



TOWN OF UPTON, MASSACHUSETTS

Conservation Commission

Meeting Minutes – August 9, 2023 – Remote Meeting (Teams)
To: Members of Upton Conservation Commission
CC: Denise Smith,
From: Grace Brownell

Members Participating:

Chair: Christine Scott, Vice Chair: Mike Penko

Members: Sandy Lajoie (treasurer), Tom Jango, Alan Miano, & Marcella Stasa

Absent: David Szczebak

Agent: Mary Overholt

Administrative Assistant: Grace Brownell

Visitors: William Taylor (Open Space Committee), Steve Saucier (VFW), Sean Malone (DGT Associates)
Valentin Komarovski, Christos Koutrobis, & Jose Mores Jr.

7:00 Remote Meeting Opened- Christine Scott is facilitating the meeting.

AGENDA ITEMS/HEARINGS

7:00 EO VFW Enforcement Order Update

- VFW Commander Steve Saucier was present to provide a status update. Mr. Saucier noted fencing and signs have been installed. Also noted, Mr. Saucier will have to inquire about whether the flat area had been seeded.
- Mary noted most of dirt piles are removed and she had advised Mr. Saucier to have the silt fence and trash removed from the wetland.
- Chris inquired if the fence is temporary. Mr. Saucier noted the VFW may look into other options, but the current fence will remain for now.
- Mike inquired whether Mary would be in agreement with lifting the two enforcement orders. Mary confirmed she is in agreement.
- *Mike motioned to lift the two enforcement orders with the understanding that the silt fence is to be removed and the upper flat area is to be seeded. Tom seconded. All voted in favor by roll call vote.*

Administrator's Report:

11 Hartford Ave-

- Mary noted a determination was issued for a house addition. The bounds were originally installed incorrectly. Thus, The Commission had asked the bounds to be moved to the correct 30-foot mark. The homeowner came into the office and expressed concern, as he was not consulted by the contractor.
- Marcella asked if the homeowner signed off on the plans as the property owner. Mary noted the company did all the permitting.
- The property owner conveyed to Mary that some of the abutting neighbors have violations on their property. Mary will send letters accordingly.
- Mike proposed coming up with a compromise. Marcella was in agreement as long as the wetland was protected.
- Chris suggested a compromise in which the middle bound would be removed.
- Marcella noted The Commission should see a reference photo of the lawn prior to making a final decision.

Dogwood Drive Access Easements

- Mary noted the Dogwood Drive Access Easements are currently under review by the Town Counsel and the Town Manager.
- Mike inquired if there would be conversations with the Crosswinds developer. Yes. Mike made the request for Mary to be allowed to attend any meeting as the representative for The Conservation Commission.
- Chris provided comment that meetings on this matter should be documented going forward.

7:15 RDA- 24 East St.

- Mary read the public notice. It was noted how the public hearing was reopened to amend a previous procedural issue with legal advertising. 24 East Street was an applicant for a Request for Determination of Applicability (RDA) for the construction of a single-family home. The public hearing was opened on 08/24/2022 and closed on 09/14/2022. On 09/14/2022, a negative determination was issued. The legal advertisement was sent to the Worcester Telegram and Gazette. However, it was never published.
- Mary noted at the time of when The Commission reviewed the application, there was some concern that there were wetland plants in the cleared area, and thus requested the applicant to conduct research. The Commission further asked Ecotec to do an independent peer review. Soils were not identified as hydric. Thus, Ecotec declared it not a wetland. Also noted, there are wetlands over 310-feet away from construction on site of property. There is some sedimentation from the construction leading into the woods. However, it is not within the vicinity of the wetland.
- Mike provided comment that The Commission did email the newspaper the public notice. Thus, there was an effort made to properly advertise the public hearing by The Commission. It was asked if the stormwater bylaw would be applicable due to the erosion leading into the woods.

