

NATURAL RESOURCES COMMISSION
Meeting Minutes
March 2, 2016

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, first floor conference room, Concord, MA at 7:00 p.m. on Wednesday, March 2, 2016. The following Commissioners were present: Greg Higgins, Chair, Lynn Huggins, Chip Poutasse, and Jeff Adams (arrived at 7:30) Delia Kaye, Natural Resources Director, Lori Capone, Assistant Natural Resources Director, and Natural Resources Administrative Assistant Karen Bockoven, were also present.

Chair Higgins opened the meeting at 7:00 p.m. in accordance with the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Concord Wetlands Bylaw.

Concord Public Works, Assabet Avenue / DEP File #137-1323	7:00 pm
Damonmill Square Properties, LLC, 9 Pond Lane / DEP File #137-1307	7:00 pm
Minute Man National Historical Park, 955 Lexington Road / DEP File #137-1334	7:10 pm
Wright Farm Condominium, Wright Farm Road / RDA#16-2	7:20 pm
Concord Public Works, Sleepy Hollow Cemetery, 34A Bedford Street / DEP File #137-1333	7:30 pm

CONTINUANCES

Notice of Intent Application for the Town of Concord - CPW Engineering, Assabet Avenue, DEP #137-1323

Chair Higgins reopened the hearing to install two overflow pipes and rip-rap swales within Bordering Vegetated Wetlands, Land Under Waterbodies and Waterways, Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Assabet River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Huggins moved to continue the hearing to the March 16, 2016 meeting. Commissioner Poutasse seconded. All so voted.

Notice of Intent Application for Damonmill Square Properties, LLC, 9 Pond Lane, DEP #137-1307

Chair Higgins reopened the hearing to repair and maintain an existing dam, stabilize the embankment, repair a section of wall, remove trees, and close the headrace and tailrace, substantially all of which work is within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Assabet River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Bruce Ringwall of Goldsmith, Prest & Ringwall, Inc. and Chip Orcutt of Damonmill Square Properties, Inc. attended the meeting to discuss the need for a third party peer review of the project. Mr. Ringwall stated that Jude Gauvin of his office did not have authorization to agree to the peer review at the last meeting. Mr. Ringwall thinks the application is straight forward and has received conditional approval from the Natural Heritage Endangered Species Program and the Office of Dam Safety. Mr. Ringwall believes that he can address the Commission's concerns without having a peer review.

Mr. Ringwall stated that most of the trees proposed to be removed are dead and have bittersweet growing on them. They were identified as a problem in the 2009 Tighe and Bond Phase I Dam Assessment and are creating a problem with the integrity of the retaining wall. They want to remove the trees along the wall and spillway and make repairs to the dam. They are proposing low growing native plantings along the retaining wall to mitigate for the trees removed. Chair Higgins stated that proposed plantings should mitigate for the loss of shade to the river which these do not appear to do. Mr. Ringwall stated that given the location of the building, it provides more shade to the river than the existing trees.

Commissioner Poutasse stated that the trees along the retaining wall appear to be incompatible with maintaining the integrity of the wall and was unclear what a third party review would provide. Chair Higgins agreed that the retaining wall needs to be repaired but felt a third party review would be helpful to determine if the proposed approach is the best way to accomplish this work.

Mr. Ringwall stated that they do not have structural engineers on staff but felt one was not needed. Mr. Ringwall explained that the base of the retaining wall is solid, except in one area. They would like to install a granite slab or poured concrete to fix this one area, during low flow conditions. There has been limited to no maintenance done before Chip's organization bought the building. Mr. Ringwall explained that there is a very dangerous piece of the dam that protrudes over the river that needs to be repaired and riprap would be installed for a portion of the embankment across the river. Mr. Ringwall has had conversations with the landowner across the river who is willing to work with them, but is concerned with impacts to his parking lot. Mr. Ringwall is not certain what a peer review is going to be reviewing.

Commissioner Poutasse expressed concern with making sure that the project did not cause issues downstream.

Commissioner Huggins stated that no new information had been presented to address the Commission's concerns regarding impacts from the extensive tree removal on water quality, reduction in shade, and impacts to cold water fisheries, which could be evaluated by a peer review and asked about the possibility of removing the dam, as suggested by the Office of Dam Safety and the Phase I Report. Mr. Ringwall stated that Chip Orcutt has been trying to work with private funding and grants to remove the dam. He has had no luck with grants at this point. In the short term, the dam needs to be made safe.

