

**SOUTHBOROUGH CONSERVATION COMMISSION  
THURSDAY, JANUARY 26, 2023  
VIRTUAL ZOOM MEETING  
MEETING MINUTES**

The Conservation Commission of the Town of Southborough held a meeting on Thursday, January 26, 2023, at 7:00pm via an online Zoom meeting.

Members Present: Mark Possemato (Chair), Benjamin Smith (Vice Chair), Russell Gregory, Elizabeth Zulick, Kevin Farrington

Members Absent: None

Others Present: Melissa Danza (Conservation Agent), Joe Orzel (Lucas Environmental)

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The meeting being duly posted, the chair opened the meeting at 7:00pm.

**APPROVAL OF MINUTES**

**1/5/2023**

Mr. Possemato asked to continue the approval to the next meeting so he could send in comments. The Commission agreed.

**PUBLIC HEARINGS**

**CONTINUED STORMWATER MANAGEMENT PERMIT & NOTICE OF INTENT –  
200 TURNPIKE ROAD (MAP 28, LOT 3C) – CONSTRUCTION OF WATERHOUSE  
SPACE, SALT SHED, AND OTHER SITE IMPROVEMENTS**

Peter Bemis (Engineering Design Consultants) was present on behalf of the applicant. Mr. Smith took over as chair for this discussion, as Mr. Possemato was absent for one of the prior discussions for this application.

Mr. Smith asked Ms. Danza to provide an update on outstanding items, which she deferred to Mr. Orzel for wetland items. Mr. Orzel stated that the wetland issue was brought up in previous memos, noting there was still a question on the wetland flags. Mr. Orzel stated that it comes down to the labels of the wetland flags in the field versus what they are labeled on the site plan. Mr. Orzel explained that the original plan that was submitted had flags A1 through A12, but in the field the wetland flags continued through A19, A20, and beyond. Mr. Orzel noted that the previous engineer was supposed to add the wetland flags on the field onto the revised plan, but it didn't happen. Mr. Orzel questioned if the flags on the current plan are representative of the original flags that were in the field (A12-A19) or if they are representative of the flags in the field labeled A12A through A19A which were up gradient. Mr. Orzel also noted that on the west side of the property, wetland B line flags were added because Mr. Orzel thought the edge of that wetland was close to putting a 100-foot buffer on the subject property but were never put on the

site plan.

Mr. Smith asked Mr. Bemis if the addition of these flags put any work into a no-touch zone or other buffer zone. Mr. Bemis confirmed, noting that there is no work activity on the west side of the property and asked that the Commission be specific about the flags that are part of the scope of work in the decision. Mr. Smith stated the Commission had asked Mr. Bemis to show the wetlands along the access drive, noting it was very helpful and appreciated that he had done so. Mr. Bemis noted that they had inherited the project, but had done survey work, showed both the original and new locations of the flags, and put the 20-foot buffer zone relative to the new flags that were hung. Mr. Bemis stated that this still allows the work to proceed as planned.

Mr. Bemis stated that during a recent Planning Board meeting, one of the members commented that part of the adjacent DPW lot is zoned residential, so there needs to be a buffer between the proposed commercial project at 200 Turnpike Road and the residential property. Mr. Bemis reviewed the proposed plantings.

Mr. Smith asked if it was possible to include in the finding of fact that they are not certifying certain flags. Mr. Orzel stated that if the plan is showing the original flags, the buffer zone would extend further onto the site, and noted the Commission might also want to consider the work being within 20 feet of BLSF. Mr. Orzel stated that the B-line flag represents a wetland that would cast a buffer zone onto the northwest corner of the site.

Mr. Bemis stated that the sealed plan from the previous engineer post-dated the review from Lucas Environmental, and with their additional survey work he feels confident they are representing the right line. Mr. Bemis also stated he has no problem with the Commission including some language in the decision that would allow the work to proceed but not tying it to this specific resource area.

