

CONSERVATION COMMISSION MINUTES

October 6, 2022 5:00 pm-8:38 pm
Center Office Building, 2nd Floor
301 Main Street, Sturbridge, MA 01566



Conservation Agent

Rebecca Gendreau

Administrative Assistant

Erin Carson

Conservation Commission Members

Ed Goodwin
A-Steven Chidester
V-David Barnicle
Roy Bishop
Erik Gaspar

308 Main Street.
Sturbridge, MA
01566
T 508/347-2506

www.sturbridge.gov

Full application plans and narratives referenced in these minutes are available on the Commission's website: <https://www.sturbridge.gov/conservation-commission/pages/meeting-calendar-and-documents>

Quorum Present-David Barnicle appeared virtual and Steven Chidester was absent.

Chairman Ed Goodwin read the following:

-Executive Session pursuant to G.L. c. 30A, Section 21(a)(3) to discuss strategy with respect to litigation (RV Management Services, LLC v. Sturbridge Conservation Commission, Worcester Superior Court Docket No. 2185CV00756) involving the property located at 30 River Road, if an open meeting may have a detrimental effect on the litigating position of the public body and the Chair so declares that having a discussion in open session would have a detrimental effect on the Town's litigating position.

5:01 pm On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to enter in to Executive session. AIF:

Goodwin-y
Bishop-y
Gaspar-y
Barnicle-y

5:54 pm On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to adjourn the Executive session and reconvene under regular session. AIF

Goodwin-y
Bishop-y
Gaspar-y
Barnicle-y

NO Walk-In

DECISIONS

I. PUBLIC HEARINGS

1. 33 Breakneck Road – Notice Of Intent – Driveway for a pre-existing single family house – DEP File #300-1142

- Owner/Applicant: David Monroe Representatives: M. Farrell, Green Hill Engineering
- Request: Issue Order of Conditions.
- Documents Presented: colored plans & site photos
- Jurisdiction: Buffer Zone
- Performance Standards
 - **10.53(1): General Provisions** "For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work."
- Project Summary:
 - Construction of a new driveway for an existing single-family home. Parking is currently located along the street in the ROW and the Town has requested that parking be off the ROW.
- Presentation and Discussion:
 - Proof of abutter notifications & proof of legal ad received.

- Project site is not located within Priority & Estimated Habitat.
- Site visit performed.
- All work is occurring outside of the 50-foot buffer zone.
- The driveway will be paved along the slope, include a berm at the top by the road and will be gravel at the base and in the parking area.
- No large tree removal is proposed.
- Turnaround area requires some grading and will include rip rap on the slope, otherwise, parking area is flat and open. Currently lawn and herbaceous growth.
- Straw wattle proposed for ECs. Due to slopes, Agent recommends including an entrenched silt fence.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to close the Public Hearing for 33 Breakneck Road. AIF 4-0
- On a Motion of E. Gaspar, 2nd by R. Bishop for 33 Breakneck Road, DEP File #300-1142 the Commission:
 - Vote to approve and issue an Order of Conditions pursuant to the WPA with the following special conditions:
 - Standard OOC conditions.
 - Sedimentation controls shall also include an entrenched silt fence in addition to the straw wattle during work.
 - Vote to approve and issue an Order of Conditions pursuant to the SWB with the following special conditions:
 - Standard OOC conditions.
 - Sedimentation controls shall also include an entrenched silt fence in addition to the straw wattle during work.

AIF 4-0

2. 145 Walker Pond Road –Request for Determination of Applicability – Septic system repair

