying to determine, due diligence.

Member of the public asked for the biologist to clarify what she was saying. He said he did not understand.

McDonough said wetland (BVW) boundary may not just be determined by standing water, but also hydrophytic plant vegetation and soils. McDonough noted that is not necessarily the same criteria used to determine the vernal pool boundary. Fair said usually the vernal pool boundary is smaller. McDonough said it depends, but if you are looking at a vernal pool boundary, you might want to do it in season.

Member of the public asked if the evaluation was being done during vernal pool season.

Butler said they are trying to make that determination. Parker made a suggestion that the information has already been collected in the field during vernal pool season and could be evaluated by a third party. Ambs asked "what data is that?" Parker stated that the applicant already paid to have the data collected by SWCA. Fair wanted to clarify because some members are new, and if the data exists the commission would like to see it. Butler asked if the vernal pool has been located. Parker said it was located with GPS. McDonough said no. Parker said the data collected can be shared with the Conservation Commission and the Commission can determine how best to make use of it. Parker said the data was from this spring 2019. Butler stated that without having it flagged, he is not sure how useful it will be. Pagliarulo said she was out there today and saw

quite a bit of indicative vegetation, like sphagnum moss. Butler said we would need hydrologist to flag it. Butler asked, can we have a third party at least look at the data for us, would that be useful first? Fair asked – before we see it? Pagliarulo said we could have a third party assessment and have them have the data in hand as well. Pagliarulo asked if it was a map. Parker said let’s get the data to you, and see if more is needed. Butler said that this will be a continuation. Butler asked if we give you until the next meeting, if that will be enough time to get the information to Erin. Butler asked if we could get them on for October 23rd. Jacque suggested an 8:00 pm continuance for all lots. Butler said, we are definitely continuing, we definitely want to see the data, there were other pieces recommended, the previous wetland markers re-established before the next meeting, and staking the house envelopes. Parker said that is tricky with it wooded, but +/- 5 feet.

Additional information, a little bit of work, and see what the data looks like from there.

Moved by Fair to continue to the hearing for Tofino Associates lots 1, 2, 5, 6, 7, and 8 Concord Way, seconded by Devlin Gauthier to continue the public hearing to October 23, 2019 at 8:00 pm.

8:00 PM Abbreviated Notice of Resource Area Delineation (cont’d from 9/25/19) – Raymond Szala for confirmation of resource area boundaries on Sunderland Road (Map 2A, Parcel 7).

Meredith Savage was present as the representative from SWCA and has some clarifying questions. She said the peer review comments were received, but SWCA didn’t have enough time to address them. Savage had three questions for the board. Question (1) on the accuracy of the field “survey”. GPS was used, Savage indicated that submeter accuracy was achieved. Savage asked the board if that was sufficient or if a registered surveyor was required. Butler said he was fine with GPS, and we have used GPS before. Butler asked if details could be provided on the accuracy of the survey that would be helpful.

Question (2) Bordering Land Subject to Flooding was not delineated or included on the plan, and is not typically included on an ANRAD application. BLSF would be based on the FEMA floodplain maps. Savage noted that Emily Stockman the peer reviewer said since the line was not included that the commission should note that line was not approved as part of the ORAD. Savage asked if the Commission wanted the estimated floodplain line on the maps. Butler said if SWCA is okay with including it, the Commission does not have an issue with it being shown on the plan. Jacque said include it on the plan or state that it is not being included in the ANRAD.

Question (3) Savage asked if it is okay that buffers are not included on the plan (per peer reviewer’s comment).

Moved by Ambs, seconded by Pagliarulo to continue the public hearing to October 23, 2019 at 8:15 pm. Vote 5/0.

8:15 PM Notice of Intent (cont’d from 9/25/19) – Ronald Keith for construction of a single family home and associated driveway and utilities including a stream crossing on Potwine Lane (Map 23B, Parcel 52).

Butler stated that the hearing was missed by multiple commission members previously, and said that the presentation of the project would need to start from scratch. Sparkle noted that he has not even had the opportunity to begin presenting the project yet because of the outstanding right-of-way issue. Fair also noted there was also a question about whether there was enough buildable land on the lot. Both questions/issues have been satisfied.

