

Sturbridge Conservation Commission
TOWN OF STURBRIDGE, MA -- CONSERVATION COMMISSION

Thursday, March 1, 2018

Approved 4/5/2018

Sturbridge Center Office Building, 2nd Floor

6:00 PM -- Meeting Called to Order/ Ed Goodwin, Chair

Quorum Check: Confirmed

Members Present: Ed Goodwin (EG), Chair Absent: Paul Zapun (PZ)
Steve Chidester (SC), Vice Chair
Dave Barnicle (DB)
Steve Halterman (SH)

Others Present: Conservation Agent Rebecca Gendreau, Conservation Clerk Anne
Renaud-Jones; Tara Vocino, Jeff & Jane Howlett, Leonard Jalbert,
Sandy Oliver, Paul Brochu, Wendy Stearns, Rich Suitum, Joe Coan, Paul
Girouard, Russell Corriveau

Committee Updates: CPA (EG) did not meet, no report submitted
Trail Committee: (DB): did not meet
Lakes Advisory Committee is not meeting until spring.

Walk-ins Mark & Sandra Oliver: 13 Adams Road; bank stabilization project. Len Jalbert representing: LJ: this project was discussed some time ago with previous agent: conversation was about armoring approx. 70feet of the shoreline with riprap because of significant erosion problems from wave action; area would be dug, lined with textile mat, and filled with rock, ; Armoring would not create further impact.
Agent RG: Since it is affecting the bank of a Great Pond, not sure it would meet performance standards of WPA..... May need to file for Chapter 91 permit (Mass Public Waterfront Act); wildlife habitat evaluation may be required; An alternative would be a more natural approach with plantings, perhaps with fabric mat and some stones;
- LJ: this area is dam-controlled and the flood elevation is fixed because of it... This area has no water 3 or 4 months of the year;
-- SH picture of existing conditions would be helpful; DB: in a past similar situation, we allowed large stones to be placed, but spaced apart; this allowed property owner to avoid Chapter 91; Property owner Sandy Oliver: currently we have one pier about 8ft from the bank; we hoped stone would stabilize the pier; RG: recommended to review WPA regulations and performance standards to see if they can meet them. Look at more natural approaches that would meet standards and also meet their goals to stabilize the bank.

Paul Brochu; 32 Tantasqua Shore; with Len Jalbert representing ;
(LJ): Mr. Brochu has removed vegetation on the slope adjacent to his home; including a couple of trees right at the shoreline; trees approx. 12 diameter, but slope itself is primarily mountain laurel ; the site is in need of erosion controls; We're proposing 6-inch wattles, approx. 20ft apart, and placed on the diagonal to the downward slope, directing the flow to either side where there is no disturbance ... EG: How soon can we get wattles installed? LJ: wattles can be done this week, then develop a long term stabilization plan in near future DB: prefer shrubs instead of grass...SH: get a wetland mix and use jute mats; it all needs to be done as soon as possible...
- Mr. Brochu will work w Jalbert Engineering to develop a plan and come back to the Commission.

Public Hearings

- 6:15 Request for Determination of Applicability: 32 Mt. Dan Road; Jeffrey Howlett; represented by Jalbert Engineering; relocation of a driveway in the buffer zone.
LJ submitted documentation: abutter letter certified list and legal notice:
-- LJ: this project is a driveway relocation; currently on southerly side of property; property owner wishes to move it away from their abutters property; Alternative sites at property all have grades not favorable to driveway regulations; Four trees are coming out; we will replace trees; disturbed area will be loamed and seeded ; erosion controls will be a double row of haybales because of the steep slope ;
- Agent Rebecca Gendreau: received an emails from abutter Martha Fearing who could not attend this meeting; Agent read this email:

Conservation Commission Members:

My name is Martha Fearing, I am a resident of 30 Mt Dan Rd., maintaining a life estate in that property via a Trust I created for estate purposes. I am unable to attend the March 1 conservation commission meeting where the relocation of the driveway at 32 Mount Dan Rd. will be discussed, however I hope that my thoughts I've written here will be read at the meeting and given all due consideration.