- Mary noted that the Stormwater Bylaw operates so that if an individual receives a determination, the determination sits in place of any storm water permit. Also noted, wattles were installed prior to construction. There is no sedimentation trailing within the direction of the neighbor.
- The abutting Neighbor and homeowner of 26 East Street, Valentin Komarovski was present to provide public comment. Mr. Komarovski inquired why the public hearing notice was not run twice and referenced Mass General Law Title 7, Chapter 48: Section 11. It was noted, for this notice and the hearing to comply with Massachusetts law, the notice should have been posted consecutively twice prior to the Public Hearing date.
- Mary noted the Planning Board as an example, requires public notices to be advertised twice. However, The Conservation Commission has been advertising public notices only once. Thus, it was Mary's assumption that the Wetland Law is different than the rules and regulations that the Planning Board must adhere to.
- Mr. Komarovski noted the law does not specifically reference the Planning Board. It references all cases where notice of a public hearing is required.
- Mary noted The Commission will inquire with the DEP as to whether the state legal requirements have been satisfied.
- Mr. Komarovski referenced Town of Upton Bylaw Section 285: Notice of Public Hearings. It was noted that Mr. Komarovski is an abutter and did not receive an abutter notification by certified mail.
- Mary noted the regulations have the final say on the matter. Mike noted there is a sentence within the bylaw which allows The Commission to waive the notification requirement. Mr. Komarovsky asked if there was a vote to wave the notification requirements for the specific determination of 24 East Street. Mike inserted there was no vote specific to the application of focus, as the regulations allow The Commission to waive such requirement.
- Mary read the Bylaw Regulation, Section 2: Filing Procedure.
- Mr. Komarovski made comment that The Town of Upton has additional requirements from the State requirements in connection to any permit or request for determination.
- Mike reiterated the State Regulations do not require abutter notifications for RDAs.
- Chris made comment that a major project which would require a NOI and abutter notification would be a subdivision directly next to wetlands.
- Mr. Komarovski noted the soil was moved on site prior to when the Ecotec study was conducted. Mike noted he as well as the former Conservation Agent, Dave Pickart had visited the site at the time in which the application seen was before The Commission. No soil had been removed from areas that were evaluated. Also noted, vegetation had ruts which compacted the soil, causing it to be non-permeable. Thus, at that point, herbaceous wetland vegetation was established.
- Mr. Komarovski displayed images from 07/09/2023 and 8/1/2023 which include what he stated to be wetland vegetation. Mike responded in saying the plants displayed are not automatic indicators of wetland plants.
- Mr. Komarovski displayed the report from the applicant's consultant, Dave Crossman. He noted that property of 24 East Street has been flooded for a while, which indicates no unnaturally wet conditions. The house was built above ground due to water level.

- Mike provided a comment that the high ground water level was around 30-inches. Chris further added Christian Hill Road has multiple homes which were built above ground due to high ground water.
- Mary noted The Conservation Commission is going to put a motion before Town Meeting to amend the bylaw to reflect that abutter notifications are not a requirement for RDAs, to prevent future confusion.
- Mr. Komarovski displayed the Town Bylaw in reference to Section 280-4: Notice and Hearings. Mike requested Mr. Komarovski to read the final sentence: "The Commission shall have the discretion to waive any of the above notification requirements except those required under the Massachusetts Wetlands Protection Act, MGL Chapter 131 Section 40, by a majority vote of The Commission".
- Mary inquired about the conclusion of the 08/01/2023 court injunction. Mr. Komarovski noted it is under advisement by the judge.
- Attorney Christos Koutrobis was present on behalf of the applicant Generation Custom Homes. Mr. Koutrobis made comment that the notice was reissued, and the public hearing was reopened which amends the previous procedural issue. The purpose of Notice requirements is to allow the public the opportunity to participate at a hearing; and such purpose has been satisfied. Mr. Koutrobis confirmed that the motions from the 08/01/2023 court injunction are under advisement from the judge.
- Chris requested to hear the opinion of The Commission: Marcella noted The Commission could wait to act until The Commission is able to consult with Town Counsel and receive results from the 08/01/2023 Court decision.
- Jose Mores Jr. homeowner of 24 East Street noted that waiting to close the public hearing would place constraints on construction. There is a line of work that needs to be meet by a certain time frame.
- Mr. Koutrobis noted this is the construction of a new single-family home for his family. Thus, there is a sense of urgency to issue determination.
- Sandy made comment she is in favor of issuing negative determination as The Commission has amended the Newspaper's procedural error. Alan commented in agreement.
- *Tom motioned to close public hearing. Alan seconded. All voted in favor by roll call vote.*
- Mr. Komarovski requested permission from The Conservation Commission to allow access to enter the property to conduct an independent peer review study.
- Chris responded indicating that The Commission does not have authority to grant such access. The permission of the property owner would be required. Mike noted the public hearing is now closed.

