



Conservation Commission Meeting Minutes

Wednesday, August 14, 2024

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

Present: Kalina Vendetti (Chairperson), Marilyn Kozodoy, Megan Hickey, Dorothy Macfarlane

Virtual: Vittorio “Buz” Artiano

Absent: Jim Franklin (Vice-Chairperson), Brian Payne

Staff: Matt Penella, Conservation Agent

Location: Town Hall Offices, Room 200 & Via Zoom

Commission Meeting Opened: 6:30 p.m.

BUSINESS:

I. Signing Documents

Agent Penella reported that he had signed a \$900.00 invoice from LEC Environmental for a wetland delineation on West Street, a \$761.25 invoice from Beals & Thomas for the Sampson’s Brook Headwaters Restoration Project, and a \$378.00 invoice from Kingston Landscaping, LLC for work on the Gray’s Beach rain garden.

II. Action Items

- a) 56 Main Street: Request for Determination of Applicability (RDA) for the installation of a gravel parking area behind the western building and restoration of a portion of Bordering Vegetated Wetland and associated 100-foot buffer zone.**

Agent Penella specified that any Determination of Applicability (DOA) would only include the gravel parking area, and that the restoration work would be permitted under an Enforcement Order. The agent noted that the RDA concerns retroactive work that has already been

completed, which includes the installation of a gravel parking area, and that the restoration work relates to areas of buffer zone and wetland impacted by the clearing of trees and vegetation, as well as the storage of wood chips and other debris.

John Zimmer from South River Environmental stated that the Conservation Agent raised the question of whether a wetland had been filled when the gravel parking area was installed. John noted that he met onsite with the agent to take soil samples, which indicated that there was no wetland in that location. Therefore, the applicants are seeking to have the parking lot permitted by the Commission. Additionally, the applicants performed some work within a Bordering Vegetated Wetland (BVW) at the back portion of the property. He noted that they cut down some trees that were impacted during a storm, which affected the buffer zone and the wetland. John stated that he has prepared and submitted a restoration plan to restore the area.

John presented the site plan to the Commission. He explained that the parking area is gravel and serves as a pervious surface at the low point of the property. He mentioned that stormwater runoff from Main Street infiltrates into the parking area. John noted that the restoration plan includes revegetating the disturbed area, removing the wood chips, and installing three conservation posts to prevent future encroachment. He added that the restoration plan also includes replanting the wetland and buffer zone with a mix of trees and shrubs.

**Chairperson Vendetti noted that Commissioner Dorothy Macfarlane had just arrived at the meeting.*

Agent Penella stated that the wetlands had not been delineated and that the wetland border was marked as approximate, though the buffer zone was not. He noted that the conservation posts are proposed to be installed approximately 40 feet from the wetland boundary. The parking lot is in an area that was previously disturbed, but the extent of that disturbance is unclear. The test pits revealed an asphalt layer beneath the gravel parking area. He noted that it is difficult to assess the situation after the parking lot has already been installed. The agent also questioned whether the parking lot is pervious, given the pea stone-sized aggregate. He stated that if the lot is not pervious, it would be more difficult to permit given its proximity to the wetland. If it is pervious, permitting should be easier since the site was previously disturbed.

Commissioner Kozodoy asked how it could be determined whether the parking lot is pervious. John Zimmer noted that there is a berm that limits stormwater from moving into the wetland area. Commissioner Artiano stated that he visited the site during a heavy rainstorm, and

although the parking area held water, it had drained by the next day, indicating that the area is pervious. Commissioner Artiano added that he would like to discuss the enforcement aspect related to the property before making a determination.

John Zimmer stated that they propose hand-planting a mixture of native trees and shrubs within the wetland and buffer zone. He noted that the remaining wood chips would also be removed by hand. John also mentioned that they propose installing three conservation posts to prevent further encroachment and will monitor the site for a minimum of two years to ensure 75% coverage. They plan to use an upland conservation wildlife seed mix in the buffer zone and a wetland seed mix in the wetland to promote additional wetland growth. They will also monitor for invasive species and return to the Commission if removal is necessary. He stated that they plan to provide the Commission with a report at the end of each growing season to document the restoration's success and make recommendations for any further work. He noted that the Enforcement Order will remain in place until the Commission determines the restoration was successful. John also suggested incorporating an as-built plan, which would allow him to delineate the wetland before restoration work and provide the Commission with a plan of record moving forward.