Commissioner Poutasse said his feeling over the course of several hearings is that the trees along the retaining wall are incompatible, and does not think a structural engineer will come up with something very different. The trees have to come out but he expressed concern with the proposed repairs from a structural standpoint. Mr. Ringwall stated that he could provide a detail of the wall sections that need repair.

Director Kaye stated that no information has been provided regarding how the retaining wall repairs would be accomplished. The wall will be further disturbed from removing the root systems of all the trees and advised the Commission that this could set a precedent to remove trees along rivers in Town where there are retaining walls. Mr. Ringwall requested the Commission entertain one additional submittal from GPR to attempt to address the Commission's concern before determining whether a third party review was needed.

Mr. Ringwall referenced the outstanding Order of Conditions dating back to 1985 that has not been closed out or recorded and Director Kaye responded that a request for a true attested copy has been submitted to the Town Clerk. Mr. Ringwall said that he will record this Order and then request a Certificate of Compliance to close out the project.

There were no public comments.

Mr. Ringwall requested the Commission continue the hearing to March 30th so he can provide additional materials.

NEW APPLICATIONS

Notice of Intent for Minute Man National Historical Park, 955 Lexington Road, DEP #137-1334

Chair Higgins opened the hearing to renovate the existing parking lot within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Notice of Intent for Parking Lot Redevelopment prepared by Allen & Major Associates, Inc. received on February 17, 2016.
- FY14 Pavement Improvements (sheets 10-14), prepared by Allen & Major Associates, Inc. dated June 4, 2015.

Nancy Nelson of Minute Man National Historic Park and Steven Chouinard of Allen & Major Associates, Inc. attended the meeting.

Mr. Chouinard presented the proposed project consisting of repaving the existing driveway and parking lot. The parking lot footprint will remain the same except for a small portion being pulled out of the 25-foot No Disturb Zone (approximate 45 s.f.) and about 300 s.f. of asphalt being removed from the 50-foot No Build Zone. They would remove the existing degraded asphalt and sub-base, install a new gravel sub-base, and repave. Grades will remain the same.

Chair Higgins noted that the existing drainage sheet flows into the adjacent wetland or into the street and asked if some drainage elements could be incorporated into the site to slow the velocity and remove some sediment. Mr. Chouinard said he would evaluate incorporating a drainage swale.

Chair Higgins remarked that the proposal indicates that if sedimentation occurs, they will install erosion controls, and stated that the protocol is to install erosion controls prior to ground disturbance to prevent sedimentation proactively. Mr. Chouinard said he would develop an erosion control plan.

Chair Higgins inquired about snow management for the parking area. Ms. Nelson responded that even though the farm stand is not open in the winter, they do plow to provide access to roofs and utilities. Ms. Nelson further responded that the house provides seasonal housing with 5 bedroom maximum in the summer season. One person lives in the house during the winter.

Chair Higgins asked what the duration of project would be. Mr. Chouinard responded 2-3 weeks from start to finish.

There were no public comments.

The Applicant requested the hearing be continued to March 30, 2016 to provide the requested information.

Request for Determination of Applicability for Wright Farm Condominium Association, Wright Farm Road, RDA #16-2

Chair Higgins opened the meeting to conduct invasive species management within Bordering Vegetated Wetland and the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Request for Determination of Applicability prepared by Wright Farm Condominium Association received on February 17, 2016.

Carol Aronson of Wright Farm Condominium Association attending tonight's meeting.

Ms. Aronson discussed combating three new invasives that have taken over the Wright Farm Condominium property. She said she started managing bittersweet in 2009. Ms. Aronson would like to expand the program to include burning bush, multi-flora rose, buckthorn, and Japanese barberry.

Ms. Aronson stated that she has contracted with John Bakewell who would like to treat the invasives while the ground is frozen.

Commissioner Adams asked why in 2009 the Association requested to remove invasives and only bittersweet was approved. Ms. Aronson said the wording in the first request was mainly for the bittersweet because they were worried about their trees.

There were no public comments.

Commissioner Adams moved to issue a Negative Determination of Applicability #2 and #3 with the following conditions: 1) A preconstruction site visit shall be held to review the limit of work; 2) Following invasive removal, restoration areas shall be allowed to naturalize and/or native plantings should be incorporated such that 80% of the vegetative cover is comprised of native species within three years; 3) After the project has been completed, the Applicant shall submit a letter to the NRC stating that all work has been conducted in accordance with all conditions of this Determination of Applicability. Any changes from the RDA shall be described; and, 4) Following successful invasive species removal, the applicant and/or property owner may remove invasive species by hand or hand tool removal methods within jurisdictional areas in perpetuity. Commissioner Poutasse seconded the motion. All so voted.

