

TOWN OF STURBRIDGE, MA -- CONSERVATION COMMISSION

Thursday, February 22, 2018

*Minutes- Approved April 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  
Steve Chidester (SC), Vice Chair  
Dave Barnicle (DB)  
Steve Halterman (SH)  
Paul Zapun (PZ)

Others Present: Conservation Agent Rebecca Gendreau, Conservation Clerk Anne Renaud-Jones; Andre Cormier, Jr, Andre J Cormier Sr., Russ Kelcourse for Peter O'Connell, George Kondylis, Glenn Krevosky, Tara Vocino, Matthew Marro, David Peterkin

6:00 PM Committee Updates:

CPA: (EG) met last week, working on budget proposals for June Town Meeting; \$30,000 will be submitted for Trails Committee; \$9,500 for the Historical Commission to continue their work in the old cemeteries; Both of these items will be voted on at the Town Mtg in June. Also we are trying to gather other Town Boards together for a meeting, tentatively March 21st, to solicit ideas for other projects CPA may be able to help fund.

Trail Committee: (DB) Committee met last week, they are finalizing the 12+ mile mountain bike trail on the Plimpton property; four members hiked this new trail to assess the accessibility issues. More info will be reported as it is completed.

Lakes Advisory: no report submitted

Public Hearings

6:15 Reconsideration of the Notice of Intent: DEP #300-1005: 47 Seneca Lane: George & Rebecca Kondylis; Raze & rebuild of single family home and garage in the buffer zone; Represented by EBT Environmental Consultants. *Continued from January 18, 2017.* Revised plan presented; Rev 6 dated 2/10/17. Applicant George Kondylis thanked the Commission for revisiting this project; This revision has greatly reduced the project impact from the previous proposal. The new plan would be limited to:

- *Repair of the existing seawall, retaining walls and stairs to include patching and repointing.*
- *Removal of existing shallow well and installation of new drilled well.*
- *Trimming of all trees with no removal of trees.*
- *Raze and rebuild existing home on existing footprint with bump out to stay, as well as stairs off side.*
- *Raze and rebuild existing garage on existing footprint.*
- *Raze and rebuild patio with deck above*

All agreed the plan was a significant improvement. DB expressed continued concern about the disturbed area in front of the retaining wall; .....other Commissioners expressed concern about the large old pine tree which has roots pushing up the under the rock wall; Commission wants the roots to be saved; GK is OK with a condition specifying no touch of that tree and its root system;  
Motion (SH) to close the Public Hearing, approve this project, and issue an Order of Conditions; 2nd PZ;  
Vote: 4:1 (DB dissenting)

6:30 Request for Determination of Applicability: 14 + 50 Douty Road; Peter O'Connell; Represented by Escape Estates: Request to extend a working gravel driveway.

Andre Cormier Jr (Escape Estates) and Matthew Marro (Matthew S. Marro Environmental Consulting) presenting;

- certified abutters list and legal notice tear sheet were submitted; ACormier shared topographic map of site with commissions; Agent showed satellite view of site for discussion: AC: this view shows location of previous farmhouse, which has been demolished, and is now currently the primary gravel work site....

- Our plan is to extend this driveway north of the demolished house...out to the far back wooded area. Access is for contractors to do their surveying, soil testing etc without further damage to the existing fields; Location is currently staked; line of stakes is at 220' from the wetlands... driveway is outside of the 200' buffer zone; We will run wattles alongside the driveway to clearly indicate the limit of vehicle traffic.... - Limit of work will only be 10-15 feet beyond edge of driveway;

-- Agent RG: Our major concern is closer to the road, ... Because this is a Determination, we can issue some conditions, which may be marking the limit of work, adding a tracking pad, and posting the permit sign – which is a standard condition;.....marking the limit of work also protects the landowner from contractors who may violate the boundary...

-- DB & SH expressed concern that this is segmenting the subdivision project; which is not allowed by DEP;

MM: This proposed driveway is not in a jurisdiction area; The RDA was to examine the swale area at the bottom, and the portion closer to the wetland area, to see if erosion controls are necessary....

RG: we asked for submittal of RDA for clarification of this driveway location and because there are still some areas where the jurisdictional status is unknown.... And some of these areas may turn out to be outside of our jurisdiction; Once the delineation is done, and the requested ANRAD filing is completed, we can assess the wetland delineation and know exactly what is there... and how it relates to both the 100ft WPA buffer and the 200ft SWBbuffer....