- Owner/Applicant: Richard Pierce Representatives: M. Farrell, Green Hill Engineering
- Request: Issue DOA
- Documents Presented: colored plans, photos
- Jurisdiction: SWB Buffer Zone
- Performance Standards
- Project Summary:
 - Project includes the repair of septic system for an existing SFH.
- Presentation and Discussion:
 - Proof of abutter notifications & proof of legal ad received.
 - Work is located outside of the 100' state buffer zone so no state jurisdiction.
 - Work is located within the SWB buffer zone and subject to review and approval.
 - Project site is not located within Priority & Estimated Habitat.
 - Site visit performed.
 - Area of system is just outside of the developed yard but does not require any tree removal for install of the presby system. Area is fairly flat before dropping off on a steep slope.
 - Access would appear to be from the driveway and may require removal of a stone wall and steps. Staff have no concerns as on opposite side of slope to the wetlands.
 - Presby system does not require mounding so no increase of slope or major erosion concerns.
 - Include ECs (silt fence & wattle) at LOW as slope is steep.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to close the Public Hearing for 145 Walker Pond Road. AIF 4-0
- On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to issue a Determination:
 - Negative #4: Area is not an area subject to the Act. Therefore, said work does not require a NOI, unless said work alters an Area subject to protection under the Act.
 - Positive #2b: no resource area approval
 - Positive #5 w/ conditions:
 - Standard pre-work and sign off conditions.
 - ECs to be installed at LOW as noted above.
 - AIF 4-0

3. 94 South Shore Drive-Notice Of Intent-Shoreline Wall- DEP #300-1141

- Owner/Applicant: William Tetreault Representatives: M. Thibeault, Landscape Evolution

- Request: Issue an OOC
- Documents Presented: sketch drawing & photos
- Jurisdiction: Bank
- Performance Standards: Bank:
 - **10.54(4)**: “(a) Where the presumption set forth in 310 CMR 10.54(3) is not overcome, any proposed work on a Bank shall not impair the following:
 1. the physical stability of the Bank;
 2. the water carrying capacity of the existing channel within the Bank;
 3. ground water and surface water quality;
 4. the capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
 5. the capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. In the case of a bank of a river or an intermittent stream, the impact shall be measured on each side of the stream or river. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.”
- Project Summary:
 - Project includes the removal of a failing concrete shoreline retaining wall and paved boat ramp. The wall will be replaced with a dry laid varied boulder wall. The wall will be stepped back and will include stairs.
- Presentation and Discussion:
 - Proof of abutter notifications & proof of legal ad received.
 - Project site is not located within Priority Habitat. Not in Estimated Habitat so no WPA approval from NHESP required. Required to file under MESA separately.
 - Site visit performed.
 - Previous engineered plan for property shows MAHW line at the shoreline wall. No BLSF past the wall or BVW. Resource area impacts include Bank only. No work shown or requested on Land Under water (LUW).
 - All equipment is proposed to be located within the upland portions of the property.
 - Proposing additional shrub plantings on site.
 - Appears to require a Chapter 91 license as work on a Great Pond. Applicant’s representative has started the process with DEP Waterways.
 - Profile plan demonstrates no LUW impacts and that height of proposed wall is not higher than the existing wall. Total linear feet of Bank impacts disclosed on NOI as 60 feet.
 - As Bank is currently a concrete wall, staff have no concerns with an adverse impact on wildlife habitat and meeting performance standards. Wall will be an improvement over existing conditions providing more wildlife habitat and BLSF capacity.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to close the Public Hearing for 94 South Shore Drive. AIF 4-0
- On a motion of E. Gaspar, 2nd by R. Bishop the Commission:
 - Vote to approve and issue an Order of Conditions pursuant to the WPA with the following special conditions:
 - Standard OOC conditions.
 - All work shall follow the submitted and approved sketch. The replacement wall shall not exceed the footprint of the existing retaining wall.
 - A drop cloth or similar material shall be placed on the Land Under Water during work. All fallen materials shall be removed at the end of each work day.
 - All activities, which may be located within areas that are subject to high water conditions, shall only occur in low water conditions. If working in dry conditions is not possible, then a plan must be developed to protect resource areas during work. Such plan shall be provided to the Conservation Department for prior review and approval.
 - Toe of boulders and stairs must end at existing extent of wall. Wall will have to conform to existing conditions (height).
 - Prior to the Pre-Activity Meeting, the limits of the existing shoreline shall be staked and photographed. The photographs shall be provided at the pre-activity meeting. Toe of boulders must end at wall. Stakes

shall remain in place to guide as a visual locator of the limits of the shoreline. Post-construction photographs shall also be provided.