Commissioner Artiano expressed that he is comfortable with the restoration plan and RDA but would like to see an as-built plan and the addition of two more conservation posts, making a total of five. Agent Penella stated that the plan or DOA should specify that the planting will be done by hand. He also noted that the buffer zone seed mix should be switched to one focused on Southeastern Massachusetts, such as the New England Wetland Plants Southeastern Mass Upland Restoration Mix. He agreed that the delineation as part of the as-built plan is a great idea and that adding more conservation posts would be helpful.

VOTE: Commissioner Kozodoy made a motion to issue a Negative 3 DOA. The motion was seconded by Commissioner Hickey. The motion PASSED with a vote 5-0-0.

VOTE: Commissioner Kozodoy made a motion to accept the restoration plan, requiring that the restoration work be completed by October 31, 2024, with the special conditions that the plantings be done by hand, two (2) additional conservation posts be installed, and a stamped as-built plan with a wetland delineation be submitted upon completion of the restoration work. The motion PASSED with a vote of 5-0-0.

b) Extension Request Mass DOT

Chairperson Vendetti opened a public meeting to discuss the extension request for MassDOT. Agent Penella stated that this is a recurring filing from MassDOT for basic roadside maintenance. The agent mentioned that he is comfortable recommending a three-year extension.

VOTE: Commissioner Kozodoy made a motion to approve the Extension Request for MassDOT. The motion was seconded by Commissioner MacFarlane. The motion PASSED with a vote 5-0-0.

c) 15 Kingston Street: Request for Certificate of Compliance

Agent Penella stated that an engineering letter and as-built plan were received from Kevin Grady, certifying that the project has been completed and is in compliance with the Orders of Conditions. A site visit was conducted, and a few discrepancies were noted with the as-built plan, including the presence of a shed on blocks and an area labeled as “electric mounted on board.” These features are located in an area that was marked as lawn on the plan of record. While they are outside of any no-structure setbacks, it is unclear if they affect the impervious surface percentages. The project was approved at 14.9% impervious surface within jurisdictional buffers, and the as-built plan indicates an impervious coverage of 15.5%. The agent noted that it is uncertain if this includes the shed and the small concrete pad for pool equipment. The agent also clarified that the as-built plan mistakenly stated that the approved impervious coverage was 17% under file number SE 037-0937, which was actually the approved coverage for filing SE 037-0921, a project that was not constructed. SE 037-0937 was approved with an impervious coverage of 14.9%, which is below the KWPR limit of 15%. The agent further mentioned that when the Orders of Conditions were issued for SE 037-0937, it was specified that they were in conjunction with and did not supersede SE 037-0921, so the perpetual conditions would remain in effect.

The agent recommended that the applicants' representatives review the impervious surface calculations for accuracy, including any unpermitted discrepancies, and ensure that the approved impervious coverage on the plan is correct. An updated plan was recently submitted but has not yet been reviewed. The agent also stated that all perpetual conditions listed in the Orders of Conditions for SE 037-0921 and SE 037-0937 should be included in any Certificate of Compliance that is issued. The agent questioned whether the shed on blocks could be considered pervious and noted that, even if it is pervious, it would still need to be permitted by the Conservation Commission.

Jeff McKinnon of 375 Elm Street, president of Harley Phil, LLC, which built the property, stated that the pervious driveway was doubled in size to account for the shed. He also noted that the

shed was not part of their original scope of work and was added after the property was purchased. The agent recommended a continuance to allow time for a review of the discrepancies.

VOTE: Commissioner Hickey made a motion to continue the meeting until August 28th, 2024. The motion was seconded by Commissioner MacFarlane. The motion PASSED with a vote 5-0-0.

III. Enforcement

a) 28 Raboth Road

Agent Penella noted that this enforcement matter pertains to both 28 and 30 Raboth Road, which share the same owner. He stated that, at the last meeting, he did not have sufficient time to review the updated restoration plan. However, he has since reviewed the plan and found it appropriate for restoring the site and limiting further encroachment on Smelt Brook. A site visit was conducted on July 16th, which confirmed that the site is stable and that there is no current concern for sedimentation of Smelt Brook. The agent recommended that the Commission permit the restoration work through an Enforcement Order and establish a timeline for the work's completion. He also suggested that the wetland seed mix be switched to a Southeastern Massachusetts-focused seed mix, such as the New England Wetland Plants Southeastern Massachusetts Upland Restoration Mix. The agent noted that late fall would be the ideal time for the installation.

The representative, Brian Taylor from Stenbeck and Taylor in Marshfield, added that they plan to install six conservation posts along the side of the existing gravel driveway.