-- MM: Yes, so the sequence is for me to finish the delineation, then file the ANRAD, then after your review/approval, Mr. Cormier can proceed with developing his larger plans based on our findings...

I agree there are a lot of jurisdictional areas out there that need to be documented and agreed upon between Mr. Cormier and this Commission.....; that will allow the project to move forward.....

-- So we see this RDA filing as the means to get the erosion controls clarified for the areas affected only by this driveway, and then we proceed to the full wetland delineation stage and discuss in full with the Commission - It should be done within a few weeks; then Bertin will start the surveying... we don't see this as a segmentation- it's a methodical approach ....

-- EG asked about removal of loam; EE is stockpiling offsite;

-- EG: asked about length of driveway/ distance to back of property: RG: 1100 feet to back

-- EG asked about future plans for the site: AC responded that all work is passive maintenance of the property while other exploratory work is being performed - surveying, etc - All other pieces of this project will come before you when planning has progressed.... For now, there is no heavy work; no skids, no bulldozers, no heavy equipment...

-- EG: I don't think this is jurisdictional;

-- Agent RG: Only the portion where the current disturbance is (site where house formerly stood) is within our jurisdictional buffer.

-- Commission then discussed which conditions shall be imposed:

-- Posting a sign indicating SCC permit; installation of a tracking pad at the entrance of the driveway, installation of a snow fence (or similar) along the eastern LOW (limit of work) associated with the driveway; LOW defined as approx. 12-15 feet from the edge of the driveway as shown on the plan; Straw wattles allowable as erosion controls, shall be properly installed, and to be inspected SCC Agent before driveway construction begins. An Erosion Control Monitor shall be designated, and the Conservation Agent and the SCC shall have access to the site to confirm compliance with this permit.

-- ALSO NOTED: This driveway approval does not constitute an approval for the location of a future road or any other work not expressly discussed at this hearing.

-- Resident David Peterkin (70 Holland Road); stated his opinion that this project is segmented, because there is no other reason for this driveway except for the future plans for the subdivision....

MOTION: SH: To close this public hearing, approve this project as discussed tonight with the conditions as stated, and issue the following Determinations:

-- a Positive Determination #2B: The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.

-- a Positive Determination #5: This project is subject to review and approval by the Town of Sturbridge under the Town Wetlands Bylaw

-- a 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.

2nd SC: Vote: AIF

## SIGNATURES

Certificate of Compliance: DEP File # 300-992: 61 Shepard Road, Bourbeau; APPROVED/SIGNED

Request for Conservation Land Special Use Permit

Opacum Land Trust: a walk with Wild Edibles author Russ Cohen on the Plimpton property; Tuesday, June 26th; early evening; approx. 25 people and 15 cars; APPROVED/SIGNED

MA DFW Stewardship Training at Leadmine Mt. Conservation Area; February 28, 2018; 1PM -4PM; approx. 15-20 people and 4 cars APPROVED/SIGNED

## Agent Report:

32 Tantasqua Shore Drive - We rec'd phone call that lakeshore property at 32 Tantasqua Shore Drive was being cleared ; I went to visit; could not see if the slope had been cleared; We sent letter to occupant, who responded right away and I went to view the site with him; he had cleared most of the slope of the mountain laurel, - it's is large area; no mountain laurel roots had been removed, some trees at the shore appeared to have been removed at an earlier time; RG showed photos ; ... Owner said most of it had been dead; He was advised not to do more cutting.... Commission discussed concerns of erosion once the thaw came: Commission decided to visit at next site visit.

