

**SOUTHBOROUGH CONSERVATION COMMISSION
THURSDAY, MARCH 9, 2023
VIRTUAL ZOOM MEETING
MEETING MINUTES**

The Conservation Commission of the Town of Southborough held a meeting on Thursday, March 9, 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:

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

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

APPROVAL OF MINUTES

2/16/23

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

PUBLIC HEARINGS

**AMENDED ORDER OF CONDITIONS – 206 TURNPIKE ROAD (MAP 28, LOT 3A) –
REMEDiate THE UNPERMITTED PAVEMENT AND INSTALL STORMWATER
MANAGEMENT INFRASTRUCTURE**

Dan Romero (Hancock Associates) was present on behalf of the applicant. Mr. Romero stated the applicant is looking for an amendment to an approved Order of Conditions to remediate unpermitted pavement that was done by a previous owner, located in the 100 ft buffer zone. Mr. Romero explained the proposed work, noting the areas of pavement that would be removed and the location of the stormwater management system as well as a shed that is to be removed.

Mr. Farrington asked if most of the pavement that would remain is within the 100 ft buffer. Mr. Romero explained that most of it would be outside the 100 ft buffer zone. Mr. Possemato asked what would take the place of the removed pavement. Mr. Romero stated it would be grass and an underground infiltration system.

Ms. Danza noted that the Order of Conditions is set to expire in July, so if the Commission is looking to amend the Order of Conditions, they may also want to vote for an extension.

Mr. Smith stated that the stormwater report included mitigation for two- and ten-year storms, but

no mention of the 100-year storm calculations. Mr. Smith asked if there was an increase or if those numbers were not looked at. Mr. Romero stated they did not conduct a full analysis of the 100-year storm. Mr. Romero explained their perspective was overflow for the 100-year storm will go directly into the wetlands and the project site would still have a stabilized surface. Mr. Romero stated they did not attenuate the existing to proposed flows for the 100-year storm, but he will provide that information if the Commission requires it. Mr. Smith asked how far away they are from mitigating it. Mr. Romero stated he would have to investigate it a little more. Mr. Smith stated the least amount of information they have accepted in prior applications was a letter stamped by the engineer of record stating the increase in flow and that it would not cause any adverse impact on properties downstream.

Mr. Smith stated he feels this information should be in hand prior to making a decision. Mr. Possemato asked if it was something they could condition. Mr. Smith stated that since Mr. Romero was not the engineer who would be stamping the letter, he felt a condition would be based on something they did not know if the responsible engineer would be able to provide. Ms. Danza stated if Mr. Romero could get the information in the next fifteen minutes, they could table the discussion until after the next public hearing. (At this time, the Commission moved on to the continued public hearing for 241-245 Turnpike Road and the Request for Certificate of Compliance for 7 Chestnut Hill Road).

The Commission resumed this hearing at 7:38 pm. Mr. Romero reviewed the existing and proposed numbers for the ten-year and 100-year storm, noting there would be an increase for the 100-year storm. Mr. Smith asked Mr. Romero to confirm that it appears that this drainage will reach the wetland and subsequently the Sudbury Reservoir system without passing over any adjacent properties. Mr. Romero stated he would need to research more to confirm that statement. Mr. Gregory stated that, based on the locus map, he did not think it was correct. Ms. Danza noted the property lines of 200 Turnpike Road wrap around 206 Turnpike Road. Mr. Smith stated that the piece of property belonging to 200 Turnpike Road does not have any infrastructure on it, which makes him feel more comfortable with Mr. Possemato's suggestion of conditioning the approval on a stamped letter from the engineer. Mr. Possemato stated that the increase in 100-year storm numbers are not insignificant, and he thinks the Commission needs an assessment from the engineer. Mr. Romero asked what specifically the Commission would need. Mr. Smith stated that an analysis demonstrating no adverse impact downstream would resolve the issue.

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

CONTINUED STORMWATER MANAGEMENT PERMIT AND NOTICE OF INTENT – 241-245 TURNPIKE ROAD (MAP 27, LOTS 8 AND 9) – DEMOLITION OF EXISTING BUILDINGS AND DEVELOPMENT OF A TWO-STORY MEMBERSHIP CLUB AND CAR STORAGE

David LaPointe (Beals & Thomas) was present on behalf of the applicant. Mr. LaPointe stated they did revise plans and stormwater calculations but have not yet received a response from Fuss & O'Neill. Mr. LaPointe stated they did receive comments on the revised materials from Lucas Environmental just prior to the meeting.