Bucky Sparkle of the Zengineer the civil engineer presented on behalf of Ronald Keith. There were questions about the lot: whether there was more than 20,000 square feet of upland area of the lot, and a question about ownership of the swale. There was a sit down meeting with the Director of Planning Chris Brestrup. The DPW Director signed off on the plan as a precaution due to the swale crossing.

Sparkle noted that there would be 155 square feet of BVW impacted for the crossing. He noted a 3-sided box culvert with 8ft wide span, greater than 1.2x bankful width would be installed. A sewer line and water line would also be installed. There will be 18 linear feet of bank impact for the crossing, and more than 200 feet replication is proposed. The wetland will be created at the same elevation of the existing ditch. The slope will be cut, trees and vegetation and removed. The proposed house footprint is 714 square feet. Butler asked about the area between the 30-foot and 50-foot buffer. Butler noted that there can be no fertilizer or herbicides in the buffer. Butler asked about a planting plan. Sparkle noted that there is no planting plan, it will be seeded with New England wetland seed mix. Butler asked about the monitoring plan. Sparkle noted that there is no monitoring, but we will work toward a minimum of 75% of vegetation coverage.

Ziomek asked about the "sediment trap". Sparkle suggested that sandbags would be a better alternative. Ziomek asked about the proposed shed and whether it was a part of the application. Sparkle said yes, and the location "soft" based on site conditions within the work area.

Jacque commented that replication areas are usually constructed first, but that is at the commission's discretion. Jacque recommended a low-flow condition during the culvert and utility installation. Sparkle noted that construction is expected to begin ASAP. Butler said aim for low flow. Pagliarulo said the shed should stay within the boundary.

Ziomek asked about permanent markers on the wetlands boundary. Sparkle noted that he would be open to vegetation. Butler said he would prefer boulders. Sparkle was okay with boulders.

Jacque recommended a single-family

Conditions: (1) aim for low-flow conditions, (2) install permanent boulder markers, (3) no chemical fertilizers or pesticides, (4) boiler plate conditions.

Moved by Ambs to issue an Order of Conditions for DEP file 089-0657 with special conditions, seconded by Pagliarulo. Vote 5/0.

Miscellaneous

Certificate of Compliance – Eversource Energy - Pomeroy Court

Jacque noted that she went out to look at the site and it was fully stabilized.

Moved by Fair to approve the Certificate of Compliance at Pomeroy Court, seconded by Devlin Gauthier. Vote 4/0.

(Ratify) Emergency Certificate – TOA Conservation Dept. for beaver dam breach Slobody Farm

Jacque noted that Beth Willson issued the EC.

Moved by Pagliarulo, seconded by Devlin Gauthier to ratify EC. Vote 5/0.

(Ratify) Emergency Certificate – 87 East Pleasant Street – hazard tree removal

Jacque noted that 3 hazard trees were identified, 2 were leaning. One tree would need to be pruned, but a large leader would need to be removed which would significantly damage, if not kill the tree. Jacque said she felt that it was better to be safe than sorry on issuing the permit, she appreciated that the applicant came to her for permission. The wetland is isolated and dry, there was no staining and not a lot of wetland vegetation, and it

was a dry depression at the time of the site visit. Jacque inquired with the tree warden prior to approving the tree removal.

Moved by Devlin Gauthier to ratify the emergency permit, seconded by Ambs. Vote 5/0.

Request for EV Charging Station – 70 University Drive (amendment to OOC or administrative change)

Jacque didn't have any problems with the plan, except for the work area in the wetlands, which she suspected was an error on the plan. Melissa Kaplan of BSC Group was present and said that the box was meant to represent the dig safe area, not the work area. Kaplan said work would not be in the wetland. Jacque showed photos. The area was just seeded down. Jacque asked for a revised plan showing a work outside of the wetland on the upland side of the silt fence.

Moved by Ambs to issue a minor administrative change to the permit with noted conditions, seconded by Pagliarulo. Vote 5/0.

Eversource Utility Maintenance Notification – 325 Sunderland Road

Jacque noted that a maintenance notification was received for work within the substation. Jacque also noted that a NOI was also received for work outside of the substation within jurisdiction. No action is required.

Moved by Devlin Gauthier to adjourn, seconded by Pagliarulo. 5/0.