Notice of Intent for Concord Public Works for Sleepy Hollow Cemetery, 34A Bedford Street, DEP #137 1333

Chair Higgins opened the hearing to replace the existing 36-inch CMP culvert with a footbridge at the northwest side of Sleepy Hollow Cemetery and slip-lining an existing 48-inch by 30-inch stone box culvert with a 24-inch HDPE pipe under the Reformatory Branch Rail right-of-way within Bank, Land Under Waterbodies and Waterways, Bordering Land Subject to Flooding, Bordering Vegetated Wetlands, the 200-foot Riverfront Area of an unnamed perennial stream, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Notice of Intent for Sleepy Hollow Cemetery Pedestrian Bridge and Culvert Rehabilitation Project dated February 2016.
- Sleepy Hollow Cemetery Pedestrian Bridge and Culvert Rehabilitation Plan set (Sheet 1-14), prepared by Concord Public Works, dated February 2016.
- Correspondence from David M. Hill dated February 24, 2016.
- Support Petition received on February 29, 2015.

William Renault, Town Engineer, and Nathan Chin, Assistant Public Works Engineer, of CPW Engineering attended the meeting.

Mr. Renault oriented the Commission to Moore's Swamp in Sleepy Hollow Cemetery being a wetland bounded by Bedford Street to the south, the cemetery to west, Martin Road and the Reformatory Branch Trail to the north with the knoll section of Sleepy Hollow Cemetery to the east. There are two culverts in need of replacement. Culvert A, which conveys a perennial stream, is a 36-inch corrugated metal culvert underneath the trail which discharges to the Concord River. Culvert B is an equalizer culvert between the Sleepy Hollow wetland system and Borden's Pond. In 2007 beavers blocked culvert A, causing the water level to rise to 120.5 feet, above the 100-year floodplain. Public Works attempted to maintain Culvert A and keep it clean from 2007 through 2009. In 2009 they received a Cease and Desist Order from the Natural Heritage and Endangered Species Program (NHESP) for cleaning the culverts during the Blanding's turtle overwintering period. Over the next year and half CPW worked with NHESP to come up with a mechanism to lower the impoundment. They agreed upon siphoning the water to lower the water elevation in the impoundment, with a time of year restriction. Siphoning did not alleviate the impounded conditions. About a year later CPW came back with a proposal to replace Culvert A in kind and also to install a slip line in Culvert B. In 2012, a Notice of Intent was filed for this work. In March of 2013, CPW requested an Emergency Certification from the Commission due to a breach adjacent to Culvert A. They used sand bags to stabilize the breach. The sand bags are still in place at Culvert A. In April 2014, there was no consensus on what water elevation should be maintained in Moore's Swamp and the Notice of Intent was withdrawn. In the spring thaw of 2015, Culvert A opened back up. The beavers have left the area and the water level dropped significantly to about 118.5, where it is today. CPW met with Natural Resources staff and came up with an approach to address this impoundment area with the ability to enhance stream continuity with the installation of a small pedestrian bridge that meets stream crossing standards. CPW conducted a stream survey in 2015 for Culvert A, 300 feet downstream and 100 feet upstream of Culvert A and at the culvert under Bedford Street to develop a stream profile. The stream will be regraded to create a high spot at the bridge to maintain a water elevation of 117.5 in the southern half of Moore's Swamp.

The plan for Culvert B is to install an inlet control structure, on the Sleepy Hollow side of the Reformatory Branch Trail, with the inlet set at elevation 118.1 and install a 24-inch culvert through the existing stone box culvert.

Commissioner Huggins asked what the impoundment was going to look like. Mr. Renault described the light blue on the project plan is the 118.5 elevation that you see today and the dark blue elevation is what it will drain to. A water elevation of 117.5 will be maintained.

Commissioner Adams asked if the anticipated water level is a full 12 inches lower than it is today. Mr. Renault confirmed.

Mr. Renault described how the area around Culvert A will be dewatered during construction through the use of a coffer dam and flue pipe allowing the stream to remain flowing during construction while the work area can remain dry. At Culvert B, there is no flowing water, but they will still install a coffer dam on both sides. They will excavate the failed area, sleeve the new culvert through the existing box culvert, grout, install the outlet control structure and remove the coffer dam. The bridge will be constructed first.

Commissioner Adams asked what the hydraulic connection was between the western and eastern portions of the swamp. Mr. Renault explained that there is an equalizer pipe under the trail through the swamp which convey flows. CPW expects that to continue.