Mr. Bemis stated that they did not observe a 20-foot setback to BLSF and apologized for not asking for a waiver. Mr. Bemis stated they want to resolve the grading in that area, noting an original 1:1 rip rap slope, but was changed to a 2:1 after discussion with the Planning Board. He noted the slope would be prepped with jute fabric then hydroseeded with a New England wildflower native mix. Mr. Bemis stated they did put in an erosion control barrier at the edge and is not putting any fill into the BLSF. Mr. Bemis stated that if they do need a waiver, he is asking for it now.

Mr. Smith asked about the small western watershed discussed during the last meeting. Mr. Smith explained the calculations he used and noted that he believes the difference shown is clearly within the computational error of the method that DEP asks the Commission to use. Mr. Smith stated he thinks it is appropriate to have a waiver since the numbers on the application do show an increase, but he recommends the Commission approve it.

Mr. Smith stated that with regard to the four flags in question, which are probably located correctly, he does not know if anyone's interests are served by tracking them down since they won't affect the project. Mr. Smith asked if the Commission can include in the finding of fact that the Commission is not approving flags 15 through 18 inclusive as a wetland line. Mr. Possemato

asked if the Commission would be verifying any of the wetland line. Mr. Smith stated they would confirm the rest of it. Ms. Danza stated that what has been done previously is that the Commission can confirm the wetland boundary for this project and DEP filing only.

Mr. Orzel noted that no documentation on delineation had been submitted either previously or with the new flagging, and stated having the DEP BVW Data Association forms would make it easier to be comfortable with the new flags.

Mr. Smith opened the hearing to the public. There were no comments or questions.

Mr. Smith asked Mr. Bemis whether his preference was verification solely for this project or for all but the four flags previously mentioned. Mr. Bemis stated his preference is whatever everyone is comfortable with as his goal is just to get the project approved. Mr. Smith stated that the cleanest way is just to condition the verification for this one project, and if work takes place in the future having this on the record will make things easier.

Mr. Orzel stated that the invasives management plan was submitted, noting it looks generally appropriate. Mr. Orzel questioned how the Japanese knotweed would be addressed at the site. Mr. Bemis stated he anticipates a pre-construction conference, noting he does not know how much knotweed is within the work areas and he feels it would be best to discuss in the field. He stated he anticipates Mr. Orzel and Ms. Danza attending to help come up with a plan on how to address the knotweed. Mr. Orzel stated that the biggest patch will probably be where there is some fill. Mr. Orzel also stated WPA Form 3 noted the site was not in ORW, and that the Commission may feel it should be corrected for the record. Mr. Smith asked if it could be corrected with a finding of fact. Ms. Danza stated that they can include it and also require a revised sheet to be submitted. Mr. Smith stated it should be included as a condition, as well as the plan for knotweed to be determined in the pre-construction meeting.

**MOTION:** Ms. Zulick made a motion to close the hearings for both the NOI and SMP. Seconded by Mr. Farrington, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

### **CONTINUED NOTICE OF INTENT – ROW WITHIN TURNPIKE ROAD AND CORDAVILLE ROAD – REPLACEMENT AND INSTALLATION OF GAS MAIN INFRASTRUCTURE WITHIN ROW**

Travis Yandow (SWCA), Jennifer Buttaro (Eversource), and Becky Weissman (Eversource) were present. Mr. Yandow stated that since the last meeting they have received a DEP#, received peer review comments, sent responses to all comments, and provided supplemental material including the Environmental Resource map with updated labels, 20-foot no-touch zone, and 100-foot buffer zone for all resource areas. Mr. Yandow noted they did update WPA form 3 with the items noted through peer review and provided BMP specifications for dewatering activities.

