



## Conservation Commission Meeting Minutes

**Wednesday, July 12, 2023**

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

**Present:** Kalina Vendetti (Chairperson), Dorothy MacFarlane, Megan Hickey, Glen Duffy

**Virtual:** Natalie Wiegman

**Absent:** Jim Franklin (Vice-Chair), Vittorio "Buz" Artiano

**Staff:** Matt Penella, Conservation Agent

Julianna Denum, Assistant Conservation Agent

**Location:** Town Hall Offices, Room 200

**Commission Meeting Opened:** 6:33 p.m.

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### **BUSINESS:**

#### **I. Signing Documents**

The Commission signed several documents: a Certificate of Compliance for 11 Brook Street; an Order of Conditions along with an Enforcement Order for 375 Elm Street; an Order of Conditions for the Lake Street Culvert; and an Extension Request for 9 Pebble Lane.

#### **II. Action Items**

##### **a) Request for Determination of Applicability (RDA) for Native Land Conservancy**

Agent Penella stated that an RDA had been filed to conduct invasive plant management near the shore of Muddy Pond. The work will entail manual control and removal techniques, with no herbicides being used. They will focus on removing Japanese knotweed, white poplar, and Asiatic bittersweet within Muddy Pond's buffer zone. Agent Penella noted that all proposed work would improve the site's ecological conditions, and the applicant is also taking erosion

prevention into account. The agent recommended the issuance of a Negative 3 DOA (Determination of Applicability). Diana Ruiz, the Executive Director of the Native Land Conservancy, stated that the proposed plan had been developed in consultation with Tim Simmons, a well-respected ecologist who has been visiting the site for over three decades.

**VOTE:** Megan made a motion to issue a Negative 3 DOA, seconded by Glen. The motion PASSED with a vote 5-0-0.

### **III. Enforcement**

#### **a) Curtis Avenue**

Agent Penella provided an update, stating that during the Commission's last discussion of the enforcement issue, they requested a site visit. This visit was conducted, and there were discussions with the homeowner, Gary Stas, about vegetation cutting, stacking of wood, and the extension of a crushed shell driveway within Commission jurisdiction.

The agent shared that he had examined the archives to review all details related to the property and its previous enforcement issues. The agent discussed the timeline associated with the property, the construction of the house, and the prior enforcement issues. He noted that special orders were added to the Order of Conditions, stipulating that once the house's construction is completed, the applicant should permanently mark the wetland boundary with plantings to prevent further encroachment. The agent added that in 2008, the previous conservation agent inspected the plantings and noted, "once they grow in, they will mark the wetland line quite nicely."

During the site visit, the agent observed what appeared to be an unpermitted crushed shell driveway within the 25-foot no-disturb zone. He informed Gary Stas that any additional work in this area would require filing with the Commission and that the area should be allowed to revegetate naturally. The agent noted violations regarding wetlands on the property and the ongoing condition specified in the Certificate of Completion that was issued.

Gary Stas expressed his intention to have the property delineated again and stated he had no objections to securing a permit for the driveway extension. However, Agent Penella mentioned that he is uncertain about whether this work would be permissible. Gary Stas sought clarification about whether the driveway extension would be permissible or about the current driveway's status. In response, the agent stated that he wasn't sure if either would be permissible, based on information from the previous filing indicating that anything within 25 feet from the wetland should remain a natural area. Dot inquired about any markers indicating the previous delineation. Gary Stas responded that "everything has changed" and that the

entire area needed to be reflagged and delineated. Kalina stated that the Commission would issue an Enforcement Order for Gary Stas to hire someone by August 12, 2023, to perform the delineation. If the designated individual can't accomplish this within a month, they must provide the Commission with a date indicating when they can.

**b) Subdivisions – follow up Enforcement Orders**

Agent Penella reported that he did not have any updates to provide to the Commission at that time.

**c) 2R/6 Main Street**

Agent Penella provided an update, stating that in the last meeting, he informed the Commission that he had reached out to the property owner but hadn't received any evidence of action taken to resolve the issue. The property owner had responded by stating he thought his workers had addressed the matter, but he would need to confirm this. Now, two weeks later, the agent reported that he had not received any further communication and would need to follow up.

**d) 1 Royson Drive**

Agent Penella provided an update, stating that during the last meeting, the Commission had issued a one-day fine to the property owner, Larry Demar. Larry was informed that he needed to rectify the stormwater erosion control issue by July 3rd. Larry followed up, claiming the issues had been resolved, so no additional fines were imposed.

However, Agent Penella stated that he visited the site after a significant rain event and found clear evidence of water, heavily laden with sediment, running across the natural buffer area and into the impounded section of Smelt Brook. During a site visit, Larry informed the agent that he had witnessed the silt fence collapse during the heavy rainstorm. Photos taken by the agent showed a large cloud of sediment in the impounded section of Smelt Brook.