Chair Higgins asked if they are thinking of putting in any beaver control devices. Mr. Renault responded that an advantage of the bridge is that the beavers do not have the same ability to block it. Clearing out culverts in estimated and priority habitat requires filing with NHESP with a time of year restriction.

Commissioner Adams stated that there has been a lot of discussion about Blanding's turtles, surveys, and deep pockets of water being maintained. Commissioner Adams walked the site recently and was concerned that he did not see the conditions being described. With the proposed dewatering of an additional foot, he asked if the area on the plan shown as blue will be standing water or just soggy land. Commissioner Adams felt the conditions are very different than anticipated. Commissioner Adams suggested that perhaps a portion of the swamp, perhaps the northeast corner near the boardwalk, could be dammed to provide a more vibrant habitat. Mr. Renault said that would not affect the current proposal. Mr. Renault was open to the proposal but wants to keep his project separate. Commissioner Adams again expressed concern that deep pockets of standing water was important and is not going to be achieved with the current plan. Mr. Renault responded that NHESP has issued a no-take order for the present design.

Chair Higgins asked if Oxbow Associates is involved in monitoring water levels. Mr. Renault stated that their role and the permit requires that CPW keep the water level where it is being proposed. Oxbow Associates will provide quarterly reports that will be provided to the Natural Resources Division as well.

Commissioner Adams asked how the grout is installed in Culvert B. Mr. Renault stated that flowable fill will be pumped in with a hose, accessing the area from the Reformatory Branch Trail. The Reformatory Branch Trail will remain open during construction.

Commissioner Adams stated the recent submittal satisfies the Bylaw.

Chair Higgins opened the discussion up for public comments.

Andrea Massar, 296 Bedford Street, lives across Bedford Street from Moore's Swamp. In 2009 when there was a Cease and Desist Order, water backed up and flooded her property killing many trees. Since 2015, the water began moving again. She supports the drop in 12 inches to keep her property dry. She also stated she is speaking for the Youngs next door at 264 Bedford whose property has also been damaged. They also support the project.

Patrick Winston, 88 Monument Street, uses the area a great deal for recreation. He is a professor at MIT and has an affection for beavers. He is concerned about something preventing

beavers from doing their thing. Commissioner Adams explained how beaver impoundments are a cyclical, natural process. Patrick Winston questioned the Town interrupting that natural cycle. Chair Higgins stated that the Commission is trying to balance all interests.

Patti Bareford, 130 Martin Road, lives closest to the culvert since 1980. Over the years, she skated there on Cat's Pond, and for all the years leading up to 2007, turtles lived there all that time. She believes the proposed plan is safe with enough water for turtles and good for the people affected by the water. Commissioner Adams asked if she knew how deep Cat's Pond is. Ms. Bareford was not sure but thought about it was about 3-4 feet deep.

Jack Kessler has lived at 116 Martin Road since November of 1971. He echoed what Patti said and has been walking there even longer. He stated two sources of frustration. His backyard is so wet that there is no going there unless wearing boots. It has been better since the water level came down. It used to be dry pretty much most of the year. Mr. Kessler asked if the dark blue on the plan meant that the trail through the swamp would be under water. Mr. Renault clarified that when the CPW performed the initial survey when the water elevation was at 120, they may not have surveyed the trail accurately. The area was resurveyed since the water has receded. Mr. Renault thinks that the trail will be above the water elevation. Commissioner Adams stated it was walkable today and believes it will be a very nice walkable trail that will be used quite a bit.

Paul Bareford, 130 Martin Road, lives in the closest house to Culvert A. He has collected 64 signatures over the weekend showing great support for the plan that CPW is putting forward. He believes this will restore and maintain the stream bed and restore wetland and floodplain. He supports lowering the water another 12 inches. He moved away for 4 years and when he came back all the trees died because of the flooding. Trees close to his house need to come down and he cannot get anyone to come to remove them unless it is approved by the Commission. The flooding has taken down many trees. He was happy to know that NHESP had signed off on the project and was saddened that the Blanding's turtle was being placed above every other species.

Commissioner Adams said time has been spent debating 117.1 versus 117.5. He thinks this presentation is helpful.

Chair Higgins stated that work will occur between April 1st and October 1st. Mr. Renault affirmed that work will occur during this time of year restrictions set by NHESP and under dry conditions.

Director Kaye stated that she sent an email to the Commission late in afternoon regarding revised information, submitted today, that addressed staff comments. Director Kaye said everyone should have a chance to read and review the new information.

Commissioner Adams asked about invasive species monitoring. Director Kaye stated that invasives would be managed within the limits of work and that the impoundment should be monitored. Mr. Renault thought that could be incorporated.

