

**Stow Conservation Commission  
Minutes  
October 6, 2020**

A meeting of the Stow Conservation Commission was held on October 6, 2020 at 7:30 pm in the evening by remote Meeting VIA Zoom Videoconferencing in accordance with the Governors' Executive Order on Remote Meeting participation.

There were present: Jeff Saunders, Chair (late)  
Serena Furman, Vice-Chair  
Andy Snow  
Ingeborg Hegemann Clark  
Matt Styckiewicz  
Doug Morse (late)  
comprising a quorum of the Commission

Absent: Andy Bass

Also present: Kathy Sferra, Conservation Coordinator  
Tom Porcher, Associate Member

**Minutes:**

*Ingeborg Hegemann Clark made a motion to approve the minutes of September 29, 2020 as amended. Andy Snow seconded the motion and it passed 4-0 on a roll call vote: Matt Styckiewicz - aye, Serena Furman - aye, Ingeborg Hegemann Clark - aye, Jeff Saunders - aye.*

**Coordinator's Report:**

- Lake Boon Commission - is meeting tomorrow night to discuss lake drawdown, among other issues. Sferra will try to attend.
- Harvard Acres Open Space - This acquisition project is moving forward and Sferra is hopeful it will be completed by the end of the year. The Commission will formally need to vote to accept and sign the deed, followed by the Board of Selectmen.
- Field Work - Sferra noted that she expected to be doing a day of field work this week and focusing on boundary posting in a couple of locations where poaching has been an issue.
- 68 Pompositticut - Sferra has been in touch with the owner who is doing invasive species management using goats and plans to do a site visit on Thursday. All are welcome.
- Collings - Bob Collings reports that filling and planting of the gravel pit is complete. Sferra will coordinate a site visit with the Planning Board.
- Spotted Lanternfly - Materials were included in the packet on this new invasive species which is on the watch list.
- Tuttle Farm Gate - Our licensee at Captain Sargent has put up a farm gate to keep vehicles out of the field. It will have a lock approved by the fire department. Sferra said she had concerns raised by residents wondering if the trails are still open for walking and will be working with Jesse on signage making clear that it is town land and open for trail use.

### **Public Hearing - 68 Hudson Road – Notice of Intent**

Serena Furman opened the public hearing and Kathy Sferra read the hearing notice. Present was Karen Keegan of Guaranteed Builders and Developers, on behalf of the homeowners, Wayne and Danyelle Collette.

Karen described the project which is the demolition of an existing attached garage and replacement with a two story attached garage with a breezeway connecting it to the house. She said that a stream and bordering wetlands had been field-delineated. She described the stream as formerly perennial, now intermittent. The existing paved driveway to the house is partially within the 25' buffer. Karen said that the garage is 61' from the wetland and there will be no stockpiling on the site. They are proposing straw wattles for erosion control and there is also a little "lip" in the topography between the driveway and stream that should prevent any sedimentation to the stream. Andy Snow did a site visit and showed photos of the site, confirming the details that had been provided, and depicting the stream as dry. She noted that the culvert does not look to be in good shape. She noted that there was multiflora rose and bittersweet in the wetland buffer on the site. DEP has issued a file number and there were no issues raised.

*Jeff Saunders arrived*

Andy noted that the project would likely require approval from the Zoning Board of Appeals and Karen said that she did not think there would be any major issues. Kathy noted that the Treasurer's Office reported that there are unpaid taxes due, however Karen said that her client has taken care of this.

There were no further questions. Andy Snow moved to close the public hearing. Serena Furman seconded and the motion was approved unanimously 5-0. *Matt Styckiewicz - aye, Serena Furman - aye, Ingeborg Hegemann Clark - aye, Jeff Saunders - aye.*

### **Continued Public Hearing – Lake Boon Commission – Notice of Intent – Drawdown**

Members of the Lake Boon Commission (LBC), Kris Krablin, Dan Barstow and Conray Wharff were present for the discussion as was Lake Boon Association representative Dave Gray.