Mr. Orzel confirmed that the applicant did revise plans and the WPA form, but noted a question on whether some of the resource areas were as extensive as Mr. Orzel had indicated. Mr. Orzel went on to say that for those areas, the expanded boundaries would not result in any work within

the resource area but would expand work within the buffer zone. Mr. Orzel stated the applicant did update stormwater information, noting that it is not an exempt project, but many of the stormwater management guidelines do not apply. Mr. Orzel also stated that the applicant did update the numbering of the wetland flags. Mr. Orzel had previously stated he thought the erosion control barriers would be sufficient for any of the expanded wetlands, but he amended the comment to suggest the erosion control barrier at the southeast corner of Route 9 and Middle Road be extended to the wet meadow area.

Mr. Possemato opened the hearing to the public. There were no comments or questions.

**MOTION:** Ms. Zulick made a motion to close the hearing. Seconded by Mr. Smith, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

## **NEW AND/OR CONTINUED BUSINESS**

### **ECONOMIC DEVELOPMENT COMMITTEE: DISCUSSION OF EDC COORDINATOR POSITION**

Rob Anderson (EDC Chair) was present to discuss the new position of EDC Coordinator position. Mr. Anderson stated they previously had a part-time EDC Coordinator position, and they discovered that the person in this role was doing much more than a part-time position. Mr. Anderson stated the EDC has discussed with other committees and the Select Board the possibility of capitalizing on grants while progressing EDC goals to help the Town move forward while making sure the residential tax rate remains low. Mr. Anderson noted the EDC had made the proposal for a full-time EDC Coordinator to the Select Board, which voted 3-1 in favor of bringing a full-time position job description to the Personnel Board. Mr. Anderson stated the EDC views the position as a way to support grants for other Boards and Commissions. Mr. Anderson explained that they are soliciting feedback from other Boards and Committees. Ms. Danza stated that as the Municipal Vulnerability Preparedness Program Coordinator, she would greatly appreciate assistance in applying for those grants. Mr. Possemato asked if there was a vote of support required. Mr. Anderson stated he would like one, but he does not have to make that request. Mr. Possemato voiced his support. Mr. Gregory and Ms. Zulick agreed. Mr. Smith stated he needed more time to review.

### **REQUEST FOR 2-YEAR EXTENSION, SMP FY08-5 276, 278, 280 TURNPIKE ROAD (BARTOLINI BUSINESS PARK)**

Ms. Danza stated that the DEP holds a superseding Order of Conditions, and this request is to extend the Stormwater Management Permit for two years. Ms. Danza stated the DEP Permit is still valid until June, but a request has been submitted to DEP who does not see any reason why they would not issue the extension. Mr. Farrington asked if DEP holds the superseding OoC due to a successful appeal. Ms. Danza confirmed. Mr. Possemato stated it was appealed by neighbors. Mr. Gregory asked when the extensions would end, as this has been an on-going renewal. Mr. Possemato stated the applicants have cited business conditions as a reason for the extension. Mr. Gregory noted that standards have changed dramatically since the permit was first issued. Mr. Possemato stated that nothing has changed with respect to the bylaws since the SMP was first issued. Mr. Farrington asked if they would need to update their plans should the bylaws change,

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and they wish to renew again. Ms. Danza stated they are allowed one additional extension and would then need to update to the new standards if the new bylaw and regulations are passed.

**MOTION:** Mr. Smith made a motion to extend the SMP for two years. Seconded by Mr. Gregory, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

**REQUEST FOR CERTIFICATE OF COMPLIANCE – 2A ASAREE & 74 OAK HILL DRIVE, DEP# 290-999**

Mitch Maslanka (Goddard Consulting) was present on behalf of the applicant. Ms. Danza noted that the major holdup was the required two years of monitoring reports, stating for the previous CoC request they only had one year and the Commission asked for additional year for the applicant to try to remove or contain as much Japanese knotweed as possible.

Mr. Maslanka explained that in November 2021 they tried to remove knotweed with shovels; in November 2022 they ripped out knotweed by hand. He stated they did not use herbicides since the patch was so large. Mr. Maslanka stated they have done monitoring, have worked to keep the knotweed contained, and have attempted to remove the knotweed. Mr. Maslanka stated that after the first year of removal the knotweed stems were stunted, and after this past November there are no more knotweed stems present in the mitigation area.

