



Conservation Commission Meeting Minutes

Wednesday, May 10, 2023

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

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

Virtual: Glen Duffy

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 May 10, 2023.

VOTE TO OPEN: PASSED 7-0-0

BUSINESS:

I. Signing Documents

The Commission signed the Determination of Applicability (DOA) for 21 Kennedy Street and the Order of Conditions (OOCs) for 19 Kingston Street, both of which were approved at the April 26th meeting. Additionally, two bills from Beals and Thomas were signed: one for the restoration planning of Blackwater Memorial Forest and the other for the Jones River Estuarine Habitat Assessment.

II. Action Items

a) 27 a Rocky Nook Avenue Certificate of Compliance (COC) request

Chairperson Vendetti reopened a public meeting to discuss a Certificate of Compliance (COC) request for 27a Rocky Nook Avenue. Agent Penella stated that the COC could not be issued at that point because there were a few inconsistencies with the plan of record. After consulting with the homeowner, the agent instructed them to file a Request for Determination of Applicability (RDA) to address the outstanding issues. The homeowners have since filed the RDA, which will be reviewed at the next meeting on June 14th. It is anticipated that this will also resolve the COC matter. The discussion regarding the COC request was continued to the June 14th meeting.

b) 58 Off Boundary Street Request for Determination of Applicability (RDA)

Chairperson Vendetti reopened a public meeting to discuss the Request for Determination of Applicability (RDA) that was filed for 58 Off Boundary Street regarding the replacement of a wooden deck. Agent Penella stated that no new documents had been received, and as a result, the discussion on this matter was continued.

III. Enforcement

a) 2R/6 Main Street

Agent Penella provided an update on his meeting with the homeowner of 6 Main Street regarding the issue of pipes protruding from the top of the culvert and discharging directly into the stream. The homeowner highlighted the areas where they believed the connections existed and provided some historical background on the site, explaining how certain installations came about. It was brought to attention that one of the pipes served as an overflow for a rain garden that had been installed years ago under a conservation permit. However, it was noted that an overflow pipe had been added subsequently without proper permitting. The homeowner assured that they would resolve this matter and remove the unauthorized pipe within a couple of weeks. The agent requested the homeowner to inform him once the work was completed, otherwise the agent would follow up in a month.

b) 1 Royson Drive

Agent Penella provided an update stating that the property owner had sent an email explaining their progress in addressing the previously raised concerns. They have started the vertical construction of the building, stabilized some piles, and taken steps to resolve issues related to exposed dirt. A portion of the area has now been covered in gravel. The property owner indicated that they anticipate becoming weathertight and commencing interior work within the next two to three weeks. Their goal is to have everything prepared by the end of July. While the agent has not recently inspected the site, it appears that the property owner is making efforts

to comply with the commission's requirements. The agent stated that he will continue to monitor the progress.

c) Curtis Avenue

During the meeting, Agent Penella provided an update, stating that a Notice of Violation (NOV) had recently been sent to the property owner of the land adjacent to 8 Cedar Lane. It was discussed that the area in question appeared on the DEP wetlands layer as a wetland, and clear modifications had been made. These modifications included tree clearance, mowing of underbrush and undergrowth, and the stacking of firewood. The NOV explicitly stated these observations and emphasized that the area was designated as wetlands on the GIS layer. Additionally, it was noted that there had been previous enforcement issues concerning this parcel, as well as a separate enforcement order for 8 Cedar Lane dating back to 2008 when the current owner constructed the house. This indicates that both the current and previous owners were aware of the existence of the wetlands on the property. Megan inquired about whether the area in question was within a wetland or buffer zone. Agent Penella clarified that the DEP wetland layer clearly identified the area as a wetland, and the observed work had taken place within that designated wetland area, rather than in a buffer zone.

During the meeting, homeowner Gary Stas mentioned that he had harvested cedar that was already down and stacked it in the area in question. The agent clarified that any work within a wetland or its buffer zone falls under the jurisdiction of the commission, and any modifications or impacts on the wetland would require the commission's approval. Gary noted that he checked the GIS map, which is from 2012, and questioned its accuracy.