VOTE: Commissioner Kozodoy made a motion to accept the restoration plan and amend the Enforcement Order, requiring that the restoration work be completed by October 31, 2024. Commissioner MacFarlane seconded the motion. The motion PASSED with a vote of 5-0-0.

b) 375 Elm Street

Agent Penella provided an update, explaining that an Enforcement Order was issued due to failure to comply with a previously issued Enforcement Order requiring the restoration of the buffer zone to a vernal pool that had been modified. The Commission voted to issue a \$300 fine and an Enforcement Order requiring an update to the restoration plan. The deadline for that update was July 15th, and since no update was received by that date, daily fines were issued until the update was received on August 8th. The update indicated that the vegetation on-site was in the process of successfully reestablishing with native species. A site visit was conducted with wetland scientist John Zimmer, who mentioned that it might take another year or two for the vegetation to fully reestablish. During the site visit, John suggested hand-planting shrubs in

the area to help expedite the process. He also recommended conservation posts, which were already included in an Order of Conditions for the property. Agent Penella proposed that any amendment to the existing Enforcement Order include the conservation posts, mandating their installation by a set date, rather than as part of an Order of Conditions that could take years to complete. The agent noted that the fines issued amounted to \$300 per day, bringing the total to \$7,000.

Jeff McKinnon, resident of 375 Elm Street, stated that he had been contacted by conservation staff and mentioned that the area had sufficiently regrown. He noted that there were no changes to the topography and no trees were removed. Jeff stated that he was being fined for something he no longer needed to address to the extent originally proposed. He expressed a willingness to cooperate with the board and mentioned that the proposals from the wetland scientist were agreeable. Jeff also noted that he had purchased the property with the expectation that he could do more with it and expressed frustration about receiving enforcement paperwork from a constable. He noted that he had appealed the fines to Plymouth and did not feel he was negligent, claiming he was simply trying to “clean up the woods.”

Agent Penella responded that the work had been done within 40 feet of the vernal pool, posing a significant risk to overwintering vernal pool species. He also mentioned that the Conservation Department had provided multiple reminders about the deadline. The agent pointed out that Certified Mail had proven ineffective, and serving the Enforcement Order through the magistrate was a cost-free method that was not intended as intimidation. Jeff explained that he wanted to move forward and have the board reconsider the violations, noting that he preferred not to go through the appeals process.

Commissioner Hickey pointed out that an Enforcement Order had been issued with a clear timeline and questioned why the work had not been completed on time. Jeff explained that it was an oversight. Commissioner Hickey expressed that she was not comfortable rescinding requirements that were previously established. Jeff acknowledged her point but reiterated his desire to move past the issue. Chairperson Vendetti remarked that the Commission must use the tools available when requirements are not followed. Jeff insisted that the situation was not a matter of negligence.

**Chairperson Vendetti noted that Commissioner MacFarlane had to leave the meeting.*

Agent Penella reviewed the timeline of the enforcement matter, reiterating that the Conservation Department had provided ample reminders to Jeff. The agent stated that the

enforcement process was not meant to be punitive, but rather to compel compliance. Jeff offered to pay \$100 per day in fines.

Commissioner Artiano made a motion to reduce the fines to a flat fee of \$2,000. The motion was not seconded or voted on.

Commissioner Kozodoy suggested that the fines be set at \$2,500, given the original amount was \$7,000. Commissioner Artiano agreed.

Commissioner Kozodoy made a motion to reduce the \$7,000 in fines to \$2,500, with payment due in 30 days. Commissioner Artiano proposed an amendment to the motion, requiring payment by September 6, 2024. Agent Penella suggested that if the \$2,500 was not paid by September 6, the full \$7,000 fine would be reinstated.

VOTE: Chairperson Vendetti made a motion to reduce the \$7,000 in fines to \$2,500, contingent on payment by September 6, 2024. Commissioner Kozodoy seconded the motion. The motion PASSED with a vote of 3-0-1.

Agent Penella asked John Zimmer to provide details on the amended restoration plan. John explained that the plan would include the installation of 20 native shrubs along the existing pathway from the conservation markers down to the vicinity of the vernal pool.

VOTE: Commissioner Kozodoy made a motion to amend the Enforcement Order to include the installation of the conservation posts as described and the hand-planting of shrubs, with all work to be completed by October 31, 2024. Commissioner Hickey seconded the motion. The motion PASSED with a vote of 4-0-0.

IV: Meeting Minutes

Minutes for June 12, 2024, were submitted to the Commission for review and approval.