- Applicant is required to receive all other permitting including a Chapter 91 license if required. Application to DEP required prior to the start of work.
- Require plantings as proposed. Landscape plantings must be installed in compliance with the approved plans. Applicant to ensure plantings survive and not covert landscaped areas.
- Vote to approve and issue an Order of Conditions pursuant to the SWB with the above noted special conditions.
- AIF 4-0

4. 231 & 233 Cedar Street – *continued* Notice Of Intent –Construction of a Single Family Home and associated site work - DEP File #300-1139

- Owner/Applicant: Bradley Marszalkowski Representative: S. Jordan, Ecotec
- Request: Issue an Order of Conditions
- Documents Presented: n/a
- Jurisdiction: Buffer Zone to 2 BVWs and Bank
- Project Status Summary: Project was continued to allow Applicant to address staff and SCC notes.
- Presentation and Discussion:
 - Materials were briefly reviewed that staff received past the new information deadline. The commission allowed the discussion.
 - New plans included a new septic location which had less grading and site disturbance.
 - Agent recommends adding signage to the property to protect resource areas.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to continue DEP File #300-1139, 231 & 233 Cedar Street to the next meeting: Oct. 27, 2022. AIF 4-0

5. 5 Ladd Road – cont'd Notice Of Intent – After the fact driveway expansion -- DEP File #300-1140

- Owner: Lorenzo Monaco Applicant/Representative: none
- Request: Issue an OOC.
- Documents Presented: colored plans & site photos
- Jurisdiction: Buffer Zone to BVW and Bank
- Project Status Summary:
 - Hearing was postponed. Project was conducted without wetland permitting. NOI required by board.
- Staff Notes:
 - DEP File # with comments received.
 - Site visit performed.
 - Proof of abutter notifications & legal ad received.
 - Project site is not located within Priority & Estimated Habitat.
 - Driveway was expanded, partial rock wall installed and vegetation removed to expand driveway. No grades were changed. Large portion of rock wall was existing from when the house was built.
 - Owner will remove millings or pave over the area with millings.
 - Native shrubs will be added along the wall, the Agent will work with applicant on type and quantity on site.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to close the Public Hearing for 5 Ladd Road. AIF 4-0
- On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to issue approval pursuant to the WPA and the SWB with the following conditions for DEP File #300-1140:
 - Allow for 3 options for project.
 - Native replacement plantings as shown. Options for native shrubs can be provided to SCC for approval prior to install.
 - Standard OOC conditions.
 - AIF 4-0

6. 16 Mt. Dan Road –*continued* NOI – Raze and rebuild of a lakefront home – DEP File #300-1135

- Owner/Applicant: Deborah Weber Representatives: L. Jalbert, Jalbert Engineering
- Request: Issue OOC.
- Documents Presented: updated landscape plans
- Jurisdiction: Buffer Zone, Bank

- **Buffer Zone 10.53(1): General Provisions**
 - “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- **Bank: 301 CMR 10.55 (4): General Performance Standard.**

”(a) Where the presumption set forth in 310 CMR 10.54(3) is not overcome, any proposed work on a Bank shall not impair the following:

 1. the physical stability of the Bank;
 2. the water carrying capacity of the existing channel within the Bank;
 3. ground water and surface water quality;
 4. the capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
 5. the capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. In the case of a bank of a river or an intermittent stream, the impact shall be measured on each side of the stream or river. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.”
- Project Status Summary
 - Project includes the raze and rebuild of the existing house. The parking area will be expanded to park five cars with a gravel base and stone top on the opposite side of the private road. 2 sets of stairs proposed within the bank of the pond. Project was continued to allow the Applicant to address the board’s comments.
- Presentation and Discussion:
 - Revised landscaping plan received.
 - Board requested details on structure coverage within the 50 ft BZ. The Engineering provided this detail at the meeting, not within the required timeline.
 - Commission had many questions in regards to the design calculations provided at the meeting.
 - Property Owner- wants the plan to accommodate the rules of the Commission, house is very small and not all lot coverage is used.
 - House Architect- Current house plan mimics the existing house in the 50 ft buffer zone.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to continue the Public Hearing for 16 Mt. Dan to November 17, 2022. AIF 4-0

7. 235 Podunk Road –*continued* Notice Of Intent-Construction of a Single family home – DEP File #300-1134

- Owner/Applicant: Dave Brunelle Representative: M. Dipinto, Three Oaks Environmental
- Request: Issue OOC
- Documents Presented: colored plans
- Jurisdiction: Buffer Zone
 - **Buffer Zone 10.53(1): General Provisions**
 - “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- Project Status Summary: Project was continued to allow for site staking, wetland flagging, and review of wetland line and revised plans.
- Presentation and Discussion:
 - Site visit performed.
 - Additional information on wetland line on this property received. Supports wetland flagging.