Mr. Orzel stated the revised plans addressed many of the initial comments, noting that while he has not looked at the wetland flags in the field, they do appear appropriate on the site plan. Mr. Orzel pointed out that the applicant has indicated they provided an invasive species management plan, but he thinks it is a little short in detail, and he recommends more detail on the plan and within the construction-phase invasive management plan. Mr. Orzel stated there was a small section of work originally proposed within the 20 ft no-work zone, but that the applicant has since pulled the work to outside that zone. He also recommended that the applicant look at the cultivars indicated on the proposed planting plan, which the applicant has since revised to include straight native species. Mr. Orzel explained that the applicant has revised the site plan to include a stabilized construction entrance and noted that DEP issued a file number along with some technical comments, one of which should be addressed by pulling the work out of the 20 ft no-work zone and a more detailed invasives management plan.

Mr. LaPointe stated the applicant would need a little more time to address the invasive species management plan along with the comments from Fuss & O'Neill, so they are prepared to continue the hearing.

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

MOTION: Mr. Smith made a motion to continue the public hearing to March 30, 2023. Seconded by Ms. Zulick, 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

REQUEST FOR CERTIFICATE OF COMPLIANCE – SMP FY20-5 – 7 CHESTNUT HILL ROAD

Bert Corey (DGT Associates), Bob Murray, D.A. Hayden, and Mike Francis (Trustees of Reservations) were present. Ms. Hayden introduced everyone and acknowledged Mr. Smith for his review. Mr. Corey reviewed the as-built plan, noting the differences between the proposed plan and the as-built plan. Mr. Corey explained that they had originally proposed to remove the tool shed, but the Historical Commission preferred that it remained in place. He went on to explain that there was no significant impact on the stormwater runoff due to the tool shed remaining in place. Mr. Corey noted the change in construction for the washing station, including additional infrastructure that takes the wash water and discharges it onto a grass area. Mr. Corey pointed out a light pole that is just north of the CR line, stating the contractor did their best to place it appropriately. He also noted a gate between the tool shed and existing barn/garage, stating Captain Dano was okay with the gate if it was not locked to prevent access for emergency access vehicles. Mr. Corey stated that some of the employee parking spaces are smaller than originally proposed in order to not cut into the adjacent grass area. Mr. Corey discussed the water line, noting the difference in location.

Mr. Smith stated that the plan is an excellent example of an actual redline as-built plan. Mr. Smith also noted a few minor changes to the stormwater management Operation and Maintenance Plan. Mr. Smith agreed that the amount of stormwater contributed by the tool shed, originally

slated to be demolished, does not have a significant impact. Mr. Smith recommended the Commission take a vote for an administrative change to the Stormwater Management Permit to account for the change with the tool shed. Mr. Smith stated that as the holder of the CR, the Commission should discuss the light pole that is within the CR property. Mr. Smith noted that the Commission has the authority to order the removal of the light pole, or that they can come up with an agreement where the light pole can stay until it requires replacement or substantial repair. Mr. Smith also stated this meeting was not the place to discuss, but it should be addressed soon. Ms. Danza stated that Mr. Corey did update the O&M and submitted it.

MOTION: Mr. Smith made a motion to administratively amend the Stormwater Management Permit to reflect that the tool shed was not taken down, and that it is negligible and non-impacting. Seconded by Mr. Gregory, 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 issue the Certificate of Compliance. Seconded by Ms. Zulick, the motion carried 5-0-0 by roll call vote: Zulick- aye; Farrington- aye; Gregory- aye; Smith- aye; Possemato- aye.

Mr. Possemato stated he likes the idea of addressing the light pole if and when it fails. Mr. Smith suggested working on agreement in the meantime.

REQUEST FOR CERTIFICATE OF COMPLIANCE – SMP FY10-2 & DEP# 290-892 – 154-156 NORTHBORO ROAD

Ms. Danza reviewed the history of the project and stated that the Planning Board does hold a bond for the plants to ensure the success of the plantings as well as the correct species, but it is not a condition of any Conservation permits. Ms. Danza recommended the Commission issue the Certificates of Compliance for both the SMP and Wetlands permits.

Mr. Farrington asked about the 20 ft no-touch zone not being on the as-built plan, and asked if they were certain nothing would be going in. Ms. Danza confirmed.

MOTION: Mr. Smith made a motion to issue the Certificates of Compliance for both the SMP and Wetlands permits. Seconded by Ms. Zulick, 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 FY21-2 – 61 BREAKNECK HILL ROAD

Continued due to outstanding items, which Ms. Danza reviewed.

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

Continued due to outstanding items, which Ms. Danza reviewed.

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

ROAD

Continued due to outstanding items, which Ms. Danza reviewed.

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

Continued due to outstanding items, which Ms. Danza reviewed.

OTHER BUSINESS

CONSERVATION SCIENTIST/AGENT REPORT

UPDATE ON OPEN AND ACTIVE SITES

Ms. Danza stated that she is working with a lot of active sites regarding snow and erosion controls. She noted that the work at Fayville Hall has started, but she has not seen any amended plans and has reminded them of the plan of record.