Dan Barstow noted that since the Commission's hearing, they had met with the Hudson Conservation Commission who had some comments on the proposed conditions and agreed that it makes sense to have one set of conditions. They will meet again on October 16<sup>th</sup>. Sferra noted that the revised draft had been distributed to the Commission. In addition, DEP has sent comments on the drawdown which merit discussion; these were distributed to the Commission at the end of the day. Sferra summarized these and they include wanting an estimate on the amount of land under water impacted, wanting an Ecological Restoration NOI and Appendix A, and questions about the date that the drawdown is to begin so as to comply with the performance standards in the 2002 Final GEIR on Aquatic Weed Management which call for drawdown to begin no earlier than November 1, and maintain stream flow in the outflow. Ingeborg noted that the original NOI was filed in 2010. The language about Ecological Restoration Limited projects did not become effective until 2014. She would make the argument that this is a continuation of an existing project and management plan/strategy that has been ongoing since prior to the 2014 date. Ingeborg has reviewed the regulations on this topic in 310 CMR 10.10(14). It was noted that the only reason for this permitting process is that DEP no longer wanted to have a Superseding Order of Conditions. DEP is also suggesting coordination of conditions with Hudson as already discussed. Lastly, Dan noted that the LBC will be meeting tomorrow night to hear residents' thoughts on the timing of the drawdown; noting the tension between those who like to have more time to do permitted work on

shorelines and those who want to continue recreational boating as long as there is good weather. This year, the drawdown has been advertised as beginning on October 19<sup>th</sup>.

The Commission discussed DEP's comments. There was a discussion of outflow and Dave Gray noted that the boards leak so about 20 gallons per minute flows over the dam. He said that it was possible that the outflow could be dry during periods of drought. It was also noted that it is a very short length of stream to get to the Assabet River. Sferra noted that the permit that DEP issued in 2010, after the FGEIR, permitted drawdown to occur as of October 1. Ingeborg asked about the history of drawdown. She asked what kind of wildlife people see on the lake. Various species were mentioned including beaver, muskrat, and cormorants. Dan said that this issue came up in the Hudson meeting and the concern was less about the timing than about the speed. The drawdown needs to move slowly enough that wildlife can adapt. Sferra noted the recent studies on drawdown and freshwater mussels. She offered to reach out to the researchers. Sferra and Hegeman Clark will also review the FGEIR in more detail. It was noted that it takes approximately a month for the lake to reach its lowest level from the time the drawdown starts based on the data that has been gathered. The permit requires the drawdown to be completed by December 1. Dave Gray thought the lake level goes down the width of one board in about 2 weeks, depending on rainfall.

Dan highlighted the issues surrounding the timing – what is ecologically best? What is legally required? And what would the residents like to see? Sferra also wondered what the implications of climate change are for this discussion. Serena wondered what dock owners who need to remove their docks would prefer.

Conray said that the biggest issue from the perspective of the residents is the desire to know when drawdown would be as far in advance as possible. The merits of various approaches and amounts of notice were discussed, as well as hard and fast dates versus some flexibility. It was thought that there could be a check in with each Conservation Commission to know if there was wall work in progress or planned that might be helpful. The process for informing people is as important as the date.

Dan asked if there is any reason ecologically not to pick November 1, given DEP's comments and the standards in the FGEIR. Ingeborg said the document talks about changes in nutrient levels, pH, and a turnover in nutrient levels in late October. Ingeborg noted that Chapter 4 of the document talks about lake drawdown. Dan suggested following up with Jason, who did research on lake drawdown. Serena noted that the contractors working on walls probably prefer the earlier dates.

Jeff asked if they knew how they might quantify Land Under Water? Ingeborg thought they could use Google Earth. The quantification is the area that will be exposed in square feet. Jeff thought there might be winter images online.