I'm an 84 year old woman who has lived on Big Alum since I was two years old. While I'm no longer able to reside in my home full time, I frequently exercise my rights under my life estate and spend as much time there as I am able. When these driveways were created many years ago, I was the owner of both 30 and 32 Mt Dan Rd. When the properties were separated approximately 10 years ago, it was my intent that an easement be placed on both of the shared driveways so that each of the owners, my children, would have no issues crossing one another's properties.

My daughter, Jane Howlett, then refused, and continues to refuse, my wishes. On several occasions I have instructed my attorney, Jeff Chasse, to produce the necessary documentation to grant the Howlett's an easement allowing them access to their property across the part of their driveway which crosses 30 Mt Dan Rd. in return for the same allowing access to my home across the portion of my driveway which crosses 32 Mt Dan Rd.

On each occasion the Howletts have refused what I feel to be a very fair offer and a very easy solution to resolve this issue. Because of this easy and simple solution, it is my opinion this driveway relocation is a case of the Howlett's creating their own hardship and that it is unnecessary.

Thank you very much for your time and consideration! Martha P. Fearing Life Estate in 30 Mt Dan Rd.

Agent continued: Martha Fearing is previous owner, has offered easement to Mr. Howlett; feels new driveway is unnecessary and a self-imposed hardship... We did site visit; Applicant will need a driveway permit from DPW,

SH: this is 100 ft from resource area, erosion controls seem adequate, don't see a problem except to make sure other town permits are in order.....

SC: questions the need to remove mature trees when you have an alternative

- Resident John Fearing spoke, saying that Mr. Howlett had been offered an alternative easement; he sees no need for this work or the tree removals.

JHowlett: We can't make the right turn on that slope- it is too tight- and we will plant as many trees as you request of us...

- SHalterman: in my opinion, this project is over 100ft from the resource; alternative is unnecessary; concern for shading the lake is irrelevant at that distance; replanting would be good... - other commissioners agree;

- Discussion about determination options: recommended Positive #5 and Negative #4 adding conditions of erosion controls, with erosion blanket after grading and seeding is finished:

- Motion: SH; to close the Public Hearing, approve this project, and issue a determination as discussed; 2nd (DB)

- Positive 5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by the Sturbridge Conservation Commission.

- and Negative Determination #4: The work described is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent unless said work alters an Area subject to protection under the Act.

Discussion resulted in request for planting of 4 trees and 4-5 fruit-bearing shrubs :

VOTE 3:1 (EG dissenting) APPROVED

6:30 **Request for Determination of Applicability; 129 Shore Road**, Paul Girouard; represented by Joseph Coan, JCLA Design; removal of deck, install small patio and landscaping - *Rescheduled from February 15th*; M. Coan submitted requested documentation: abutter letter certified list and legal notice:

Project consists of removal of small deck, installing stepping stones down to the water and patio; patio is 75sqft with 22inch retaining wall on water side; gravel path down to the water; slope to the water is approx. 8% grade; planting plan submitted as separate document, showing a significant number of plantings

Agent RG: Commission did take site visit; project is within 50ft of the lake; see no issues with removal of the existing deck; I suggest a determination of Pos #5; Neg #3 with some conditions; did see the paved swale which leads right to the lake; and found an old permit from 2007 which also made comment on this swale?

-- JCoan: this swale is not on Mr. Girouard's property; we have reached out to that property owner but have had no response.... The shared driveway pitches to the center; there's no way to correct the drainage as is.

-- SHalterman: all work is within footprint of existing structures - I have no issues with this...

Motion DB: to close the Public Hearing, approve this plan and issue a determination as the Agent suggested:

Positive Determination #5: The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by the Sturbridge Conservation Commission, AND a Negative Determination #3: The work described is within the Buffer Zone, but will not alter an area subject to protection under the Act. Therefore, the work does not require the filing of a Notice of Intent.

-- Motion 2nd (SH); Vote: AIF (4:0) APPROVED

6:45 **Notice of Intent; DEP#300-1006; 202 Lake Road; Wendy Stearns**; raze and rebuild of single family home in the buffer zone. Represented by Jalbert Engineering: Len Jalbert (LJ) presenting; *Continued from January 18th*.