VOTE: Commissioner Hickey made a motion to approve the minutes for June 12, 2024. The motion was seconded by Commissioner Kozodoy. The motion PASSED with a vote 4-0-0.

V. Updates

a) 3 Brook Street Administrative Review

Agent Penella stated that he received an administrative review request to add a flower box to block the view from the road. The agent noted that the location is within the riverfront area and very close to the Jones River. During the site visit, he determined that the project did not

meet the Administrative Review guidelines and appeared to be more of a retaining wall project. He informed the property owner that an RDA or other filing would be required.

b) Blackwater Memorial Forest Fence

Agent Penella stated that a fence was installed at the parking area of Blackwater Memorial Forest, funded by donations.

VI. Public Hearings

a) 1 Landing Road: Notice of Intent (NOI) for the proposed construction of an addition and deck to the existing single-family dwelling within the 200-foot riverfront area to the Jones River and buffer zones to wetland resource areas.

Chairperson Kalina Vendetti re-opened the hearing for 1 Landing Road. Agent Penella stated that updated proof of abutter notifications had been received. He noted that there were still questions regarding the existing impervious surfaces and recommendations on how the project could be approved without requiring a variance. The agent mentioned that he would still like to see updated before-and-after impervious surface calculations. He also pointed out that the current plan does not propose the use of pervious materials, which he had previously suggested, though the plan does adjust the proposed deck to stay out of the 50-foot no-structure setback. Additionally, the plan includes a proposed drywell, but it does not show any connections on the plan. A note from the representative, John Zimmer, stated that the drywell would handle all roof runoff from both the existing house and the addition. Matt noted that the updated plan includes details for the drywell system and now represents Land Subject to Coastal Storm Flowage and its buffer zone.

John Zimmer, from South River Environmental, presented the plan to the Commission and noted that the deck layout had been modified to stay out of the 50-foot buffer zone. He also mentioned that a drywell had been added, which would result in a net decrease of impervious surface runoff from the site by capturing runoff from both the existing dwelling and the proposed addition.

Agent Penella stated that the plan was currently incomplete and recommended continuing the hearing to gather more information. Commissioner Artiano requested that a checklist be provided to the representative so they know exactly what the Commission is seeking for the next hearing. John Zimmer responded, saying his notes indicated that the Commission is looking for updated impervious surface calculations showing existing and proposed conditions, drywell sizing information, connections from roof drains to the drywell on the plan, and clarification on the deck board spacing to demonstrate that it is a pervious surface. Agent Penella clarified that while deck board spacing was suggested, it was not a requirement.

VOTE: Commissioner MacFarlane made a motion to continue the hearing until August 28th, 2024. The motion was seconded by Commissioner Kozodoy. The motion PASSED with a vote 5-0-0.

CLOSING REMARKS

Vice-Chair Jim Franklin made closing remarks at 8:13 p.m. The next meeting will be held on August 28th, 2024, starting at 6:30 p.m. in Room 200.

VOTE: Commissioner Hickey made the motion to adjourn, seconded by Commissioner Kozodoy; PASSED 4-0-0.

Note on Voting Format: In the vote tallies mentioned in these minutes, the format used is "Yes-No-Abstain".

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

Approved by: Kingston Conservation Commission

Documents used at the meeting:

- 08/14/2024 meeting agenda
- 06/12/2024 meeting minutes
- RDA documents for 56 Main Street
- Enforcement documents for 56 Main Street
- Extension Request documents for Mass DOT
- Request for Certificate of Compliance documents 15 Kingston Street
- Administrative Review documents 3 Brook Street
- Notice of Intent documents for 1 Landing Road
- Enforcement documents for 28 Raboth Road
- Enforcement documents for 375 Elm Street



KINGSTON CONSERVATION COMMISSION



26 Evergreen Street, Kingston, MA 02364

SIGN-IN SHEET

PLEASE NOTE THIS MEETING IS BEING VIDEO & AUDIO RECORDED

DATE: 08/14/2024

NAME	INTEREST	ADDRESS
BRIAN J. TAYLOR	.	RABOTH RD
Jeff McKeim		375 Elm St

TELEPHONE: 781-585-0537



KINGSTON CONSERVATION COMMISSION

26 Evergreen Street, Kingston, MA 02364



PUBLIC MEETING NOTICE

The Kingston Conservation Commission will hold a public meeting on Wednesday, August 14th, in accordance with the Wetlands Protection Act, M.G.L Chapter 131, section 40, as amended, and the Town of Kingston Wetlands Protection By-Laws, Kingston G.L. Chapter 13. This meeting is regarding the Request for Determination of Applicability filed by South River Environmental on behalf of the applicant LLRS, LLC, for the property located at 56 Main Street. The project proposes installation of a gravel parking area behind the western building and restoration of a portion of Bordering Vegetated Wetland and associated 100-foot buffer zone. Public meetings begin at 6:30 p.m. and may continue after any public hearings, which begin at 6:45 p.m.