Mr. Possemato questioned who would be pulling knotweed after the CoC is issued. Mr. Maslanka stated it is difficult because it extends off property and outside the mitigation area so it is almost bound to grow back, but that the applicant has done their due diligence in removing and containing the knotweed as best as possible. He stated the entire mitigation area has been treated for invasive species.

**MOTION:** Ms. Zulick made a motion to issue the CoC. Seconded by Mr. Gregory, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

**REQUEST FOR CERTIFICATE OF COMPLIANCE – SMP FY21-4, 147 MIDDLE ROAD**

Item continued for further information.

**REQUEST FOR CERTIFICATE OF COMPLIANCE – SMP FY21-5, 149 MIDDLE ROAD**

Item continued for further information.

**REQUEST FOR CERTIFICATE OF COMPLIANCE – SMP FY21-6 & DEP#290-1057, 151 MIDDLE ROAD**

Item continued for further information.

**REQUEST FOR CERTIFICATE OF COMPLIANCE – SMP FY21-2, 147 61  
BREAKNECK HILL ROAD**

Item continued for further information.

**84 MAIN STREET – RESTRICTIVE COVENANT COMPLIANCE**

Ms. Danza stated that Michael Weishan was originally going to attend the meeting, but after discussing the Restrictive Covenant and receiving an updated as-built plan, she feels it is best to wait until the next meeting as she will be requesting a legal opinion from Town Counsel. Ms. Danza noted the owners had offered to give the Commission two feet for every one foot that has encroached, but she is unsure if this is possible. Ms. Danza stated that the Historical Commission also has some concerns, and that she did discuss the landscape master plan with Kevin Miller (Historical Commission Chair) and Grant Farrington (Historical Commission member), noting they could not find records of the master landscape plan or approvals for other structures such as the generator and gazebo. Ms. Danza stated that Mr. Weishan dropped off plans to Mr. Miller, stating they were landscape plans. Ms. Danza noted it included a landscape plan dated 2017, which looked to be the same as the existing and proposed conditions plan was for the NOI, just without grading.

Mr. Smith asked if it would be helpful for the Commission to vote to request a legal opinion. Ms. Danza said yes. Mr. Smith stated that it looks like the Town would be disposing of an interest in real property even if they are taking on an interest in an additional larger area, and noted it would require a two-thirds vote at Town Meeting. Mr. Possemato agreed.

**MOTION:** Mr. Smith made a motion to formally request a legal opinion. Seconded by Mr. Gregory, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

Mr. Possemato stated he would like to have the legal opinion prior to having any further discussion.

**SMP BYLAW & REGULATIONS UPDATE/CHANGES & TOWN MEETING  
WARRANT**

Ms. Danza stated that Town Counsel will review the bylaw in its entirety. She explained there would be two warrant articles: the first would be a motion to remove the SMP and Erosion Control Bylaw out of the Zoning Code, and the second would be to approve the amended language into the General Bylaws, into a section that Town Counsel and the Town Clerk had agreed upon. Ms. Danza had put the proposal to the Select Board for them to formally refer it to the Planning Board, noting that the Planning Board is only required to make a vote of support/not support of the removal of the bylaw from the Zoning Code. This is scheduled for February 6. Ms. Danza stated she will be going over the amendments to help the Planning Board understand the reasons for moving it out of the Zoning Code. Ms. Danza has put together a final version of the proposed bylaw, including a clean version and a redline version with comments, to help further explain the changes, and she noted it can be used as a handout at Town Meeting as well.

Ms. Danza stated that the Floodplain and Wetland Overlay District Bylaw wasn't up to FEMA

standards since the federal standards are stricter than the state. Ms. Danza stated that the biggest source of confusion is the section that states a permit is needed for any work within the floodplain, but a building permit or Order of Conditions count.