Gary inquired about any conditions imposed by the commission on the previous property owner. The agent responded that he was unsure of any specific conditions but mentioned an enforcement issue in 2006 related to tree and brush clearing. Additionally, in 2008, the commission was involved during the construction of the current property owner's house, specifically regarding the 25-foot no-touch zone around the wetland line. Gary stated that the wetness of the area has changed since he first moved there, possibly due to drainage work carried out by the Town in 2013 or 2014.

Gary expressed his willingness to comply with the commission's requirements but maintained his reservations about the accuracy of the 2012 GIS map. The agent responded by explaining that wetlands generally do not change quickly and suggested hiring a wetland scientist to delineate the area if the homeowner believed there was no wetland present. Until the commission receives evidence to the contrary, the commission must assume the area is a wetland, necessitating that it remains in its natural vegetated state without any clearing. Jim

added that wetland hydrology can vary depending on the time of year, and if it is marked on the map, chances are it is indeed a wetland. Gary also mentioned that some of his neighbor's dump grass clippings on the wetland side, but he has asked them to stop. The agent stated that this is a common enforcement issue. Buz recommended that Gary and the agent conduct a site visit together before proceeding with a paid delineation. Buz advised Gary to refrain from any work until the matter is resolved.

IV: Meeting Minutes

Minutes for March 22, 2023, and April 5, 2023, were submitted to the Commission to review and approve.

VOTE: Buz made a motion to approve both sets of minutes, seconded by Jim. Megan abstained from voting on the minutes for March 22nd. The motion PASSED with a vote 7-0-0.

V. Updates

a) Town Meeting recap

Agent Penella reported that the Town Meeting was successful, and the Commission achieved all its objectives. However, there were five remaining tax title parcels of interest to conservation. It has been determined that these parcels do not belong to the town and are classified as land of low value, which can be sold but not retained. The agent stated that they are currently exploring potential options for acquiring these parcels. Kalina inquired about the specific parcels, and the agent highlighted that three of them hold significant conservation value as they are located directly across from Hathaway Preserve on the Jones River. The other two parcels are small and isolated, with no viable access. Glen asked if the Conservation Commission could purchase those tax title parcels. The agent stated that although these parcels are required to go to auction, as a town department, it may be possible for the Conservation Commission to purchase them. The agent added that he will inquire further and gather more information on this matter.

b) Additional updates

Agent Penella reported that there was a fire at Camp Nekon, estimated to be about half an acre in size. The agent mentioned that he doesn't have many details but knows it occurred at the same location as the previous fires. The agent questioned whether it was caused by unauthorized off-road vehicles.

Agent Penella asked the commission if they would attend a Board of Selectmen (BOS) meeting where Thorndike, the developer of the Scared Heart property at the high school, was presenting information outlining their proposed development plans. The commission confirmed they would be in attendance and requested the creation of an agenda for the meeting.

Agent Penella reported that the commission has filed an RDA for the Bay Farm Conservation Area, which will be included on the June 14th agenda. The project focuses on invasive plant management, primarily using mechanical means, with occasional use of cut stem treatment as needed. Additionally, there are plans to either relocate or add a couple of benches.

The agent explained that several years ago, benches were placed in areas with a view of the ocean. However, these locations have since become overgrown with large shrubs and trees, obscuring the viewshed. Rather than cutting native vegetation solely for the purpose of improving the view, the idea is to clear out other areas dense with invasives, allowing the benches to be placed in spots where the ocean view is already visible. Furthermore, a volunteer named Bill Gould, who resides in the area, will assist in laying boards on existing trails that experience significant standing water. This maintenance work does not require a filing. However, Bill plans to eventually construct extensive sections of boardwalk, which will necessitate proper permitting. The agent emphasized that the site needs extensive rehabilitation.