8:00 Governor's Landing

- A discussion took place in which The Commission reviewed the draft order of conditions.
- Mary noted that the two overarching concerns were the number of reference vernal pools and the number of years for monitoring.
- Marcella noted how there was previous concern with utilizing reference vernal pools off site due to the difference in hydrology and environment.

- Mike noted there are not any other vernal pools on site which can be considered for monitoring. Even if there were applicable vernal pools on site, it is possible that construction could impact them. In terms of hydrology, the vernal pool at the Kerr Preserve is the best option at this point. The reason for doing three as opposed to two vernal pools is to ensure that the third would be the arbiter between the other two.
- Tom inquired about the elevated vernal pool on North Street. Mike noted it is on private property.
- Mike noted the vernal pools on the Mechanic Street and the Taft Mill properties could be variable options as well.
- Mike noted two years would not be adequate, as it would deter the ability to analyze impacts on next generation of wood frogs.
- Mary displayed the Draft Vernal Pool Monitoring Metrics. Mike noted in terms of monitoring frequency, one compromise could be to monitor for three years and then make a decision as to whether additional monitoring is needed. Mr. Malone of DGT Associates and Tom expressed to be in favor of the proposed compromise.
- Mike requested the addition of a condition to reflect that The Commission has authority to continue monitoring if they choose to.
- The Commission was in overall agreement for the condition of the three vernal pools.
- Mary inquired about requiring bounds within the buffer zones of the wetland. Mr. Malone was in favor.
- Mary inquired about the option for an independent monitor as the erosion control inspector. Mr. Malone noted that is typical protocol.
- Mary inquired about future ownership of open space. Mr. Malone noted that has not been determined, but there will be a restriction placed on open space.
- Mr. Malone advised Mary to amend condition #30 to reference C-504.
- Regarding condition #30, Mike noted a skylight would be sufficient.
- Regarding condition #45, Mr. Malone provided clarification that the plan does not include the subdivision of lots, the project will entail one lot. Mr. Malone requested the language change to reflect “units” or “buildings”. Also noted, some of the trails indicated on the plan may slightly change. Thus, Mr. Malone requested the language to reflect flexibility.
- Marella noted The Commission wishes to ensure trails are in place and marked prior to individuals moving into the development.
- Mary requested DGT to send the most up to date paper plans.
- It was confirmed that overall, The Commission is in favor of three reference vernal pools.
- *Mike motioned to issue the order of conditions with the changes as discussed. Alan seconded. All voted in favor by roll call vote.*

Administrator’s Report Continued:

11 Hartford Avenue

- Mary displayed images of the improperly installed bounds and indicated where bounds were moved to.
- Bill noted he checked Nearmap historical imagery. The property had been mowed up to the stream since 2014.

- Marcella asked if they could provide five feet of no disturbance along the stream.
- Mary will discuss the proposed compromises to homeowner.

0 Main Street

- Mary witnessed test pits for the new Lobbisser apartment project. A NOI will be filed.

17 School Street

- Mary had a conversation with the Homeowner about fixing erosion controls..

146 Westboro Road

- Five lots were previously approved, and the first lot is facing construction.