Len Jalbert and Wendy Stearn present: LJ: at our last meeting, suggestions were made about

dripstrips, which are now planned on both the north and south sides of the house;

- questions were raised relevant to the limits of the cellar area and underneath; LJ clarified outline of basement; clarified that the porch would now be on piers on a stone base with no cellar underneath it... The screened porch is 100% within the footprint of the existing structure

- We tried again to find a way to move the house further back towards the east – We've all concluded there is no alternative after an exhaustive study with the power company - We've gone thru ZBA; they ruled it did not increase the density of the property and no variances would be required; was approved by ZBA

- The Stearns shared a summary statement addressed to the Commission:

We have heard your concerns and your comments regarding our project and tried to accommodate all of them.... We've added considerable vegetation with blueberry bushes and winterberry bushes; we've added a 30inch oak back into plans which seems to have been marked for removal in error: we've included some photos to show that moving the house back would involve tree removal on our property as well as our neighbors' property... and to reiterate that our discussions with the power company was exhaustive and that this plan really is the least impactful option -

Commissioners agreed applicants have done good job of addressing concerns within their limitations.

- Motion (SH) To close the Public Hearing, approve this project and issue an Order of Conditions; 2nd (DB); Discussion was had about conditioning erosion controls, no stockpiling, and questioned gapping the wattles- don't want turtles to be trapped inside the barriers

Vote: AIF (4:0) APPROVED

Letter Permits

Wetlands Bylaw Letter Permit: 26 Kelly Road; Sturbridge Retirement Co-op; Mary Berry, Manager; Removal of invasive species and understory vegetation within 200ft buffer; no tree removal; no excavation. No one was present for this conversation.

- Agent report: This project is +/- 150 feet from wetland; total lot area is 12+ acres; from aerial maps, this looks like approx. 2 acres; Applicant is exploring options for future expansion -

- no excavation is planned; all work is just preliminary to assess the site; site is mostly flat; We can condition the permit so she doesn't exceed her estimated area so no accidental expansion: Motion (SH) 2nd DB: AIF (4:0)

Wetlands Bylaw Letter Permit: 68 Goodrich Road; Nancy Pierangeli; represented by Russell Corriveau, contractor; 2nd floor addition, in the buffer zone;

RC: This is a second floor addition – all is within the footprint of the 1st floor; We'll add a walkway from the 2nd story to the upper (street) , which will allow access without using stairs; Walkway will be bolted to the ledgerock; Gutters and downspouts will be directed to the back swale – away from the lake -

- EG asked about septic: RC: special septic design approved in 2010 (tight tank) ; requires regular monitoring and all is OK- DB questioned the gutters: RC said the closed system gutter guards work well and will not be a problem.....

- there are no tree removals planned; dumpster will be on the road;

- Motion DB; 2nd SC to APPROVE this project as presented; no need for further filing;

Vote AIF (4:0)

AGENT NOTE: This property still has an open Order of Conditions from the septic install. It should be taken care of.... Applicant agreed.

Old Business

**Request for Minor Amendment: DEP File # 300-970; 22 Cedar Lake Drive;
A. Dobson; Arborist report.**

Agent RG: This is project where we're discussing 2 trees at 22 Cedar Lake: You've been given 2 new reports tonight; 1 is from Ganesh Tree, Joe Kowalski, stating his opinion of the viability of these 2 trees; the other is a Tree Risk Assessment done by Tom Chamber in July 2017; this report was not previously in our files

Mr. Dobson came in recently with Minor Amendment to have two trees removed:

-- Tree A is a large 30inch oak, which was bordered by a retaining wall, and was to have been protected as that retaining wall was replaced.....

-- Tree B is a smaller tree, on the property line with Mr. Dobson neighbor (24 Cedar Lake), it leans heavily toward and overhangs the neighboring property. This neighbor attended the Jan 18th meeting and spoke in support of removal because he fears the tree will come down and damage his property.....