VI. Public Hearings

a) Cushman Farms LLC

Chairperson Vendetti reopened the hearing at 7:02 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 the most recent changes to the plan. It was stated that the potential vernal pool had been added to the plan, including a 50-foot no disturbance zone and a 100-foot buffer. In addition, test pit 10 and 11, as well as the access road, were removed from the plan. However, test pit 29 was retained, as they are aiming to complete the testing in that area. Lori also mentioned their plans to monitor whether the amphibians in the potential vernal pool are successfully completing their life cycles. Additionally, Lori proposed having an experienced individual present during the entry of construction equipment onto the site to conduct a pre-construction survey for eastern box turtles. This person would handle the search for eastern box turtles along the work line and would also be present on site during the test pit work. Lori mentioned that they intend to hire someone to conduct a box turtle survey with retrievers. However, this survey is not anticipated to be completed during this phase of the test pits and boring. To minimize traffic, only the excavator and boring equipment will be allowed

access to the site. Staff members will walk to the testing location instead of driving trucks onto the site. Additionally, the wording "isolated land subject to flooding" has been changed to "bordered land subject to flooding" based on the recommendation from the Department of Environmental Protection (DEP).

Agent Penella sought clarification from Lori regarding the scope of the box turtle sweeps. It was established that the sweeps would be limited to buffer zones, no disturbance zones, and riverfront areas. Lori confirmed the accuracy of this information. Jim expressed his discomfort with undertaking any actions beyond receiving the narrative, as the plan had only been submitted a day prior. Glen inquired why the box turtle sweep couldn't be conducted before the test pits. In response, Lori explained that they would have someone present to perform the sweep before the equipment entered the buffer zones and moved closer to the vernal pool area. That person would remain on-site during the test pit work to ensure that the equipment did not encounter any box turtles.

Lori reiterated their consideration of retaining an eastern box turtle specialist who utilizes retrievers to locate the turtles. However, this would be pursued at a later stage in the project. Megan questioned why the retrievers couldn't be brought in prior to the exploratory work, given the presence of that species on the site. Megan expressed a preference for a specialist trained in locating box turtles with retrievers, rather than relying solely on a quick sweep before construction commences. The agent agreed with Megan, acknowledging that finding box turtles in a natural forested environment with dense understory and leaf litter poses challenges for humans. The agent also raised concern about the language specifying that sweeps would only occur within buffer zones, no disturbance zones, and riverfront areas, as it excludes the rest of the site, which is likely to be box turtle habitat.

The agent highlighted the jurisdictional questions that arise in this context. Under the Kingston Wetland Protection Regulations (KWPR), the commission can request measures to protect rare species, regardless of Natural Heritage's stance. However, the question remains whether the commission can require actions outside its jurisdiction, such as conducting a box turtle sweep on the rest of the site. The agent emphasized that by getting the retrievers on site to assess the box turtle population and attaching transmitters to them, the applicant has the opportunity to conduct the best possible work to protect the species. This would allow them to relocate the turtles if necessary at any point during the construction process. The agent expressed concerns about the potential impact on the box turtle population due to the presence of numerous test pits, borings, and large vehicles on site. He cautioned that future surveys might reveal cracked carapaces or turtle skeletons.

In response, Lori stated that the current work is exploratory and temporary, limited to the alignment shown on the plans. It was mentioned that nothing would prevent the turtles from moving across the alignment, indicating that conducting a survey at this point would not provide the desired protection sought by the commission. Lori noted that a specialist is needed to monitor the work and search for eastern box turtles ahead of the equipment entering the site. If any turtles are found, they can be documented and safely relocated away from the equipment. Lori reiterated that this is a temporary and exploratory test pit boring project, assuring that all equipment will be removed once the work is completed. Lori also stated that the equipment will be maneuvering around vegetation, avoiding dense areas, which should make the box turtles highly visible within the alignment. However, Lori acknowledged that she had not walked the entire alignment. Lori mentioned that there are staff members with experience in handling eastern box turtles, who have been approved by Natural Heritage to conduct pre-construction surveys. Lori stated that they possess the necessary expertise to protect the species during this temporary work. Lori also noted the difficulty of finding someone on short notice to conduct a turtle sweep with retrievers. Additionally, Lori explained that even if a turtle sweep with retrievers was performed, it cannot guarantee that the eastern box turtles would not move into the construction area afterward. Given the nature of this project, Lori stated that having one or two individuals present to monitor the area and perform the pre-access survey is the most appropriate approach.