Agent Penella explained to Larry the necessary steps for fixing the erosion issues. Following this incident, Larry mobilized a crew to reinforce the silt fence with hay bales on the non-wetland side and crushed stone on the wetland side, functioning as a berm for support. Efforts were also made to reinforce an area on the other side of the street where a catch basin that overflows is located. The agent noted that paving the area would likely resolve most of the erosion control issues, but additional problems, like road flooding, had been discussed with the Town Planner. When Glen asked if the flooding would be a conservation issue, Agent Penella confirmed it would be if the runoff started entering the wetland.

Glen inquired if the commission needed to review the paving plans to anticipate and address any potential water flow issues. The agent responded that he was unsure but noted that Larry had mentioned contacting Rick Grady from Grady Consulting about the plans. Rick Grady, representing Grady Consulting, confirmed their involvement in designing the site and its drainage systems. He stated that paving the area would significantly reduce water flow towards the problem area due to two large subsurface infiltration systems. He also added that once paved, it shouldn't be a long-term concern for the Commission.

Rick proposed to discuss with Larry the idea of installing temporary sediment basins on the uphill side of the driveway to catch surface runoff before it reaches the driveway. When Glen asked Rick for a timetable on the paving, Rick mentioned that Larry believed it would be done within a few days. However, Rick personally estimated it to be two to three weeks away based on his site observation.

**VOTE:** Glen made a motion to issue a one-day fine for the release of sediment-laden water into the impounded section of Smelt Brook. Megan amended the motion and stated that in addition to the fine, temporary sediment basins need to be implemented on-site by the next meeting on 07/26/2023. Megan seconded the motion, which PASSED with a vote of 5-0-0.

#### **e) 19 Kingston Street**

Agent Penella updated the Commission on the situation at both 15 and 19 Kingston Street, managed by the same applicant, J. McKinnon Company. He had recently met with Mike Shultz, the project manager, to discuss erosion control concerns at the sites. Although Shultz assured Penella in an email follow-up that all requested measures had been implemented, a subsequent site visit by the agent following a major rain event revealed several issues.

Agent Penella presented photos to the Commission showing the impact that the heavy rainfall had at the site, particularly relating to erosion control. The stormwater had filled an excavated foundation area and a pump was seen discharging sediment-laden water directly into the nearby wetland. The agent noted that the duration of this activity was unclear, but given the water level, it had likely been ongoing for a while. He instructed a worker onsite to immediately remove the hose and told Shultz to contact him.

Additional photos revealed a poorly installed silt fence that was not dug into the ground correctly and was, therefore, not functioning properly. The condition of the silt sock was similarly inadequate, evident by the dirt piled on top of it and sediment-laden water on the side closest to the wetland. Agent Penella also showed a photo of a catch basin that had been improperly fitted with a silt fence instead of filter fabric.

Mike Shultz stated that he was not onsite when the improper dewatering was conducted. He shared with the Commission an email that was written to the agent. In the email he apologized for what had occurred and that he did not authorize the pumping. The email also outlined his plans to rectify the erosion control issues. Mike also shared photos showing the remedial work that has already been done, including the installation of a retention center and new silt fences and socks. He also noted that he has ordered filter fabric for the catch basins.

Agent Penella concluded by emphasizing that everyone working onsite was responsible for understanding and adhering to the Orders of Conditions. Had corrective actions not been undertaken, Penella stated he would have recommended the Commission to issue fines for each violation. The agent suggested the issuance of a fine for the dewatering that occurred directly into the wetland.

**VOTE:** Megan made a motion to issue a one-day fine for the pumping of water directly into the wetland, seconded by Glen. The motion PASSED with a vote 5-0-0.

#### **IV: Meeting Minutes**

Minutes for June 14, 2023, were submitted to the Commission to review.

**VOTE:** Megan made a motion to approve the minutes, seconded by Dot. Natalie abstained from voting. The motion PASSED with a vote 4-0-1.

#### **V. Updates**

##### **a) 11 Brook Street**

Agent Penella updated the Commission on the status of the property, recalling that a Certificate of Compliance (COC) was decided to be issued at the last meeting, contingent on the installation of four conservation posts. The new property owner accepted this stipulation. The agent confirmed during a site visit that the posts had been installed properly resulting in the issuance of a COC.

##### **b) Grant projects**

Agent Penella reported that the fiscal year's end marked the submission of grant projects for reimbursement. He highlighted the successful completion of the Coastal Habitat and Water Quality Estuarine Assessment project. This endeavor concluded with a report identifying restoration opportunities in the Jones River Estuary. He noted that this project incurred no costs to the town and paves the way for the application of implementation grants or more targeted research grants based on the specifics identified in the report.

The agent provided an update on the Elm Street stormwater BMP project stating that it had a tight timeline due to a late start in June and a deadline of June 30th. Although the project is nearly complete, a few items still require attention from the contractor. Agent Penella noted that some aspects of the project caused problems for the water department due to issues with the engineering plan, but the system appears to function well overall. The agent mentioned a large rain event that caused erosion control issues at the site, which he promptly addressed.