BREAKNECK HILL DUMP

Ms. Danza stated that the Commission has received supportive votes from both Advisory and the Select Board for the Town Meeting warrant article. Ms. Danza attended the most recent Select Board meeting to provide them with information on the cost. She noted that TRC is still working on putting together the cleanup plan. Sam Stivers will be providing the background for this article at Town Meeting, so Ms. Danza has been working with him on the materials to present. Ms. Danza stated she found the original warrant article from when the Town acquired this property, which has provided useful information.

SMP BYLAW & REGULATIONS UPDATE/CHANGES & TOWN MEETING WARRANT

Ms. Danza stated that the Commission has received supportive votes from both Advisory and the Select Board on all three warrant articles, including the one for the Wetland and Floodplain Overlay District. Ms. Danza stated she had a good meeting with the Planning Board, providing them with other towns' location of their SMP bylaws and why they are located where they are. Ms. Danza explained that many of the other towns' SMP bylaws located within the General Bylaws are the ones promulgated only by the Conservation Commission, where ones in the Zoning Code include things like a DPW permit review. She noted one outstanding comment from the public, from Jack Bartolini, where he would still like appeals to go to the ZBA as well as commenting on the difference between no grub vs. grub. Mr. Smith stated that in a conversation with Meme Luttrell (Planning Board) she noted that minor site plans issued by the Planning Board used to be appealed to the ZBA, but it was changed by an overwhelming vote at Town Meeting. Ms. Danza stated it was Ms. Luttrell who provided the initial language for the appeals,

and Ms. Danza is hopeful that the Planning Board as a whole is supportive. Mr. Possemato stated that not knowing the Planning Board's official position until Town Meeting is uncomfortable. Ms. Danza stated she would attend the upcoming Planning Board meeting to see if they would consider providing more information on where they stand.

Mr. Smith discussed the pre-Town Meeting meeting with the moderator, and stated he told the moderator that Mr. Possemato would likely be the one to make the motion, and if not, possibly Mr. Smith. Mr. Smith stated that the Commission needs to have materials they plan on disseminating prepared and the Commission must bring them to Town Meeting to put on the table. Mr. Smith noted that Jim Hegarty made it very clear that article sponsors are responsible for the printing of handouts. Mr. Smith suggested a green flyer.

UPDATES FROM TOWN COUNSEL – 84 MAIN STREET

Ms. Danza has been discussing with Town Counsel, and she feels the best way forward is to determine which basic track to follow. Ms. Danza outlined three potential paths: do nothing, let the structures remain and do not amend the Restrictive Covenant, which would allow the Commission to pick this back up at any time in the future; not require the owners to remove the structures, but amend the Restrictive Covenant with a 2:1 restoration proposed by the owner and representatives, which would not require a Town Meeting vote but would require a new plan of land paid for by the owner; or they could require the removal of the structures and complete compliance with the Restrictive Covenant which would require litigation and Select Board authorization to litigate. Ms. Danza stated that there is a potential issue about who owns the property, and Town Counsel agreed that they need confirmation from the owner of record that other people can work on their behalf.

Mr. Possemato stated he would like an executive session with Town Counsel to get more specific answers and to understand the ramifications of each option before deciding. Mr. Possemato stated he is leaning towards the second option but would like more information.

Mr. Gregory stated he also is leaning towards the second option, but he wants the Commission to be involved in which part of the land is involved in the swap. Mr. Farrington asked why the original land for the Restrictive Covenant was chosen. Ms. Danza stated it was because of the location of the historical beech tree and isolated wet area. Mr. Gregory stated it also would prevent subdividing the lot. Mr. Smith added that the land acted as an informal detention pond to mitigate the flow coming out of the property, so the Restrictive Covenant would ensure this function remained. Mr. Smith stated he had heard the Restrictive Covenant described as an easement, so if they are talking about an interest in real property it would require Town Meeting, and added he would also like an executive session. Mr. Smith stated that the second option makes the most sense, as option three would result in spending a lot of money and they may not end up in a better position that if they took the second approach. Mr. Possemato agreed. Ms. Danza stated she would follow up on the Restrictive Covenant as an easement, but that the Restrictive Covenant language does not state easement. Mr. Smith stated it would be easier to resolve if they did not have to go to Town Meeting. Mr. Possemato stated it would be beneficial to meet with Town Counsel. Ms. Danza said she would ask him to attend the next meeting.

OTHER BUSINESS AS MAY ARISE

MOTION: Mr. Gregory 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

Administrative Assistant

Documents Used:

1. Site Plan – 206 Turnpike Road
2. Site Plan – 7 Chestnut Hill Road