## Forest Cutting Plan – 130-133 Fiske Hill Road;

Agent - We received a Memo from BOS requesting our feedback on a Forest Cutting Plan submitted for Fiske Hill Road; We received this request too late to put on our agenda for tonight's meeting, but it needs to be addressed. Plans and draft response to the BOS were emailed to Commissioners before tonight's meeting; Commission discussed the following concerns;

- this is same FCP we received months ago, at that time, we had requested access to the property, and access was denied.
- plan shows multiple wetland crossings, explanation says they are not sure which one will be appropriate depending on the season... - one area seems to be total clear-cut; - Access seems to be right in the middle of residential area
- slope of the entire site is very steep- Commission has great concern regarding erosion
- Commission is charged with protecting the wetland resources, but cannot do their job if access for review is denied

Motion (DB) that ConCom send Board of Selectmen a memo stating the following: :

1. Pictures be provided of all entrances and exits at the town roads (per Sturbridge General Bylaw, Sec 3.333)
2. Town require a performance bond for road and erosion controls (per Sturbridge General Bylaw, Sec 3.33)
3. Conservation Commission must have access to view property, identify wetland areas of concern, and be allowed to recommend erosion controls, which must then be reviewed to insure the continuous effectivity of these controls, or require a report every 2 weeks from a certified environmental specialist indicating the effectivity of these controls

SH 2nd this motion;

Discussion: Emphasis must be on accessing the property, identify wetland areas, and oversee erosion controls;

Vote: AIF to have Memo sent to BOS

## Approval of minutes:

- January 18, 2018; DB proposed changes listed below:  
Motion (DB) to approve as amended (below); 2nd: SH: Vote AIF (5:0)
  - Under Trails Committee Update, DB corrected his statement of 1/18/18: the planned mountain biking trail length on Plimpton property should have been 10+ miles.
  - Under the hearing for 195 Arnold Road, Rapsallion Brewery - 2 paragraphs below the listed plan submittals, paragraph beginning: "Regarding questions discussed at the site visit re sewer cleanout..."; DB pointed out grammatical errors in the sentence: It should read:  
*"SM - regarding questions discussed at the site visit re sewer cleanout - Note on plan indicates that yes, we will have a licensed plumber run the line through the proposed building to make that reconnection.; also the cleanout pipe will be raised 3 inches above the retaining wall so rainwater will not enter the sewer system...."*
  - Under the hearing for 5 Cherry Brook Circle, a sentence regarding the fence installation needs to be corrected to read:  
*"Commission asked about bottom gap for the fence: Agent: I recommend no gap because the fenced area is so small; we do not want wildlife getting trapped inside the fenced area w/ dogs... .. Commissioners agreed..."*
- February 1, 2018: DB submitted minor grammatical changes;  
Motion (DB) to approve as amended; 2nd: PZ : Vote (3:0); EG and SH abstain due to absence at Feb 1 mtg.

## Old Business

Sturbridge Wetland Bylaw Regulations - Continuation of the final review of proposed changes to Regulations.

NOTE: Review of these regulations has been tabled for some time due to time needed to review all comments received. Per prior discussion, we are working tonight from the master document dated July 13, 2017, which is the document used to create the “red-line” version sent to Board of Selectmen.

Tonight’s review entailed ONLY those sections referenced by either the Board of Selectmen comments or by KPLaw (Town Counsel) comments.

Also referenced in tonight’s discussion was an email from KPLaw, dated 11/16/17, which comments on an issue with a different project in town, but which discusses specific buffer zone questions brought forward by the Board of Selectmen review of these Wetland Bylaw Regulations.

These documents will be posted along with these meeting minutes, or are available by request at the Conservation Department office.

➤ **Sec 1.1: STATEMENT OF JURISDICTION**

**Next-to-last paragraph; “The commission may impose.....”**

The Commission may impose conditions, safeguards, and limitations in a waiver permit to protect or further the interests protected by the Sturbridge Wetland Bylaw and Regulations. It should be understood that waivers are intended to be granted only in rare and unusual cases and are issued at the sole discretion of the Commission.

At the discretion of Commission concrete bounds or other appropriate permanent marker clearly delineating the 25-foot No Disturb Buffer or any alternative approved width No Disturb Buffer the Commission imposes for each property are to be installed prior to the start of any work on site.