- Commission discussed the possibility of an additional site visit because wetland flagging was unclear at the first site visit.
- Revised plans received showing wetland boundary (was not shown on previous plan).
- Lot lines have been revised to reconfigure the 2 lots to meet the zoning upland/wetland requirements.
- Applicant has 4 open SWB OOCs which need to be closed out as work is completed and properties transferred. Recommend CoC requests submitted as work is completed. CoC is a requirement of the OOC.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to close the Public Hearing for 235 Podunk Road, DEP File #300-1134. AIF 4-0
- On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to approve DEP File #300-1134, 235 Podunk Road and issue an Order of Conditions pursuant to the WPA with the following special conditions:
 - Standard OOC conditions.
 - Lot line changes must be implemented prior to the start of work and BOH approval on systems received prior to start of any work.
- Vote to approve and issue an Order of Conditions pursuant to the SWB with the following special conditions:
 - Conditions noted above.
 - Require a surety bond or deposit of money during work to ensure conditions are met. Funds to be returned or bond to be released upon issuance of a Certificate of Compliance. \$5,000 for new single family house development has been previously required. To be released upon issuance of a Certificate of Compliance. AIF 3-1(Goodwin apposed)

8. 237 Podunk Road – *continued* Notice Of Intent Construction of a single family home– DEP File #300-1138

- Owner/Applicant: Dave Brunelle Representative: M. Dipinto, Three Oaks Environmental
- Request: Issue OOC
- Documents Presented: colored plans
- Jurisdiction: Buffer Zone
 - **Buffer Zone 10.53(1):** General Provisions
 - “For work in the Buffer Zone subject to review under 310 CMR 10.02(2)(b)3., the Issuing Authority shall impose conditions to protect the interests of the Act identified for the adjacent Resource Area. ... where prior development is extensive, may consider measures such as the restoration of natural vegetation adjacent to a Resource Area to protect the interest of [the Act]. ... The purpose of preconstruction review of work in the Buffer Zone is to ensure that adjacent Resource Areas are not adversely affected during or after completion of the work.”
- Project Status Summary: Project was continued to allow for site staking, wetland flagging, and review of wetland line and revised plans.
- Presentation and Discussion:
 - Site visit performed.
 - Additional information on wetland line on this property received. Supports wetland flagging.
 - Revised plans received showing wetland boundary (was not shown on previous plan).
 - Lot lines have been revised to reconfigure the 2 lots to meet the zoning upland/wetland requirements.
 - Applicant has 4 open SWB OOCs which need to be closed out as work is completed and properties transferred. Recommend CoC requests submitted as work is completed. CoC is a requirement of the OOC.
- Vote: On a motion of E. Gapsar, 2nd by R. Bishop the Commission vote to close the Public Hearing for 237 Podunk Road. AIF 3-1(Barnicle apposed)
- On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to approve DEP File #300-1138, 237 Podunk Road. AIF 2-2(Goodwin & Barnicle apposed) Motion fails***
- *** (Discussed later in the meeting) At 8:35 pm the Commission discussed reconsidering this vote. At that time D. Barnicle asked for to reconsider the vote for 237 Podunk Road.
- On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to approve DEP File #300-1138, 237 Podunk Road
 - and issue an Order of Conditions pursuant to the WPA with the following special conditions:
 - Standard OOC conditions.
 - Lot line changes must be implemented prior to the start of work and BOH approval on systems received prior to start of any work.
 - Vote to approve and issue an Order of Conditions pursuant to the SWB with the following special conditions:
 - Conditions noted above.