Megan sought clarification from Lori regarding the individuals who would be responsible for conducting the survey and what their credentials are. Lori explained that these individuals have been approved by Natural Heritage under the National Grid contract to perform construction monitoring for eastern box turtles. Lori mentioned that Mike Toohill, the lead of the ecological team at Coneco, has extensive experience in conducting such surveys. Lori stated that she has also completed these surveys and received training at the Cape Cod Turtle School for radio monitoring and tracking of eastern box turtles. Lori added that Coneco has other biologists who are familiar with the species and can assist with the monitoring. Lori noted that both her and Mike Toohill are PWS (Professional Wetland Scientists).

Agent Penella acknowledged that he understood Lori's explanation, but in his opinion, the most effective way to protect the turtles at the site and prevent any harm to them would be through dog surveys and the use of transmitters. The agent emphasized that even if certain areas of vegetation are being avoided, turtles seeking refuge from heat, for example, may dig down and remain unseen by humans. The agent, drawing from his experience with the species in southeastern Massachusetts, highlighted the significance of retrievers' keen sense of smell in locating turtles effectively. Lori reiterated that they are not planning to survey the entire site, but rather focusing on the work limits. They are proposing hiring a professional to conduct a

thorough sweep and analysis of the site before finalizing the project plans. Lori expressed her belief that the Commission's expectation of retriever sweeps represents a significant demand, considering the proposed work is exploratory.

Jim noted that the commission prefers to err on the side of caution to avoid any potential harm to a protected species. Megan noted that the short notice mentioned by Lori shouldn't be an issue since this matter was already discussed two weeks ago, and it is likely that this hearing will be continued for another month. The agent added that the box turtle issue arose during the ANRAD process, where it was stated that the applicant was willing to take all necessary steps to protect the species. Jim further emphasized that the commission has been consistent with their comments, including the previous discussion on the human versus retriever issue at the last meeting.

Buz inquired about the logistics of conducting a turtle sweep using retrievers, seeking clarification from the agent. The agent explained that once the dogs locate a turtle, a handler would then take measurements and attach transmitters to the turtle. For adult box turtles, the transmitters can last a couple of years, depending on programming and the model used. Once the transmitters are in place, telemetry can be used to track the turtles. If work is scheduled to take place, the turtles can be located and moved outside of the work area. The agent mentioned that in the past, wildlife biologists would visit the site in the mornings to perform triangulation on all the tagged turtles, ensuring they are positioned away from the excavator's work area for the day. Once confirmed, they would report to the construction team that the area is clear to proceed with work.

Lori asked if this type of sweep is typically conducted for large-scale construction projects, expressing that she has not seen this level of sweep for exploratory work. The agent emphasized that by attaching transmitters to the turtles at this stage of the project, it will facilitate locating them in the future if the project progresses to a larger-scale construction phase. Additionally, it would ensure their protection during the test pit and boring phase. The agent highlighted that this is an opportunity to prioritize their protection at the site. Buz suggested an alternative approach. He proposed a daily sweep involving both dogs and humans before equipment enters the work area. This approach eliminates the need for transponders, so the applicant doesn't have to go through the permitting process for that. Lori stated that she will need to have a discussion with the applicant on how to proceed.

VOTE: Buz made a motion to continue the hearing to June 14, 2023, Jim seconded; PASSED 7-0-0.

CLOSING REMARKS

Chairperson Vendetti made closing remarks at 7:50 p.m. The next meeting will be held on June 14, 2023 starting at 6:30 p.m. in Room 200.

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

Prepared by: Julianna Denum, Assistant Conservation Agent, Conservation Department

Approved by: Conservation Commission