This meeting will be held in person in Room 200 of the Kingston Town House. The public will also be able to attend the meeting virtually through Zoom.

Please visit the link below to join the webinar:

<https://pactv.zoom.us/j/96816332793?pwd=WmZRUWhTc0dsWUxrNGhSSjBNdDFldz09>

Meeting ID: 968 1633 2793

Passcode: 756156

Or, dial by your location +1 929 205 6099 US (New York)

This notice is also available at masspublicnotices.org

Conservation Agent: Matt Penella



TOWN OF KINGSTON

NOTICE OF MEETING

BOARD: Conservation Commission

DATE & TIME: Wednesday, August 14, 2024 @ 6:30 PM

MEETING LOCATION: Town House-26 Evergreen St. Room 200 & VIA ZOOM

AUTHORIZED SIGNATURE: Matt Penella, Conservation Agent

This meeting notice is being posted on the Official Town House Bulletin Board, pursuant to General Law Chapter 30A, Section 20. Said notice and agenda must be filed in the Office of the Town Clerk at least **48 HOURS** prior to such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

For those who want to watch this meeting, it is being broadcast by the Local Seen on Comcast 9 or Verizon 42 and streamed on YouTube at www.pactv.org/stream.

For anyone wishing to speak during the meeting, you are welcome to join us in person in room 200 or to join the Zoom call.

This meeting is being recorded by the Local Seen. Anyone intending to make an audio or video recording of this meeting should notify the Chair.

AGENDA

6:30 PM – CALL TO ORDER – ROOM 200

SIGNING DOCUMENTS:

1. \$900.00 invoice from LEC Environmental for a wetland delineation on West Street - signed by Conservation Agent
2. \$761.25 invoice from Beals & Thomas for the Sampson's Brook Headwaters Restoration Project - signed by Conservation Agent
3. \$378.00 invoice from Kingston Landscaping, LLC for work on the Gray's Beach rain garden - signed by Conservation Agent

ACTION ITEMS:

1. 56 Main Street: Request for Determination of Applicability (RDA) for the installation of a gravel parking area behind the western building and restoration of a portion of Bordering Vegetated Wetland and associated 100-foot buffer zone.
2. Extension Request Mass DOT
3. 15 Kingston Street: Request for Certificate of Compliance

ENFORCEMENT:

1. 28 Raboth Road
2. 375 Elm Street

MEETING MINUTES:

1. 06/12/2024

UPDATES:

1. 3 Brook Street Administrative Review

PUBLIC HEARINGS:

1. 1 Landing Road: Notice of Intent (NOI) for the proposed construction of an addition and deck to the existing single-family dwelling within the 200-foot riverfront area to the Jones River and buffer zones to wetland resource areas.

ADJOURN:**NEXT REGULAR MEETING:**

1. 08/28/2024

Join Zoom Meeting

<https://pactv.zoom.us/j/96816332793?pwd=WmZRUWhTc0dsWUxrNGhSSjBNdDFldz09>

Meeting ID: 968 1633 2793

Passcode: 756156

Or, dial by your location

+1 929 205 6099 US (New York)

This meeting of the Conservation Commission will be held in-person at the location provided on this notice. Members of the public are welcome to attend this in-person meeting or remotely. All Town Board and Commission meetings are required to provide remote participation. If there is a technical problem and remote participation cannot be provided, the meeting will end and be rescheduled.

The Town of Kingston advises its employees and the public that it does not discriminate based on a person's disability in employment or in access to its programs, services, and activities. This meeting location is accessible to people with disabilities. The Town of Kingston has designated Paul Armstrong to coordinate efforts to comply with the requirements of Executive Order 526, the Americans with Disabilities Act, the federal Rehabilitation Act and various other federal and state laws protecting the rights of people with disabilities.

If you have a disability and require a reasonable accommodation to fully participate in this event, please contact the ADA Coordinator no later than forty-eight (48) hours prior to the event by phone at 781-585-0505 or email parmstrong@kingstonma.gov to discuss your accessibility needs. Requests for accommodations or modifications made within the forty-eight (48) hour window will be honored to the maximum extent feasible, but it may not be possible to fulfill them.