Dan said their homework was to do the calculations, review the FGEIR, talk with the residents about their preferences at the LBC meeting, and check in with Jason.

Kris asked if they should be including notice in the newspaper – is that still a good form of getting information out to people. Sferra said that it is for legal notices, but there are many other ways of getting out information. It is really up to the Commission if they want it in the paper. Dan said that the paper did it as a notice without charge.

Dan reviewed the revisions proposed to the Order of Conditions. Hudson prefers a three year permit, Stow prefers five years. Ingeborg noted that the regs might change, which is why she prefers five. Ingeborg noted that the Commission can always take enforcement action or amend the Order if conditions changed for some unexpected reason. He noted that there was agreement that sampling should be at the outlet. He has also reworked the language on drinking water supplies which was further discussed and further revised to include involvement by the town Boards of Health. It was also agreed to leave out reference to emergency removal of boards in the event of an impending storm as it is unrelated to drawdown. There was also discussion of what amount of remediation would need to be provided for failed wells, if any, and what reporting there should be about well failures. They will remove the reference to supplying water and just report on any failures.

Sferra said that DEP will be looking for an amended page from the Notice of Intent and responses to their other comments to be submitted by the applicant. Jeff asked the applicant to keep us up to date on any issues in Hudson. Kathy offered to set up a meeting with Pam from Hudson if needed.

Andy S. moved to continue the public hearing to October 20, 2020 at or after 7:30 pm. Serena seconded and the motion was approved unanimously (5-0): *Matt Styckiewicz - aye, Serena Furman - aye, Ingeborg Hegemann Clark - aye, Jeff Saunders - aye.*

## **Chapter 91 Continued Discussion**

*Doug Morse arrived during this discussion.*

Members of the Lake Boon Commission and David Gray remained for this discussion which was a follow up to the discussion at the last meeting. Sferra provided the Commission with copies of the presentation on Chapter 91 from DEP and also selected portions of the regulations that address the definition of Great Pond and their jurisdiction over inland waterways, as well as how the Town takes on the permitting. She noted that the Commission has some thinking to do on how it wants to address this issue. Sferra mentioned it to the new Town Administrator who has had experience permitting docks on the Merrimack River. DEP wants Conservation Commissions to play a role in helping enforce the Chapter 91 regulations on inland waterways for docks, retaining walls and other structures.

Sferra noted that she has thought a bit about this issue. For new docks or relocation of docks, the Commission can require applicants to get a Chapter 91 license. For reconstruction or changes, the same conversation can occur. The bigger challenge is existing docks, some of which may have predated the Wetlands Protection Act. She said it would be helpful to have a list of existing licenses from DEP. She also thought it might be helpful to have a simple flyer about Chapter 91 requirements. It was noted that approving Orders of Conditions and Chapter 91 licenses for docks would be a huge amount of work. Dan Barstow noted that he and his wife may have one of the few Chapter 91 licenses on the Lake. He explained the process that they went through. Dan and members of the Commission questioned whether DEP has the capacity to do all of this permitting for Stow and beyond, and the expense to homeowners was noted. Dan wondered if existing docks could be grandfathered. He wondered if there were environmental reasons to do this and noted the legal burden of the permitting. Sferra said that her hope is that CC and LBC can work together to come up with a reasonable plan to approach this and possibly have the town assume the permitting process. She is hopeful of finding a way through this that works for the town and homeowners.



Members asked if DEP had given any guidance about implementation. Sferra said that none had been provided to date. Circuit riders are available to come to Commission meetings to discuss the issue. She does not think they are planning any kind of grandfathering or amnesty program. There was support for the idea of rolling this out gradually and doing public education.

Dan explained that applicants need an Order of Conditions before they could even go to the state. Members wondered if site inspections would be needed. Would individual permits be required or could there be a blanket permit? And some of the docks don't meet the state's requirements because they contain non-water dependent uses. It was noted that there have been many permits with docks recently. Sferra noted that even if there could be a single public hearing, individual Orders would need to be written.

