



Conservation Commission Meeting Minutes

Wednesday, June 28, 2023

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

Present: Kalina Vendetti (Chairperson), Vittorio "Buz" Artiano, Dorothy MacFarlane, Megan Hickey, Natalie Wiegman

Virtual: Jim Franklin (Vice-Chair)

Absent: Glen Duffy

Staff: Matt Penella, Conservation Agent

Julianna Denum, Assistant Conservation Agent

Location: Town Hall Offices, Room 200

Commission Meeting Opened: 6:30 p.m.

BUSINESS:

I. Signing Documents

The Commission signed a mileage reimbursement for the Conservation Agent, a DOA (Determination of Applicability) for 58 Off Boundary, a DOA for 27A Rocky Nook Avenue, and a COC (Certificate of Compliance) for 27A Rocky Nook Avenue.

II. Action Items

a) 11 Brook Street COC Request

Chairperson Vendetti is a direct abutter and recused herself from the Certificate of Compliance (COC) request. Megan Hickey opened the public meeting to discuss the COC request. Agent Penella stated that a COC request was received from the owner of 11 Brook Street. They are selling their house and had an open Order of Conditions. The original Order of Conditions was

issued around November of 1984. The work involved in the project was to create an off-street parking area with a retaining wall. However, the retaining wall was never built. The homeowner stated that previous commissioners told him he did not have to build the retaining wall, however there was no record of this. The agent stated that at this point now the site is vegetated and stable, with no erosion issues present. Buz asked the agent if he saw anything encroaching or egregious to the wetlands. Agent Penella stated that it is hard to determine any encroachment or damage to the wetlands because he did not see what the site looked like prior to the changes. He noted that certain areas have been filled, and there has been dumping at different sites on the property. However, the homeowner mentioned that everything would be cleaned up before the property changes hands. Buz stated that, in his opinion, unless there was something egregious occurring to the wetlands, he would support issuing the COC and closing out the file. Buz proposed issuing the COC if the homeowner agrees to install 4 conservation posts on the property to ensure that no encroachment will occur in the future.

VOTE: Buz made a motion to issue a COC pending the installation of four conservation posts, seconded by Dot. The motion PASSED with a vote 4-0-0.

b) 9 Pebble Lane Extension Request

Chairperson Vendetti opened a public meeting to discuss the Extension Request for 9 Pebble Lane. Beth Litchfield, the owner of 9 Pebble Lane, stated that an extension was required due to circumstances related to COVID-19. Agent Penella informed the commission that this request was to extend the existing Order of Conditions. Buz inquired about the duration for which Beth would like to extend the Order of Conditions. Beth stated that a three-year extension was requested. However, Buz responded that he would be comfortable granting a two-year extension.

VOTE: Buz made a motion to extend the Order of Conditions for two years, seconded by Dot. The motion PASSED with a vote 5-0-0.

III. Enforcement

a) 2R/6 Main Street

Agent Penella provided an update, stating that the property owner had assured him that the issue regarding stormwater would be resolved within a few weeks. The agent noted that one to two months have since elapsed, and he had followed up with the property owner the previous day. The property owner expressed uncertainty about whether his crew had completed the work. In response, Agent Penella stated that he would conduct a more thorough inspection before the next meeting.

b) 1 Royson Drive

Agent Penella reported that during his recent visit to the site amid a rainstorm, he observed numerous unresolved issues. The site was retaining a significant amount of water in the street, resulting in an overflow of the erosion control system. He also noticed this excess water flowing into Smelt Brook, leading to contamination. The agent added that many problems previously identified for repair have either been left unaddressed or have already fallen back into disrepair. Buz commented that the property owner has had more than enough time, eight weeks since the issue was first presented to the commission, to resolve these problems.

VOTE: Buz made a motion to issue a one-day fine of \$300, and to issue a letter stipulating that if the erosion control issue isn't fixed and stabilized by Monday, July 3rd, fines will commence at \$300 a day until the issue has been repaired, seconded by Megan. The motion PASSED with a vote 5-0-0.

c) Curtis Avenue

Agent Penella provided an update, stating that he will be inviting Gary Stas to the next meeting to discuss the recent enforcement issues at his property.

IV: Meeting Minutes

Minutes for May 10, 2023, were submitted to the Commission to review and approve.

VOTE: Megan made a motion to approve the minutes, seconded by Natalie. The motion PASSED with a vote 6-0-0.