Both Arborist reports submitted question the long-term viability of these trees..... Joe's notes say that damage to the large tree could not really have been avoided based on proximity of the tree to the house and the retaining wall.....

- SC: Feels strongly they did not follow our instructions to take extra caution with this tree:

Suggests fining Mr. Dobson for violating the Order of Conditions

- SH: We can find him in violation and fine him, and then permit him to remove this tree and condition that removal with requirements to replant and monitoring of new plants to insure health

- Agent: My review of the OOC shows no specific instructions in the conditions, but the approved plans show the tree with note: "30" oak to be protected during construction"

Discussion ensued about the condition of both trees ; Discussion focused on several issues: Can these trees survive now? Are there punishable violations here? What are the actual violations? What can be done moving forward to rectify this issue?

Conclusion:

A violation occurred when, in the course of the construction work for this project, the root system of Tree A was not protected in a way to ensure the tree's survival. The tree may have had a better chance to survive if the excavation site was filled with soil immediately when the retaining wall was removed. When the site was visited in January the tree was found with exposed roots on two sides in a period of frigid temperatures.

At the January 18th, ConsCom meeting, the applicant agreed to fill the excavated hole immediately to protect the exposed roots.

As of today, March 1st, this task still not been completed; so that the risk to this tree has been further aggravated.

The commission wants two things:

All possible efforts should be made to save this large tree (A) - It is one of very few mature trees in that area. If that is now impossible, the Commission wants replacement efforts to include several significant trees with monitoring.

Commission wants to treat the initial violation and the current conversation regarding solutions separate and distinct.

Conclusion

- The commission will investigate fining Mr. Dobson for failure to follow his Orders of Conditions dated 12/1/2016. The plans approved for DEP #300-970 indicate the tree was to be protected. The Commission site visit of January 16, 2018 discovered the tree had been exposed to excavation activity and had been left with roots exposed and unprotected.
- Fines will be issued on a per day basis, beginning January 19th, which is the day after Mr. Dobson agreed to take immediate action to fill around the tree roots to attempt salvaging the tree. Per our Sturbridge Bylaw Regulations, this will be calculated using a fine of \$25 for a 1st violation, \$50 for a 2nd violation, and \$100 for the 3rd, and all subsequent violations.
- The Commission request that Agent RG instigate fining against the property owner for the violation. Agent RG will investigate how fining has been handled on previous projects and report her findings to the ConCom to develop a plan.

FURTHER, going forward...

- Per previous discussion with Mr. Dobson at January 18 meeting, replacement plantings must be made for this tree loss. The Commission expects a planting plan, indicating placement and species of 4 trees. Trees must be substantial and appropriate species. A planting on the neighbor's property will be allowed as mitigation for the (expected) loss of the smaller second tree (B) which overhangs the adjacent property.
- Commission also discussed the possibility that the applicant may be asked to seek the services of an Arborist to oversee the new plantings and submit reports to the Commission on an annual basis to insure that proper attention is given to this effort.
- Discussion of proposed changes to the stairway location must be presented to the Commission separately as a Request for a Minor Change of Order of Conditions

SCC#17-37 Ltr; 551 Leadmine, Removal of trailer and debris within Riverfront & Buffer Zone. Agent reported that Mr. Earls has been speaking to the Bldg Inspector re removal of the Trailer and expects that to be completed soon; DB: asked if the agent to check weekly to see when project has been completed.....

Ameresco Solar Project update:

-- RG: Original Orders have expired; They did submit a new Notice of Intent for two culvert replacements underneath the access road which have not been completed; They must first obtain a partial Certificate of Compliance on this OOC before they can submit the new NOI filing; In addition, Army Corp revised one of the crossings; they didn't want the 24inch control structure originally spec'd; they want to open the stream; so their plan is now a 36 inch culvert; The Request for a partial Certificate of Compliance will be coming in, but is not ready yet.

Update of Commission's final review of Sturbridge Wetland Bylaw Regulations:
We have put together and submitted the letter to KPLaw with our final questions regarding the Bylaw Regulations based on our final review on February 22nd....