*Selectman MS commented on these two paragraphs: The Bylaw is less restrictive with respect to waivers of the “No Disturb Buffer” and does not reference a “No Structure Buffer”. Language needs to be consistent with the Bylaw.*

**Commission comments 2.22.18: This language has not changed from 2004 version: we will leave it as is.**

➤ **Section 1.3 NO SIGNIFICANT ADVERSE IMPACTS-**

**Re: first paragraph**

An applicant is required to demonstrate that any work, including proposed mitigation measures, will have no adverse impacts on the resource area. The Commission requires a 25-foot undisturbed vegetated corridor (No Disturb Buffer) around all resource area boundaries with the exception of certified or identified vernal pools which will require a minimum of a 100-foot Undisturbed Buffer. This Buffer may range up to 200 feet depending on the characteristics and species present. The term identified vernal pool refers to a vernal pool for which sufficient evidence to certify the vernal pool is present and is identified by the Commission or a representative of the Commission. The Commission prohibits the use of pesticides, fertilizers and herbicides within the 100-foot Buffer to all resource areas and prohibits the use of salts, quick release pesticides, quick release fertilizers and quick release herbicides within the 200-foot Buffer to all resource areas except by licensed applicators. Activities, which increase the potential for hazardous impact to the resource areas such as vehicle maintenance, are prohibited within the 200-foot Buffer to resource areas.

*Selectman MS COMMENTS: Language needs to be consistent with the Bylaw. A 100-foot vernal pool buffer would require a revision to the Bylaw, A prohibition on the use of pesticides, fertilizers and herbicides would also require a vote of Town Meeting.*

*Agent Rebecca Gendreau referred to comments from KPLaw in an email dated 11/16/17, written regarding a different project, but which applies directly to this question from Mr. Suprenant. KPLaw specifically states that SCC has the right to impose more detailed restrictions than the General Bylaw.*

*“These regulations are more detailed than the Bylaw, but in my opinion, they are authorized by and consistent with the Bylaw....” AND “There is no language in the Bylaw prohibiting the Commission from further regulating activities in that buffer zone”.*

**Commission comments 2.22.18: Because KPLaw has reviewed this issue, we will leave it as it currently stands.**

## ➤ Section 1.4 BUFFER ZONES

...Referring to the entire section on buffer zones...

*Selectman MS COMMENTS: Limitations on disturbance within the riverfront area is not included or referenced in the Bylaw, Section 1.4: The Bylaw is less restrictive with respect to waivers of the "No Disturb Buffer" and does not reference a "No Structure Buffer." Language needs to be consistent with the Bylaw.*

... Referring to the very end of Section 1.4, regulations read:

Vernal Pool Buffer, the first 100 feet is to be considered the minimum no-disturb buffer. This buffer zone may be extended to 200 feet based on site conditions and impacts to critical wildlife habitat needed to keep the pool viable. A 500-foot buffer may be applied where slopes exceed 8%.

*Selectman MS COMMENTS: A 100-foot vernal pool buffer would require a revision to the Bylaw*

**Commission comments 2.22.18: Because KPLaw has reviewed this issue, as stated previously regarding KPLaw email of 11/16/17, we will leave these sections as they currently stand.**

## ➤ Chapter 2: DEFINITIONS

*Selectman MS COMMENTS: The definitions of "Alter", "Seasonal Wetland", "Vernal Pool" etc. should simply reference Section 3.59 of the Bylaw or repeat the definition exactly.*

**Commission comments 2.22.18: YES, we will make this change.**

## ➤ Section 3.1 BURDEN OF PROOF / PRESUMPTION OF SIGNIFICANCE

*Selectman MS comment referencing the entire section: Section 3.1: The Burden of Proof/Presumption of Significance is more restrictive than Section 3.69 of the Bylaw. Language needs to be consistent with the Bylaw.*

**Commission comments 2.22.18: This language has not changed from 2004 version: we will leave this section as is.**

## ➤ Section 3.4.2 Tree Removal Permit Application

*...Referencing the section beginning at the end of 2nd para, beginning: "Trees should be retained along and around the resource area...."*

Trees should be retained along and around the resource area as much as possible. Tree removal will only be considered in situations where the tree poses a threat to health or safety by being a hazard or in situations where a tree is diseased or partially dead. Healthy trees which pose no hazard will otherwise not be approved for removal, unless it is determined by the Commission that removal will pose no impact to Resource Area or Buffer Zone.