V. Updates

Agent Penella stated that the Elm Street Stormwater BMP project is nearing completion.

VI. Public Hearings

a) 375 Elm Street NOI - Restoration of altered vegetation and installation of a pool within the buffer zone of a certified vernal pool.

At 7:00 PM, Chairperson Vendetti opened a public hearing to discuss the Notice of Intent (NOI) regarding 375 Elm Street. The focus was the restoration of altered vegetation and the proposed installation of a pool within the buffer zone of a certified vernal pool.

These alterations were the result of a disturbance caused by an ATV, which impacted the vegetation within the vernal pool's buffer zone. John Zimmer from South River Environmental delineated the wetlands on the property and created the corresponding restoration plan.

Rick Grady, from Grady Consulting, presented the plans which proposed the introduction of plantings within the previously used car path area. In addition, the plan included the installation of a pool within the 200-foot buffer zone of the vernal pool. The total area impacted within this buffer zone is estimated to be around 1,700 square feet, a part of which is impervious, constituting 2% of the area within the buffer zone's outer edge.

The proposed work also entails the establishment of a silt fence between the vernal pool and the new plantings, which is expected to effectively mitigate potential erosion sedimentation. In addition to this, another silt fence is proposed at the periphery of the pool project, to be located 170 feet away from the vernal pool. Lastly, the project proposal includes the installation of a fence surrounding the pool area along with the introduction of conservation posts.

Agent Penella clarified that under the Kingston Wetland Protection Regulations, the first hundred feet from a vernal pool is considered part of the resource area boundary, while the buffer zone extends to 200-feet from the mean high water. The agent noted that Natural Heritage has classified the project as a "no take," indicating that the commission should feel satisfied that the proposed work can be permitted.

Agent Penella further stated that if the project was approved, an Enforcement Order would be issued for the restoration work and an Order of Conditions for the pool installation. The agent had also reached out to Kevin Grady, asking him to formally request a waiver concerning the 100-foot no-touch zone of the vernal pool.

Pine Dubois, a member of the public from 93 Elm Street, emphasized the importance of educating the new property owner about the vernal pool on their property and the use of pesticides. In response, Agent Penella stated that the Commission could include a condition in the Order of Conditions prohibiting pesticide use beyond the conservation posts on the property.

Dot raised concerns about the size of the pool and the impacts of salt water within the buffer zone of the vernal pool. In response, the property owner, Jeff McKinnon of 375 Elm Street, specified that the pool is of an average size, measuring 20 x 40. Dot clarified that she was referring to the size of the entire pool system, including the surrounding material. In response, Kevin Grady noted that half of the pool lies outside of the buffer zone and any water that would make its way out of the pool would be de minimis.

Jim asked Kevin Grady about the site's topography. Kevin explained that a ridge runs between the developed property and the vernal pool, which means any water flow would first have to go

uphill then back down, thus minimizing impact on the vernal pool. Buz asked Agent Penella if he believed the restoration plan was sufficient. The agent responded affirmatively but recommended against the use of heavy machinery on site during the restoration work.

VOTE: Buz made a motion to issue the Enforcement Order, which includes the monitoring and reporting of proposed plantings, mandating all work done in the restoration area is to be completed by hand without the use of heavy machinery, and requiring that the work be completed by November 2023, seconded by Jim. The motion PASSED with a vote 6-0-0.

VOTE: Buz made a motion to issue an Order of Conditions with general conditions and special conditions, including: no stockpiling within Commission jurisdiction, pervious pavers to be used for the portions of the patio within Commission jurisdiction, no chemicals may be used within Commission jurisdiction without approval by the Commission, and no water or any other material from the pool or patio area may be released into Commission jurisdiction. The motion was seconded by Jim and PASSED with a vote 6-0-0.

VOTE: Buz made a motion to close the hearing, seconded by Jim. The motion PASSED with a vote 6-0-0.

b) Bay Farm Association Trust NOI - For maintenance of invasive vegetation in a pond.