Chair Higgins recommended continuing this to the March 16th meeting to issue an Order of Conditions.

CLOSE AND ISSUE PERMITS

Massachusetts Department of Transportation, Bruce Freeman Rail Trail - Phase 2C, DEP#137-1322

Chair Higgins reopened the hearing for approval to build a multi-use recreational trail to include paving with stone dust graded shoulders, markings and signage; construction of three parking areas; reconstruction of a pedestrian underpass; rehabilitation and/or construction of two bridges; construction of stormwater BMPs and culvert replacement; earthwork, landscaping, and rest areas with associated pavement markings and signage, and interpretive signs within Land Under Waterbodies and Waterways, the 200-foot Riverfront Area to Jennie Dugan Brook, the Assabet River, and Nashoba Brook, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Atty. Gregor McGregor, 70 Williams Road, was in attendance and provided comments on the draft Order of Conditions.

After a lengthy discussion on the draft Special Conditions, Commissioner Adams moved to issue Order of Conditions for DEP File#137-1322 with Standard Conditions 1 through 19, Findings A, B and C, and Special Conditions 20 through 62 with four amendments: (1) wildlife biology was added to the list of experience requirements for the environmental monitor; (2) a comma was added after paving in the project description; (3) condition 22 was modified to include NRC on any written reports on environmental findings, discovery or test results; and, 4) condition 48 was modified to require plantings survive the life of the permit. Commissioner Poutasse seconded. All so voted.

Ha Richmond, 144 Nashoba Road, DEP #137-1332

Chair Higgins recused himself from acting on this application as an abutter to the landowner and asked Commissioner Adams to serve as Chair in this matter. Acting Chair Adams reopened the hearing seeking after-the-fact approval to resurface the existing driveway, construct a paved turn-around area, and landscape within the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Commissioner Huggins moved to close the hearing and issue Order of Conditions for DEP File#137-1332 with Finding A, Standard Conditions 1 through 19, and Special Conditions 20 through 50. Commissioner Poutasse seconded. All so voted.

OTHER BUSINESS:

Director's report

- Director Kaye informed the Commission that the Comprehensive Plan Committee is seeking a representative from the Natural Resources Commission. Commissioner Adams nominated Judith Zaunbrecher to serve as the Natural Resource Commission representative. Commissioner Poutasse seconded. All so voted.

Commissioner Poutasse was approached by Select Person Reiss to also serve on this committee.

Administrative Approvals

- **Grandbois, 37 Fielding Street: Tree Removal**

Assistant Director Capone said there is a group of arborvitae and spruce along the property lines in the outer buffer zone, which the homeowner would like to review. The Commission had no concerns.

- **Deering, 94 Elm Street: Tree Removal**
Assistant Director Capone presented a few tree issues at 94 Elm Street in the Riverfront Area. The first tree is an “S” shaped elm tree that is leaning towards the house of Mr. Topolcic at 38 Elm Street, who was also in attendance. The second tree is a Norway maple beside the garage. The third tree is closest to the river, in decline, but not a hazard. No stumps will be removed. The Commission had no concerns with removal of these three trees.
- **Huggins, 95 Coolidge Street: Tree Removal**
Assistant Director Capone presented a dead walnut tree within the wetland that the landowner would like removed. They requested the stump be removed but Assistant Director Capone recommended the tree be flush cut and stump remain since the tree was located in the wetland. The Commission concurred that the stump should be flush cut.
- **Middlesex School, 1400 Lowell Road: Soil Borings**
Director Kaye stated Middlesex School is continuing to do testing from a 1995 oil spill. They will continue doing testing until no additional contaminated soil is encountered. Approval was granted.
- **Emerson Hospital, 133 ORNAC: Tree Removal**
Director Kaye advised the Commission of an elm tree leaning against the fence over the parking lot at Emerson Hospital in the 25-foot No Disturb Zone that they would like to remove. Approval was granted.
- **Johnson, 82 Finigan Way: Tree Removal**
Assistant Director Capone presented three trees for removal at or within the 25-foot No Disturb Zone. Two trees are in decline and have a precarious lean: one leaning towards the house. The third tree is straight but its top snapped off. The Commission had no concerns with the trees being removed but asked that the tree that is straight remain for woodpecker habitat unless it becomes a real hazard.

Commissioner Adams moved to adjourn. Commissioner Poutasse seconded. All so voted. This meeting adjourned at 9:30 p.m.

Respectfully submitted,

Karen Bockoven
Administrative Assistant