*Selectman MS comment: Regarding the wording "removal will pose no impact"  
1) can we add the word "significant impact" here? And 2) Could tree replacement be considered?*

**Commission comments 2.22.18: Yes, we will add the word significant; and yes, replacements are considered in every tree removal conversation.**

## ➤ Section 3.7: STORMWATER

*Selectman MS Comment referencing this entire section: Section 3.7: Check the use of will and shall in this Section and for consistency with the Massachusetts Stormwater Management Regulations...*

**Commission comments 2.22.18: YES, we will change wording in this section to use the word SHALL in all instances...**

## ➤ Section 3.10: SECURITY REQUIREMENTS

*Selectman MS comment: Section 3.10: The Security Requirements paragraph includes a method not in Section 3.60 of the Bylaw.*

**Commission comments 2.22.18: This language has not changed from 2004 version: we will leave it as is.**

Text under discussion:

*Quoted text from the General Bylaws:*

### 3.60 SECURITY

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or estate board, agency or official, the Conservation Commission may require that the performance and observance of the conditions impose hereunder be secured wholly or in part by one or more of the methods described below:

(A) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Conservation Commission;

(B) By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of Sturbridge whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

*Quoted additional paragraph included in current SWBRs:*

If a lot covenant is used in place of a bond, the minimum allowed will be 150% of the market value of the designated lots deemed equivalent to the current cost of restoration as stated by the Town DPW Director. This is to account for possible downward fluctuation in market value during the course of the project.

## ➤ Section 4.15 APPEALS TO THE DEP AND MASSACHUSETTS SUPERIOR COURT

*Selectman MS comment referring to this entire section: Section 4.15: Regarding Local Bylaw. The Bylaw does not specify that ... persons may request an appeal from the DEP or Superior Court. -- Does the Bylaw need to be revised?*

**Commission comments 2.22.18: This language has not changed from 2004 version: we will leave it as is.**

## ➤ Section 4.16 ENFORCEMENT AND CEASE AND DESIST ORDERS:

Enforcement Orders or Cease and Desist Orders are issued when it is found that an activity is in violation of the Massachusetts Wetlands Protection Act or its Regulations, or the Town of Sturbridge Wetlands Bylaw or regulations or a Final Order by the SCC.

Such orders may be issued by the Sturbridge Conservation Agent, or any of the sitting Commissioners, OR directly by the DEP or the Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement (DFWELE).

Violations include, but are not limited to:

- Conducting activities within a buffer zone or a resource area without a permit
- Conducting work which has an adverse impact on a resource area

**For permitted projects, violations can include: (this subhead ADDED by SCC 2/22/18)**

- Failure to comply with a Final Order of Conditions
- Failure to complete work described in a Final Order of Conditions
- Failure to obtain a Final Order of Conditions or Extension Permit

A Final Order of Conditions may be enforced by the Conservation Commission, its agent or any individual commissioner, or designee authorized by the Commission, (the Board of Health Agent, the Director of Inspections or the Police Department), or the DEP. The members, officers, employees and agents of the Conservation Commission and the DEP may enter upon privately owned land for the purpose of performing their duties under M.G.L. c. 131, § 40, 310 CMR 10.08-2, and the Town of Sturbridge Wetland Bylaws.

*Sept 18 KPLaw comment relating to the second sentence of this paragraphs: Recommend revision to acknowledge that property access is by prior consent or search warrant.*

**Commission discussion at Oct 5, 2017 added the following sentence to the end of this paragraph:**

“Entry onto private property by Town officials or their agents may only take place with the owner’s consent or pursuant to an administrative search warrant.”

**Commission discussion October 5, 2017** also concluded that boiler plate Orders of Condition include SCC right to access property, and by recording an OOC with the Registry of Deeds as required, the applicant has given permission for entry.

**Feb 22, 2018: Commission agrees with discussion from October; no further changes are necessary.**

Enforcement Orders shall be signed by a majority of the Commission, unless deemed an emergency. An emergency allows a single Commissioner, or the Agent to take immediate action. Consultation with other Commissioners is encouraged. Said Order shall then be ratified by a majority of the Commission at the next scheduled meeting or be considered invalid.

*Sept 18 KPLaw comments: recommend consideration of Agent alone, or Chair alone, OR majority of Commission have emergency authority.*

**Commission discussion October 5, 2017** concluded that, due to the small size of this commission and commissioners' varying degrees of availability, it is best that single-person authority be granted for emergencies, both for enforcement reasons as well as to minimize the potential for increased fines if the activity continues while waiting multi-person approval for enforcement action. **NO CHANGE** is being made to this section.