Chairperson Vendetti opened a public hearing for the proposed maintenance of invasive vegetation in a pond. James Tracey with TRC Environmental explained that the pond referred to in the Notice of Intent (NOI) filing is known as "Back Pond", half of which is in Kingston and the other half in Duxbury. He noted that the entire shoreline of the pond is obscured by extensive phragmites. James presented his plan to reduce the phragmites, which includes cutting and mulching as well as treatment with Clear Cast herbicide. He noted that Clear Cast is a systemic herbicide that eradicates the whole root system and can be applied near or around hardwood vegetation. Additionally, it binds to an enzyme that's only found in plants, so it doesn't affect mammals, birds, reptiles, amphibians, or invertebrates. James stated that during a site visit, there was no evidence of an outlet to the pond and the inlet was stagnant, showing no signs of active flow. His goal is to eliminate the phragmites and introduce desirable native wetland plants.

Agent Penella noted that the pond is not natural and was excavated in the 1960s out of Tussock Brook. The agent added that potential future restoration could include removing the pond and restoring Tussock Brook, as mentioned in the landscape master plan put together by the Bay

Farm Association Trust. The agent also emphasized the importance of gathering comprehensive information about the proposed chemical before proceeding.

Pine Dubois, a member of the public from the Jones River Watershed Association and resident of 93 Elm Street, stated that studies have been conducted on the removal of the tide gate under the highway. Pine added that while she supports the cutting of phragmites, she would prefer to see a comprehensive plan implemented. She also expressed concerns about the potential impact of the proposed chemical on fish and suggested there may be an outlet to the pond under the southwest side of the highway. Pine emphasized the importance of preserving the Tussock Brook tributary.

VOTE: Buz made a motion to continue the hearing to July 12, 2023, Jim seconded; PASSED 6-0-0.

C) Lake Street Culvert Replacement & Stormwater Improvements NOI

Chairperson Vendetti re-opened a public hearing for the proposed replacement of an undersized culvert at Lake Street on the Jones River and the installation of an associated storm water management system.

Kristopher Houle from Strong Tree Engineering noted that they received a letter from Natural Heritage, which expressed no concerns about the project's impact on rare or endangered species. Agent Penella asked if any commissioners had any questions about the aluminum culvert. Buz confirmed that he is satisfied with the material selection, and Jim added that he had reviewed the information about the aluminum structure and has no further queries.

Pine Dubois, a public member from the Jones River Watershed Association and a resident of 93 Elm Street, declared her intimate involvement with the site and the fish passage they were developing. Pine said she had requested Gomez and Sullivan Engineers, who were working on the fish ladder, to coordinate with Strong Tree Engineering to ensure both projects align.

Pine expressed concerns about the dated Firm maps from 2012 referenced in the project and wondered if there was a requirement to account for local species in the construction plans. She also highlighted potential scheduling conflicts between the fish ladder and culvert installations. In addition, she noted that soil boring B1 had revealed coal ash, which she suggested should be removed rather than being re-deposited on a slope. She emphasized the importance of both projects using the same benchmark to ensure accurate elevation alignments.

Buz asked Pine if she saw anything in the plan that would cause serious concern. In response, Pine stated she did not see any major issues. Pine emphasized that her primary concern was ensuring that the two projects aligned correctly. Pine reiterated the need for a single benchmark for both projects. Jim agreed, stating that it would be sensible for the applicant who is further along in the process to establish this benchmark to ensure consistency.

VOTE: Buz made a motion to close the hearing, seconded by Dot. The motion PASSED with a vote 5-1-0.

VOTE: Buz made a motion to issue an Order of Conditions with general conditions and special conditions. These include: Bid documents and construction plans must reference protection measures for local wildlife; any coal ash exposed during construction will be disposed of off-site in an appropriate location; all in-water work must follow the time-of-year restrictions by MA Division of Marine Fisheries; and a Letter of Map Revision must be submitted after the work is completed. The motion was seconded by Dot and PASSED with a vote 6-0-0.

Kristopher Houle from Strong Tree Engineering stated that a project of this nature does not necessitate a Letter of Map Revision. He suggested that the Commission might not want to require one for the culvert project, as it wouldn't account for the work being done at the Forge Pond Dam. Additionally, Kristopher highlighted that the cost associated with such a letter could amount to around \$50,000.

VOTE: Buz made a motion to remove the Letter of Map Revision from the Order of Conditions, Dot seconded; The motion PASSED with a vote 6-0-0.

CLOSING REMARKS

Chairperson Vendetti made closing remarks at 8:37 p.m. The next meeting will be held on July 12, 2023 starting at 6:30 p.m. in Room 200.

VOTE: Megan made the motion to adjourn, seconded by Dot; PASSED 6-0-0

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

Approved by: Conservation Commission