



Conservation Commission Meeting Minutes

Wednesday, April 26, 2023

Town of Kingston
26 Evergreen Street, Room 200
Kingston, MA 02364

Present: Kalina Vendetti (Chairperson), Jim Franklin (Vice-Chair), Vittorio "Buz" Artiano, Glen Duffy, Dorothy MacFarlane, Megan Hickey, Natalie Wiegman

Virtual: N/A

Absent: N/A

Staff: Matt Penella, Conservation Agent

Julianna Denum, Assistant Conservation Agent

Location: Town Hall Offices, Room 200

Commission Meeting Opened: 6:30 p.m.

The Chairperson, Kalina Vendetti, opened the meeting at 6:30PM. The date was April 26, 2023.

VOTE TO OPEN: PASSED 7-0-0

BUSINESS:

I. Signing Documents

The Commission signed bills for Jones River Habitat Assessment, Blackwater Memorial Forest wetland restoration plan/permitting, Tall Timbers peer review, and the Conservation Agent's mileage reimbursement. Additionally, two Orders of Conditions were signed for 15 Kingston Street and 8 Silver Lake Drive.

II. Action Items

- a) 27 a Rocky Nook Avenue COC request

Chairperson Vendetti opened a public meeting to discuss a COC request for 27a Rocky Nook Avenue. Agent Penella explained that they are still working on a few things and would like to continue.

VOTE: Jim made a motion to continue to May 10th, Glen seconds; PASSED 7-0-0

b) 58 Off Boundary Street RDA

Chairperson Vendetti reopened a public meeting to discuss the RDA that was filed for 58 Off Boundary Street for the replacement of a wooden deck. Agent Penella stated it will be continued.

VOTE: Jim made a motion to continue to May 10th, Glen seconds; PASSED 7-0-0

c) 21 Kennedy Road RDA

Chairperson Vendetti reopened the public meeting to discuss the RDA filed for 21 Kennedy Road, which concerned the installation of an inground pool associated with a single-family residence.

Agent Penella stated that he received new materials showing the pool complex had been moved closer to the existing house and deck, further from the resource areas. Additionally, a robust streamside mitigation area with native plantings, roughly 10 feet wide along the property line, and the impervious calculations were provided. Buz inquired about the access way to the back of the property. Homeowner Tom Laxton stated that access had been available for decades and that he and his neighbors had used the area to dump yard clippings and brush. Agent Penella added that technically, lawn clippings are not allowed in that area. It could be perceived as an overall benefit to have an agreement where there will no longer be lawn clippings in that area.

The Commissioners discussed whether the homeowner would be able to gain access to the back of the property after the proposed planting buffer was finished. Sean Green, the representative from Dex by Terra, explained that the proposed planting strip would allow walking foot access. Tom Laxton stated that ultimately, he would love to have an access way to be able to walk back there. Jim clarified that the current plan does not restrict the homeowner's use of his land.

Agent Penella began a discussion about the impervious surface calculations, stating that the existing impervious coverage within 100 feet was 0.1% and within 200 feet, was 16.6%, making it already over 15%. The proposed impervious conditions within 100 feet would be 7%, and within 200 feet, would be 23.6%. The agent added that unless the commission felt that they

had already provided a robust enough mitigation plan to account for the increase, they may need to reduce the impervious surface numbers or provide additional mitigation.

Buz stated that by treating this area as a wetland line, not as a river, they were already under 15%. Agent Penella explained that technically, the impervious surface was already nonconforming. He cited that under KWPR (Kingston Wetland Protection Regulations), if there is a stream, then you have a 200-foot riverfront area, and that portion of the lot was supposed to be kept under 15%. Either way, they would have to ask for a variance.

Jim stated that in his opinion, there was enough proposed mitigation to approve the project. Agent Penella agreed, pointing out that they had moved the whole project further from the resource areas and included a robust restoration/mitigation planting strip in the plans.

VOTE: Buz made a motion to issue a Negative 3 Determination subject to the normal order of conditions with additional conditions. These additional conditions include placing four conservation posts along the edge of the restoration line closest to the house. Two on each corner and the next two equidistant from those two. A small set of stepping stones shall be placed in the restoration area to allow access to the back. The Conservation Commission will provide a variance on KWPR 10.05 allowing impervious coverage within jurisdiction to exceed 15% based on the mitigation as proposed and the relative permeability of the paver system. The mitigation/restoration area shall remain in a natural vegetated state. If the commission finds that the area did not establish sufficiently, additional plantings may be required., Jim seconds; PASSED 7-0-0

d) Cancel May 24th Conservation Commission meeting.