**Feb 22, 2018: Commission agrees with discussion from October; no further changes are necessary.**

Owners of land on which violations occur will receive written notice of the violation, what measures are to be taken and the day and time on which the owner or the owner's representative is to meet with the Commission. These meetings will usually be held during the next scheduled public meeting. However, in the case of serious impact or threat of immediate serious impact to a resource area, the Commission may schedule the meeting at the earliest possible date. Determination of serious impact will be at the discretion of a majority of the commission. Failure to attend the meeting scheduled or to notify the Commission and arrange an alternative acceptable time, will result in a Cease and Desist Order being issued at the stated meeting time and date. **Failure to respond to the Cease and Desist Order will result in the issuing of an Enforcement Order which will be recorded on the property deed as a lien against the property.** Said enforcement order will not be waived until the property and the violation are completely mitigated and restored, and approved by the Conservation Commission.

*Sept 18 KPLaw comments regarding this sentence: "Failure to respond to the Cease and Desist Order will result in the issuing of an Enforcement Order which will be recorded on the property deed as a lien against the property." Comment: "Such an action could prompt a "slander of title" claim against the Town.*

**Commission discussion October 5, 2017: Commission agrees to remove the words "which will be recorded on the property deed as a lien against the property."**

**Feb 22, 2018: Commission agrees with discussion from October; no further changes are necessary.**

The fines listed below may be overwritten by the Commission for violations considered to be egregious. Multiple actions within a single enforcement may, at the discretion of the Commission, incur "serial" fines. For example, a single tree cutting violation (in a buffer zone, without a permit) may sustain a "1st violation" fine of a \$50.00. If this first violation, however, involves the cutting of 20 trees (in a buffer zone, without a permit), the Commission may impose a "1st violation" for the first tree, a "2nd violation" for the second tree, and a "3rd violation" rate for every additional tree.

**2/22/18: Based on KPLaw comments regarding maximum fines (see below), the Commission will submit a new question to KP Law specifically regarding the proposed revisions regarding instituting "serial" fines as described in this section; the commission wants confirmation that this fine structure is approved by Town Counsel.**

For violations within a Resource Area:

1st violation ..... \$100.  
 2nd violation ..... \$200.  
**3rd and each subsequent violation ..... \$300.**

*Sept 18 KPLaw comments: ..... the process set forth in G.L. c. 40, s. 21D states that any violations shall be have maximum of \$300. Section 3.61 of the Town's wetlands bylaw also sets forth a \$300 limit on violations. The revised Section 4.16, however, sets forth fines that are well in excess of the \$300 limit. As a result, I recommend that this language be revised so that the amount of the fines comports with the limits of G.L. c. 40, s. 21D.*

*Selectman MS concurs with KPLaw comments re fines in section 4.16*

**Commission discussion October 5, 2017:** Commission discussion and decision to edit this 3rd fine amount to \$300 per recommendation of KPLaw, and to match the maximum fine allowed under Sturbridge General Bylaws.

**Feb 22, 2018:** Commission agrees with discussion from October; no further changes are necessary.

Filling or Alterations of a Resource Areas: Filling or Alterations of a Resource Areas will be fined on the basis of square foot of alteration, and will be calculated on the basis of \$1.00 per square foot, with a minimum fine of \$250.

Sample fines for resource area alterations:

250 sq ft or less .....	\$250.*
2,500 sq ft .....	\$2,500.*
6,000 sq ft .....	\$6,000.*

*\* If the SCC orders restoration work to be performed, restoration costs are the responsibility of the property owner and are additional to fines being imposed.*

**2/22/18:** Based on KPLaw comments regarding maximum fines (see above), the Commission will submit a new question to KP Law specifically regarding the proposed revisions regarding fines structured “per square foot of wetland fill” as described in this section; the commission wants confirmation that this fine structure is approved by Town Counsel.

#### ➤ **Section 4.19 REQUESTS FOR RECLASSIFICATION OF STREAMS**

*Sept 18 KPLaw comments: This section refers to the Conservation Commission’s authority to reclassify intermittent streams. The Commission should be aware that this provision would only apply to the Commission’s authority under the bylaw and not under the WPA.*

**2/22/18:** Commission understands and concurs with this statement.

#### ➤ **Section 6.1 PROJECTS ON SLOPES 8% OR GREATER**

For projects occurring on slopes of 8% or greater, the wetland buffer zone shall extend to 500 feet from the edge of wetlands to provide needed additional protection. Refer also to Zoning Bylaw section 4.04.