The agent mentioned the Blackwater Memorial Forest Restoration project and noted that it was not tied to this fiscal year. Additionally, agent Penella provided an update on the parking lot area at Calista Farms. He noted that everything was set with the paving company to start paving the parking lot but that the archaeological survey had not occurred, and the notification form had to be resubmitted with the Massachusetts Historical Commission resulting in a several month-long delay.

Agent Penella discussed the Department of Transportation (DOT) land approved for purchase under CPC and town meeting. He informed the Commission about a field visit for the appraisal conducted about a month ago and expressed his anticipation of receiving the appraisal soon, which would allow negotiations to proceed and the sale to progress.

## **VI. Public Hearings**

### **a) 9 Pebble Lane Amendment Request**

At 7:06 PM, Chairperson Vendetti opened a public hearing to discuss the proposed amendment request to Orders of Conditions for 9 Pebble Lane for the raze and rebuild of a single-family home. Rick Grady, from Grady Consulting, reported that the Commission had previously approved an Order of Conditions to construct a house at this address for the past owner. The new property owner, Beth Litchfield, plans to alter the approved design, reducing it from a six-bedroom to a three-bedroom dwelling.

Rick noted that this redesign results in a minor reduction in impervious coverage, specifically a decrease of around 1.3%. Given the property's location within a flood zone, the plan ensures that all construction will match the previously approved elevations. Rick also drew attention to a design feature that keeps a portion of the deck cantilevered to maintain the mandated 40-foot setback from the resource area to the nearest column lines. Additionally, access to the underneath portion of the garage will be relocated further away from the resource area. Rick stated that they intend to follow the proposed footprint under the same Order of Conditions that was previously approved.

Agent Penella indicated that the proposed changes align with state and local wetland regulations. He further noted that it would be appropriate to amend the Orders of Conditions given that the proposed changes suggest a less significant impact on the resource area compared to what had been previously approved.

**VOTE:** Dot made a motion to issue an amended Order of Conditions, seconded by Glen. The motion passed with a vote 5-0-0.

**VOTE:** Megan made a motion to close the hearing, seconded by Dot. The motion passed with a vote 5-0-0.

**VOTE:** Megan made a motion to approve the amendment request, seconded by Dot. The motion passed with a vote 5-0-0.

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

Chairperson Vendetti re-opened a public hearing to discuss the proposed maintenance of invasive vegetation in a pond. Agent Penella shared his research findings on the proposed herbicide. He stated that most scientific literature suggested minimal ecological issues associated with Clearcast, except in extremely high doses, which could cause biochemical and cellular issues in certain species, such as quail, ducks, and lab rats. He emphasized, however, that such doses vastly exceeded those likely to be encountered in real-world applications.

Agent Penella identified the most significant potential risk as prolonged exposure of waterfowl to vegetation treated with Clearcast. He suggested the herbicide's impact could be mitigated by careful application, expressing preference for leaf application rather than an in-water mixture. Additionally, he proposed that drawing down the water level could further reduce potential impacts.

Pine Dubois, from the Jones River Watershed Association, objected to the site being referenced as a pond, asserting it is a part of Tussock Brook with a control structure. She voiced concerns about the project's potential impact on the local aquatic species. Her recommendations included lowering the water level, cutting the phragmites, and applying the herbicide sparingly and directly to the plant to control dispersion. Furthermore, she advised implementing monitoring requirements to track the introduction of the chemical into the water body.

Agent Penella asked Pine if the upstream boards could be modified to draw down the water level before work commenced. Pine affirmed that it could be done. She also encouraged post-application water quality testing and stated that this project could be a multi-year process.

Pine also raised questions about the herbicide's impact on other aquatic vegetation and organisms. James Tracey with TRC Environmental addressed these concerns, explaining that the proposed chemical binds with an enzyme that is only found in plants. Dot noted that it does not have significant impacts to other vegetation pine referenced like eel grass.

Referring to the EPA's data, Agent Penella underscored Clearcast's rapid photodegradation in water, indicating its non-persistent nature. Dot inquired about the company responsible for the herbicide's application, to which James identified Water & Wetland, affirming their status as registered pesticide applicators and their reputable standing.

Agent Penella suggested that the Commission could require the applicant to provide further information from Water & Wetland, including evidence of past successful projects like the one proposed, specifically those involving phragmites.

**VOTE:** Glen made a motion to continue the hearing to July 26, 2023, and requested that the applicant return with background information from the company administering the treatments, specifically concerning the success of similar local projects, Dot seconded; PASSED 5-0-0.

### **CLOSING REMARKS**

Chairperson Vendetti made closing remarks at 8:24 p.m. The next meeting will be held on July 26, 2023 starting at 6:30 p.m. in Room 200.

**VOTE:** Megan made the motion to adjourn, seconded by Glen; PASSED 5-0-0

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**Prepared by:** Julianna Denum, Assistant Conservation Agent, Conservation Department  
**Approved by:** Conservation Commission