New Business

Chair Ed Goodwin: reminded the Commission that 2 sitting commissioners (Ed Goodwin and Steven Chidester), have terms expiring on June 30, 2018. At our July meeting, there will be a reorganization of the Commission.

Conservation Commission summer meeting schedule:

-- Commission decided Summer Meetings would again be only 1 meeting in July and 1 meeting in August; Dates are July 19th and August 16th.
June meetings will be standard 1st & 3rd Thursday.

Lakes Brochure: "Protecting these Beautiful Lakes"; review before reprinting - This conversation was tabled until March 15th

Board of Selectmen Memo re: Dock at 44 Burgess School Road: Agent asked for clarification about whether or not Commission wants to review all Memos to the BOS regarding docks: - EG: only when installation involves attachment at the shore

Request for Certificate of Compliance

DEP #300-957; 6 Birch Street; James Rowe SIGNED

Agent Report

- Trail Meeting - Projects for this year – Agent met with Town Administrator and Trails Committee: 2018 Trails Committee Plan was distributed to the Commissioners
- Mountain bikes on Leadmine Mountain: Agent reported that on the night of Opacum's Full Moon hike at Heins, Opacum ran into a large group of mountain bikers using the Leadmine trails after dark... There have been incidents before when F&W have said trails were being damaged by mountain bikers.... Bikers have been creating illegal trails - Agent will try to reach out to them
DB: mentioned that Trails Committee creating new trails on Plimpton may help; Agent also mentioned caution on Plimpton plans because they'll need to work with Opacum as the holder of the CR, and need to coordinate with Natural Heritage due new priority habitat mapping - Both of these issues were mentioned to Trails at this meeting
- Upcoming RDA for Leadmine Parking Lot at 10 Shattuck Road (at 1 OSV Road); Agent reported that this filing is being pulled together and will be on our next agenda; the previous Orders for this planned parking lot have expired, we're moving forward with an RDA filing DPW is already doing some preliminary work...
- Agent RG will be attending the upcoming CPC meeting on March 21st - She is researching our properties to see what projects may be suitable to apply to CPC for funding...
DB: suggested the development of "pocket parks" - and mentioned several spots he thought might be suitable.... One spot on the Quinebaug River in particular - a nice overlook of the river...

- Agent provided the Commission with a copy of Article 50 from the February 26th Special Town Meeting, and advised them that the warrant had passed. This article revises the details of the Forest Harvesting Bylaw logging violations within the General Bylaw. The document now proceeds to the State Atty General's office.

Forest Cutting Plan – 133 Fiske Hill Road - Commissioners received a document from Agent RG, a summary of the site visit conducted on 2/26/2018 by herself and Commissioner Steve Halterman;

DB questioned comments about sections ST2 and ST3 not being harvested; Agent RG clarified the plan submitted to DCR, the long-term plan, shows these areas are slated for harvesting later, but this areas are not being harvested now.

RG: The perennial stream did have constant flow at our visit - Crossing #1 has a high bank, almost 5feet high; the stream itself will not be touched; They do also want to keep Crossing #2. Having both crossings will minimize access through the steep slope and will minimize risks of erosion there.

- SH: we were pleased with plans for the crossings – They will use water bars to reduce erosion; there is no harvesting in the wetlands. Stream in that location is approx. 2 ft wide and 6 inch deep

- Landings – altho they originally proposed 3 landing sites, they will only be using one, the existing driveway at 133 Fiske Hill; and DCR has stated they can only do minimum amount of clearing allowed...;

- Agent RG - Clarified that forester is also aware of the Scenic Road setbacks:

- Agent: forester has a 50 foot filter strip on the stream, but he is also implementing a 25ft no tree removal restriction

- DB asked to make sure that trees will be marked for TAKE trees to avoid any confusion.

Commission agreed to recommend to the Board of Selectmen that they accept this plan.

Agent will compose letter to BOS.

Approval of Minutes - Minutes were not ready to be reviewed.

Adjourn; 8:50 pm Motion to Adjourn (SC); 2nd DB; Vote: AIF (4:0)