When slopes of 8% or greater dominate the initial 200 feet of resource buffer zone, the 25-foot No Disturb zone and the 50-foot No Structure zone shall begin at the top of slope or at 200 feet, whichever is smaller. Determination of the start of the 25-foot No Disturb zone or the 50-foot No Structure zone within the 500-foot 8% slope buffer will be at the sole discretion of the Commission and will be based on site specific natural features, on a case-by-case basis.

*Selectman MS comments: Prohibition of any disturbance within 225-feet of a resource area because the slope exceeds 8% cannot be justified by science or engineering.*

*Reasonable performance standards referring to the USDA Soil Conservation Service, Guidelines for Soil and Water Conservation, the Massachusetts Stormwater Management and Wetlands Regulations should replace the second paragraph.*

**2/22/18 SCC Comments:** The first paragraph of this section refers directly to the Zoning Bylaw, Section 4.04 (shown below for reference); -

**[Zoning Bylaw Section 4.04:** No soil removal or grade alterations on slopes in excess of eight percent (8%) shall be permitted within 500 feet of any area subject to protection under the Massachusetts Wetland Protection Act without prior Conservation Commission reviewing and issuing of an Order of Conditions. {Amended 4-24-89; Article 63}]

**The second paragraph will be sent to KPLaw for consideration.**

#### ➤ **8.2 RIVERFRONT RESOURCE AREA RESTORATION AND MITIGATION**

In addition to the guidelines for resource area restoration and mitigation outlined in Chapter 5 of these regulations, the Commission may allow/require on site restoration of riverfront areas in exchange for approving additional development within already disturbed areas. Redevelopment of disturbed areas must occur further from the river than existing



disturbance. Mitigation, such as preservation of additional riverfront land or improvement of an existing adverse impact on site or within the watershed, may also be approved by the Commission.

Within the Riverfront Resource Area, the following conditions shall always be a part of any permit:

- 2:1 mitigation must be given and must not be within existing undisturbed Riverfront Resource Area; no further disturbance of Riverfront Resource Area will be allowed on the parcel in consideration.
- The parcel in consideration shall be considered to include any sub-divided lots, or any parcel out of which the lots were created, including any adjacent parcels with common ownership, or any land which can reasonably be obtained.

*Selectman MS comment: 2:1 mitigation is not addressed in the Bylaw. Is there any justification for requiring additional riverfront area? Is there an exemption for developed sites?*

**2.22.18 Commission comments: This language has not changed from 2004 version: we will leave it as is.**

## ➤ APPENDICES / ALTERNATIVES ANALYSIS SCOPE OF REQUIREMENTS

**Referencing the 4th and 6th paragraphs: re “The discretionary authority ...”**

The discretionary authority of the Commission shall take precedence over any alternative analysis presented.

The purpose of evaluating project alternatives is to locate activities so that impacts to the resource area are avoided to the extent practicable and to present evidence supporting requests for waivers.

Under no circumstances will the completion or submission of an alternatives analysis overcome or negate the discretionary authority of the Commission.

*Selectman MS comments: Using the terms “discretionary authority of the Commission” leaves the possibility that an applicant does an alternatives analysis and the Commission uses its discretion to reject or ignore the results. Please use words like in the judgement of the Commission instead.*

**2.22.18 Commission comments: Although this section was moved, this exact language has not changed from 2004 version: we will leave it as is.**

**Referencing the entire section and its use of the word “practicable”**

*Selectman MS comments: This section repeatedly refers to the Commission’s authority under the Bylaw to deny a project. There is no definition of “Practicable” in the Bylaw or Regulations, so is the definition in the 310 CMR 10.04 going to be used?*

**2.22.18 Commission comments: Yes, and we’ll add to our definitions**

*The definition of “practicable” as in 310 CMR 10.04:*

*Practicable means available and capable of being done after taking into consideration costs, existing technology, proposed use, logistics and potential adverse consequences*

**8:25 pm; Motion (SC) to adjourn; 2nd EG; Vote: AIF**

Next Meeting: Thursday, March 1, 2018; 6:00 pm

*A copy of tonight’s meeting can be found on our Town’s website or is available upon request via the Audio Department: 508.347.7267*