Mr. Smith asked if the first warrant article will have a contingency that the SMP bylaw would remain in the Zoning Code should the second warrant article fail. Ms. Danza confirmed.

Mr. Farrington suggested giving the Planning Board examples of why having the SMP bylaw in the Zoning Code is a bad idea. Ms. Danza stated she sent to the Planning Board the memo she provided to the Select Board, but she will send anything else if she can clarify more. Mr. Smith stated he can attend the Planning Board meeting. Mr. Possemato stated he can as well, suggesting it might be helpful to have PowerPoint slides to explain the reasons for removing the bylaw from the Zoning Code and putting it in the general code to help the general population at Town Meeting understand, as not everyone understands what the Commission does. Mr. Possemato asked to confirm if the second article fails, that the bylaw will go back into the Zoning Code. Ms. Danza stated she will double check, but that was her understanding from Town Counsel. Mr. Possemato stated he wanted to make sure that the wording in the warrant article is that if the second article fails the first vote is null and void and the bylaw would go back into the Zoning Code. Mr. Possemato asked if Town Counsel wrote the warrant articles. Ms. Danza stated he provided draft language. Mr. Possemato asked if there were any changes within the bylaw itself with respect to anything other than removing it from the Zoning Code and putting it into the General Bylaws. Ms. Danza stated the major change was the language for appeals to go to Superior Court, noting Town Counsel is going to do one final check on the language and will ensure the Home Rule Amendment still applies.

Mr. Smith asked if they could pull the warrant article up to a day or two before the Town Meeting. Ms. Danza confirmed. Mr. Possemato stated it can be withdrawn at the meeting itself.

## **OTHER BUSINESS**

### **CONSERVATION SCIENTIST/AGENT REPORT**

#### **UPDATE ON OPEN AND ACTIVE SITES**

##### **BREAKNECK HILL DUMP**

Ms. Danza stated that she did get confirmation that Liz Lydon (Town Counsel) discussed the amended ACO with DEP, as they could not come to agreement with the abutter for access. Ms. Danza stated that DEP agreed that the Town has done its due diligence and does not have to clean up the abutters property, noting the cleanup plan will only be necessary for the Town-owned portion. Ms. Danza explained that DEP agreed the only acceptable way to do the cleanup would be dig and haul, which was always the more preferred route but is typically the more expensive route. Ms. Danza stated the next steps are moving straight into amending the initial assessment plan to remove the abutter's property, and they will have the cost ready for Town Meeting. Ms. Danza noted they are still on track to have the correct amount within the warrant article which keeps them on plan for cleanup in FY24, starting July 1.

Mr. Possemato asked if the abutter has to clean up the area on her land. Ms. Danza stated that the Town was trying to clean up the project in its entirety, but there were liability issues that the Town and the abutter could not agree on. Ms. Danza noted that Mass DEP can hold the abutter responsible to the fullest extent to clean up her property. Mr. Smith asked if the abutter was working with an attorney. Ms. Danza stated the abutter is an attorney but had her own engineering firm reviewing the site assessment.

## **OTHER BUSINESS AS MAY ARISE**

### **200 Turnpike Road – Stormwater Management Permit and Order of Conditions**

Ms. Danza reviewed the special conditions for the SMP. Ms. Danza reviewed the conditions for the OoC. The Commission discussed the conditions.

**MOTION:** Mr. Smith made a motion to issue the SMP and OoC. Seconded by Ms. Zulick, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

### **ROW within Turnpike Road and Cordaville Road – Order of Conditions**

Ms. Danza reviewed the drafted conditions.

**MOTION:** Mr. Farrington made a motion to issue the OoC as drafted by Ms. Danza. Seconded by Ms. Zulick, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

**MOTION:** Mr. Smith made a motion to adjourn the meeting. Seconded by Ms. Zulick, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

Respectfully Submitted,

Lara Davis

Recording Clerk

Documents Used:

None