Chairperson Vendetti opened a public meeting to discuss the cancellation of the conservation commission meeting scheduled for May 24th, 2023.

VOTE: Buz made a motion to cancel the conservation commission meeting May 24, 2023, Glen seconds; PASSED 7-0-0.

III. Enforcement

a) 2R/6 Main Street

Agent Penella stated that there are two pipes on top of the culvert head wall that discharge storm water into the stream. The pipes are located at 2R and 6 Main Street, but it appears that they originate from 6 Main Street. The agent reported that he contacted the property owner, who promptly responded with a description and background information regarding the pipes.

The property owner agreed to meet on site to assess the situation and discuss potential solutions.

b) 1 Royson Drive

Agent Penella reported that the property owner is still gathering information and will provide an update for the next meeting.

IV: Meeting Minutes

There were no meeting minutes to approve.

V. Updates

a) The agent reported that all large trash, including shopping carts, tires, and other debris, has been removed from Blackwater Memorial Forest. The old pump house and sheds are still standing, but they will be removed during the restoration process. Additionally, when the water level was lowered, some preserved Atlantic White Cedar stumps were exposed and a couple of 6-foot-tall Atlantic White Cedar saplings were discovered, indicating that the area was once an Atlantic White Cedar swamp that was logged and impounded.

VI. Public Hearings

a) 19 Kingston Street

Chairperson Vendetti opened the hearing at 7:02 PM to discuss the Notice of Intent (NOI) received for the construction of a single-family dwelling with landscaping and driveway within the 100' buffer to wetland resource areas at 19 Kingston Street. The applicant was J. McKinnon Company, and the representative was Grady Consulting, LLC.

Kevin Grady from Grady Consulting presented revisions to the plan from the previously filed NOI, including the installation of a three-car garage, modification of pavement to pervious pavement, the addition of a covered patio, a proposed tree line, proposed dry wells to address roof runoff, two dry swales for drainage, and an updated proposed impervious calculation of 8.4%.

Buz asked if the water would be directed down into the drain instead of onto the lot at the site of the existing street curbing. Kevin Grady stated that since it is outside of the buffer zone, they would be able to do that. Buz requested that it be drawn into the plans.

Agent Penella noted that since there have already been two Orders of Conditions issued on the property, any additional conditions would be added to the same conditions as before, which specify no chemical use on the lawn. The placement of the wells on the property was discussed, and an agreement was reached to place them outside of the buffer zone. Agent Penella

recommended issuing an Order of Conditions under KWPR and WPA with the same special conditions found on the previous order. Additionally, he recommended that two conditions be added. The first was to address the street drainage and the second to ensure that the irrigation wells be placed outside of the 100-foot buffer.

VOTE: Buz made a motion to close the hearing, Jim seconds; PASSED 7-0-0.

VOTE: Buz made a motion to issue an Order of Conditions with the last Order of Conditions as the baseline and adding additional conditions. The first additional condition required the irrigation well to be placed outside of the 100-foot buffer area, while the second addressed the street drainage during the site plan to ensure that water is entering the drainage culverts., Jim seconds; PASSED 7-0-0.

b) Cushman Farms LLC

Chairperson Vendetti opened a continued hearing at 7:14 PM to discuss the Notice of Intent (NOI) for the exploratory test pits and borings at the properties located at the Cushman Drive right of way, the Thomas Street right of way, and the following lots along Thomas Street: on map 66, lots 29, 32, 33, 35, 37, 38, 40, 41, 42, 47; and on map 75, lots 5 and 7. The applicant was Rick Lincoln of Cushman Farms LLC. And the representative was Lori Macdonald of Coneco Engineers and Scientists.

During the meeting, Lori presented a revised project plan that showed the relocation of the access road to avoid areas subject to flooding and instead pass through the buffer zone. In addition, Lori stated that they would install weed-free straw or leaf mulch over exposed soils after the work is complete and adding coir fiber matting to secure the steep slopes. The areas would also be stabilized immediately after the equipment is moved out of the areas, and the access way restored.

Lori stated that they are willing to stake the center line of the access paths before the equipment enters buffer zones and riverfront areas. Additionally, Lori suggested having the Conservation Agent, or an independent environmental peer reviewer, come out and review the access area to discuss any alternatives before the equipment moves into the buffer and resources areas. Lori also proposed having an independent environmental peer reviewer on-site to review and approve installed sedimentation controls prior to the start of the work and inspect the restored site after the work is complete.