Fivefork Farms

- Mary noted they are doing an adequate job at keeping water and materials on site. Mary may request installment of erosion controls between stream and pond.
- Marcella asked if an end date had been established. Mary noted the person she had talked to was uncertain.
- Sandy asked where the pile of dirt would be moved. Mary noted that is the topsoil from stockpiling.
- Bill inquired about the status of stone wall. Mary commented that the wall has not been disturbed.
- Mike requested Mary to ask what type of cover crop will be planted during the fall season.

Administrative Report:

Approve Minutes-

- *Alan motioned to approve minutes as amended from December 14, 2022. Marcella Seconded. All voted in favor by roll call vote.*
- *Chris motioned to approve minutes as amended from July 26, 2023. Marcella seconded. All voted in favor. Chris, aye; Alan, aye; Sandy, aye; Marcella, aye; Tom; aye, Mike; aye.*

Finances-

- *Sandy motioned to approve bills for payment. Marcella seconded. All voted in favor by roll call vote.*

Open Space:

- Bill participated in a conference call between DCR, SVT, Town of Westboro, and Town of Upton, as there was interest in preserving 80-acres of land between Upton and Westborough. The next step is to get the various parcels appraised.

- Also noted, Gale Mann is going to finish the appraisal of the reed property by end of August 2023.

Land Stewardship:

- Marcella noted there was a site visit on August 9, 2023, at the open space parcel next to 7 Dogwood Drive. LSC had put up medallions to mark the main trail and put-up signage with listed regulations. Temporarily, LSC will put up signage that indicates the end of the trail.
- LSC spent time GPSing sections of the proposed trails at Mechanic Street Property and those trailing into the Stephans parcel.

Mosquito Control Board-

- Chris noted how the Mosquito Control Board (MCB) is presently experiencing issues with reaching quorum. In the past, communication was from the Board of Health (BOH). However, BOH cannot disband MCB, since it was previously established by The Board of Selectmen (BOS). Thus, Chris presented the following options:
 - Option A: Marcella talks to Maureen Dwinnell to request to have the Board of Selectmen (BOS) restructure the MCB so they can achieve a quorum and keep the MCB to remain under the BOS. The MCB would report to the BOS quarterly.
 - Option B: Present to The Conservation Commission (CC) that the MCB would be under the CC.
- Chris noted how under Option B, The CC would act as the liaison between the public and other governmental agencies to protect natural resources and become an environmental and educational resource.
- Marcella shared some brief history of the MCB. Also noted, the work that MCB does is aligned with the CC mission in protecting natural resources and wetlands.
- *Marcella motioned that The Conservation Commission accepts the MCB as a subcommittee. Alan seconded. All voted in favor by roll call vote. Chris, aye; Alan, aye; Sandy, aye; Mike, aye; Tom, aye; Marcella abstained.*

State Ethics Test

- Chris provided a reminder that all Commission Members are to complete their State Ethics Test.

Warren Brook Sign

- Mike noted he had received a quote for the Warren Brook watershed sign for \$1,800. The plan is to use western red cedar to replicate the original sign.
- Chris inquired where the funding would derive from. Mike noted the Land Stewardship Revolving Fund.
- *Chris motioned to expend funds within the Land Stewardship Revolving Fund for the purchase of the Warren Brook watershed sign. Alan seconded. All voted in favor by roll call vote.*

24 East Street-

- *Sandy motioned to issue negative determination. Alan seconded. All voted in favor by roll call vote.*

9:25 Tom p.m. motioned to adjourn. Alan seconded. All voted in favor by roll call vote.

Document List

08/09/2023 Meeting Packet

Minutes approved on: 08/23/2023 remote meeting.

Chris Scott Mike Penko

Tom Jango Sandy Lajoie

Alan Maino Marcella Stasa

David Szczebek

Meeting packet Contents:

- Agenda
- Agent Report
- 24 East St. RDA
- 24 East St. Ecotec Evaluation
- 24 East St. Determination
- Exhibit 1
- Special conditions Governor's landing
- GL VP Monitoring metric
- Mechanic St. draft CR
- MCB potential options draft
- Draft Conditions Robertson CR
- Draft minutes 7/26/23, 12/14/22
- Financials/ Invoices