Sferra said that she wasn't seeking resolution tonight. She thought that perhaps there should be a future conversation with LBC about local permits. If LBC is designated the harbormaster they can issue annual permits for docks and floats that are bottom anchored. Those residents would have to come yearly. Kris Krablin of the LBC thought they did have the harbormaster designation and had the authority to issue licences for freestanding, floating docks if more than 20 feet offshore. She said that they get requests periodically. They also don't do enforcement. She wondered if there should be some sort of medallion that shows a dock is licensed. They are not currently doing that. Anything that is pile supported still needs a permit from DEP. Sferra noted that there is a process whereby towns with Lake Commissions can petition the state to grant their own Chapter 91 licenses. So far, only Southwick has done that. There is a question about the local capacity to do the administrative work that would be required.

Dan wondered if associate members could be designated that would be responsible for this? Conray noted that this is a recurring issue which comes up from time to time. He said that the LBC is designated as Harbormaster with limited authority defined in Section 10A of the state regulations. He noted that Laura Diamond also has a Chapter 91 license.

The Commission discussed the fact that this is intended to include retaining walls as well.

The Commission wrapped up by supporting the idea of taking small steps like creating a dock guidance for homeowners that can be posted on various websites, and keeping the conversation open with the LBC about finding ways to make this as easy as possible for residents. Sferra said that she thinks we have as much time as we need to look at this issue and come up with a plan. If the state wants more enforcement, they can do it themselves.

Conray noted that they have the ability to require people to make corrections to dilapidated docks, but they don't have the time or ability.

There was agreement to focus on education in the short term. Sferra will send the LBC the DEP presentation. Kris will be the lead going forward. The Conservation Commission members thanked the LBC for attending.

#### **Decision – 68 Hudson Road**

The Commission discussed a draft of the Order of Conditions for 68 Hudson Road. They made revisions to the draft findings and conditions to reflect the discussion at the hearing. Serena Furman moved to issue the Order of Conditions as amended. Andy Snow seconded and the motion was approved 5-0-1:

Matt Styckiewicz - aye, Serena Furman - aye, Ingeborg Hegemann Clark - aye, Jeff Saunders - aye,  
Doug Morse- abstain.

**Coordinator's Report (Continued):**

- **Flagg Hill:** Sferra briefed the Commission on a potential boundary dispute involving a portion of Flagg Hill land off West Acton Road. She has been in touch with the adjacent owners who had a survey completed and corner markers set, has walked and GPS'd the area, and reviewed relevant deeds and plans at the Registry of Deeds. The adjacent owners believe that they own a significant portion of the access road that was thought to be town land. The area in question has an old cart road on it which is not an official trail but is used by residents of the area to access portions of Flagg Hill. The question is whether to pay a surveyor to investigate further or just accept the boundary survey done by the abutters. After discussion, the Commission agreed that it was worth hiring a surveyor to review documents and plans and help resolve this issue. Sferra will contact a couple of surveyors to get an estimate for the work and proceed if the cost seems modest, or bring back options if it is costly.

**Adjournment** – Ingeborg Hegemann Clark made a motion to adjourn the meeting at 9:36 PM. Matt Styckiewicz seconded the motion and it passed 6-0 on a roll call vote: Andy Snow – aye, Doug Morse – aye, Matt Styckiewicz – aye, Ingeborg Hegemann Clark – aye, Serena Furman – aye, Jeff Saunders – aye.

Respectfully submitted,



Kathy Sferra  
Conservation Coordinator

**Materials Used during the October 6, 2020 Conservation Commission Meeting:**

Application, Photographs, and Supporting Materials for 68 Hudson Road  
DEP Comments on Lake Boon Drawdown  
Maps and Photographs of Flagg Hill Boundary issue  
Photographs of Tuttle Lane Gate