Lori indicated that the access path would be established by clearing vegetation to make a path for the equipment to get to the test pit and boring locations. No material will be brought on-

site to create the access path. If large trees or a large patch of vegetation are encountered while moving equipment along the path, then the equipment would be moved around to avoid impacting vegetation. Lori stated that they are looking at using smaller excavators to do the work than what was previously done on-site, although the drill rig will be the same. Spill controls will also be on-site and located in the vehicles in the event of any issues with the equipment. They can also provide an equipment list if requested by the commission.

Lori identified Wetland A as a bordering vegetated wetland with an inlet and outlet, and reported yellow spotted salamanders with egg masses were sighted in the area. Additionally, Lori noted that the area was unable to become certified as a vernal pool because of associated inlet and outlet. She added that there is no 100-year floodplain associated with wetland A, so there is no BLSF associated with it.

Agent Penella replied that it is imperative that the commission ensures the type of equipment being used for the project and whether the center line will indeed be staked prior to the equipment coming on site because, if this is not the case, then a stormwater checklist should have been provided.

Buz asked about the use of bio hydraulic fluid in the equipment and stated that it is one of his requirements. Buz also inquired about the depth of the test pits. Lori replied that the excavation would continue until they reach groundwater, which is expected to be around 10 feet. Buz expressed his concern about the potential impact of large equipment on the resource areas and suggested using a smaller excavator instead. Lori said she would ask the engineer about the use of large equipment and provide the commission with more information. Agent Penella clarified that, while the commission cannot mandate the type of equipment being used, they can require a list of potential equipment that could be used on site. This could include stipulations such as categories and/or size classes so that there is a threshold on the type of equipment being used.

Agent Penella disagreed with Lori's statement about the possible vernal pool not being able to be certified because it has an outlet. The agent specified that an outlet does not disqualify the pond from being a vernal pool unless it runs year-round and connects to a permanent water body that contains predatory fish. Additionally, citing KWPR, if the ponded area seems like a vernal pool, it should be shown on the plan as a vernal pool.

Agent Penella highlighted that the presence of an eastern box turtle on July 12th, 2022, as viewed by the Town's reviewer, means that the commission should regulate the site as a habitat for that species, which is listed as special concern by the Massachusetts Natural

Heritage Endangered Species Program. Without a survey or habitat evaluation, the commission has no way to know the size or health of the box turtle population at the project site. If the site does harbor a substantial population of box turtles, the exploratory work that was already performed may have impacted overwintering box turtles at the site. Additionally, allowing any further work there during the active season without any sweeps or survey would also impact the turtles and their habitat. Lori replied that she understood what the agent was saying about the box turtles and that she would have to check in with the project team and applicant to see how to proceed.

Agent Penella raised concerns about the new routing of the access path around the flood zone, as the commission had previously been informed that the area was too steep. The agent expressed worries about potential erosion, safety issues, and contamination hazards in the event of a rollover or spill along the new route. Additionally, the agent pointed out that claiming temporary impacts such as vegetation loss and erosion can have long-lasting effects and emphasized the importance of restoring the area as best as possible to avoid such impacts. The agent recommended that the commission include a condition specifying a timeframe for restoring any areas of exposed soil. Additionally, the agent recommended that if the commission required an environmental scientist to be on site during work within jurisdiction, they should report directly to the town through the peer review process.

Lori asked if the commission would be willing to accept a turtle sweep prior to the contractor entering the site. Agent Penella pointed out that box turtles are notoriously difficult for humans to find, so a dog survey would be more effective. He suggested that, in that situation, they would put transponders on the turtles to ensure they are outside of the work area before the equipment enters or establish a delineation or inclusion zone that would be safe for the work period.

Buz asked Lori if test pits 10 and 11 were necessary because of their proximity to the resource areas. Lori responded that there were plans in the 40B project to have a storm water system in that location. Lori asked if the test pits would even be allowed if the vernal pool was officially designated as a protected resource area moving forward. The agent responded that the assessment of that hasn't been conducted yet. However, the commission upholds vernal pool protection very highly. They have only allowed activity within the buffer of a vernal pool in certain situations where an area had already been given up by past commission permits. Jim expressed frustration that the plan was not complete and that the potential vernal pool was not included.

VOTE: Jim made a motion to continue the hearing to May 10th, Dot seconds; PASSED 7-0-0.

CLOSING REMARKS

Chairperson Vendetti made closing remarks at 8:44 p.m. The next meeting will be held on May 10, 2023 starting at 6:30 p.m. in Room 200.

VOTE: Jim made the motion to adjourn, seconded by Megan; PASSED 7-0-0