- Require a surety bond or deposit of money during work to ensure conditions are met. Funds to be returned or bond to be released upon issuance of a Certificate of Compliance. \$5,000 for new single family house development has been previously required. To be released upon issuance of a Certificate of Compliance. AIF 3-1 (Goodwin Apposed)

9. 86 & 88 South Shore Drive – continued NOI – Raze and rebuild of a single family home and associated site work – DEP File #300-1127

- Owner/Applicant: Steven and Marcy Reed Representative: L. Jalbert, Jalbert Engineering
- Request: Issue OOC.
- Documents Presented: n/a
- Jurisdiction: Riverfront Area and Buffer Zone to BVW and Bank
- Project Status Summary:
 - Project was continued for further revisions.
- Presentation and Discussion:
 - Written continuation request received from the Applicant.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to continue to Nov. 17, 2022 meeting as requested. AIF 4-0

II. WETLAND DECISIONS

10. 104 Westwood Drive –Request for a Certificate of Compliance-DEP File#300-1099

- Applicant: Steven Hennigan Permit Holder: same
- Request: Issue COC
- Presentation and Discussion: Site visit performed, plantings in and met growing season requirement.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to issue a complete Certificate of Compliance with perpetual conditions: 45-47. AIF 4-0

11. 17 Bennetts Road –Request for a Certificate of Compliance-DEP File#300-948

- Applicant: Patricia Kritzman Permit Holder: same
- Request: Issue COC
- Presentation and Discussion: Site visit performed and letter of substantial compliance and as-built plan (last revised 9-15-2022) received. Plan shows location of required plantings which have been completed.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to issue complete Certificate of Compliance with perpetual special conditions: 22. AIF 4-0

12. 96 Gladding Lane – Request for Certificate of Compliance-DEP File#300-1125

- Applicant: Mark & Laurie Palmer Permit Holder: same
- Request: Issue COC
- Presentation and Discussion: Site visit performed and letter of substantial compliance received.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to issue complete Certificate of Compliance with perpetual special conditions: 47-52.(pending fee provided) AIF 4-0

13. 96 McGilpin Road – Request for Certificate of Compliance-DEP File #300-293

- Applicant: Charles and Nancy McDevitt Permit Holder: same
- Request: Issue COC
- Presentation and Discussion: Staff couldn't locate any records on the property. A septic asbuilt was provided by the BOH and M. Farrell of Green Hill Engineering provided a letter of substantial compliance.
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to issue complete Certificate of Compliance. AIF 4-0

III. ADMINISTRATIVE DECISIONS

14. Minutes of 9/15/22 to be approved

- Documents Presented: draft minutes
- Vote: On a motion of E. Gaspar, 2nd by R. Bishop the Commission vote to accept the 9/15/22 minutes. AIF 4-0

IV. OLD BUSINESS

15. 100 Breakneck Road-Unpermitted work

- Documents Presented: colored existing conditions plan

- Presentation and Discussion: Existing Conditions plan submitted for review. Some work occurred within local jurisdiction based on plan if resource areas correctly delineated. The applicant's representative is working on a filing for a proposed house and barn at this location. The engineer reports that the owner has done some selective cutting for his personal use to date.

UPDATES

V. ADMINISTRATIVE UPDATES

- Committee Updates: CPA, Trails, Open Space, and Lakes-No Reports

VI. CORRESPONDENCE

VII. NEW BUSINESS

16. Mullins rules and Voting Procedures WPA and SWB

- Agent discussed with the Commission the Mullins rules and reminded Commissioners about abstaining from voting after missing two Hearings.
- Voting Procedures-Sturbridge Wetland Bylaw, vote is majority of the Commission in office at the time of the Vote while the MA Wetland Protection Act is the majority of the Commission in the room.

17. Agent's Report

- 71 Mashapaug (Curboy's Junkyard) new commercial project for that site was denied at the last BOS MTG.
- **110 Brookfield Road-E Goodwin asked Property Owner to file a NOI for the site improvements since change of ownership.**
- **413 Main Street-Parking Lot Emergency repair during a recent rain event; follow up required.**

18. Next Meeting-Tuesday October 27, 2022 and Site Visit Schedule-October 18th, 9 AM

OTHER TOPICS NOT REASONABLY ANTICIPATED BY THE CHAIR 48 HOURS BEFORE THE MEETING

On a motion of R. Bishop, 2nd by E. Gaspar the Commission vote to adjourn @ 8:38 pm. AIF 4-0