

**Stow Conservation Commission  
Minutes  
November 7, 2018**

A meeting of the Stow Conservation Commission was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts, on November 7, 2018 at 7:30 in the evening.

There were present:     Jeff Saunders, Chair  
                                 Cortni Frecha, Vice-Chair  
                                 Serena Furman  
                                 Andy Snow  
                                 Ingeborg Hegemann Clark  
                                 Nicki McGachey

Absent:                     Sandra Grund

                                 comprising a quorum of the Commission

Also present:             Kathy Sferra, Conservation Coordinator  
                                 Jacquie Goring, Conservation Assistant

**Minutes:** *Andy Snow made a motion to approve the minutes of October 16, 2018 as written. Serena Furman seconded the motion and it was passed unanimously.*

**Request for Certificate of Compliance – 242 Hudson Road** – Jacquie Goring visited the site and confirmed that the addition was built as proposed. Goring noted that the existing driveway was not removed and no new curb cut was made onto Hudson Road. Goring recommended the Commission issue. The Commission recommended that the change to the driveway be sketched on the plan in the file. *Cortni Frecha moved to issue the Certificate of Compliance for 242 Hudson Road, Nicki McGachey seconded and the vote was unanimous.*

**Appointment – Don Hawkes, Lake Boon Commission** – Don Hawkes, Lake Boon Commission Chairman, was present and reviewed the proposed changes to the Lake Boon bylaws and reviewed the Lake Boon Commission's jurisdiction over the Lake. Hawkes noted that the revisions include changes to the rule regarding speed stating that boats will not be operated at a speed that might endanger property. Hawkes noted that wake boats are designed to create a three to four foot wake which creates concerns about shoreline erosion. Hawkes also clarified that the Lake Boon Commission does not have jurisdiction over dock length but does have regulations regarding swim floats. Hawkes added that Chapter 91 requires that on great ponds, in their original state, all docks must be licensed but the regulation does not apply to Lake Boon which has been altered by the dam. The Lake Boon Commission can order docks to be repaired. Hawkes clarified that photographic evidence would be required to be provided to the police if property damage occurs as result of speed. The Commission recommended that the Lake Boon Commission consider adding retaining wall work including maintenance during draw down and walls made of natural material to the bylaw. Hawkes noted that the Town of Hudson deadline for Annual Town Meeting warrant articles is January 28, 2019 and major changes to the bylaw are not expected at this time.

**Notice of Intent – Hallocks Point Road – Sarah Bailin** – Jeff Brem, Meisner Brem Corporation, and Paul Alphen, Attorney for Robert Dawes LLC, were present. Brem reviewed the proposed seven lot subdivision on Hallocks Point Road which currently has three house lots. The existing dirt road will be improved and used for the subdivision road. Brem noted that the land is under Chapter 61 tax classification and Alphen added that the applicant will be selling the property to a builder and the Town would have the right to purchase the property through the right of first refusal process. Alphen also noted that the applicant is going through the permitting process with the Commission, Planning Board and Board of Health to sell the property with no contingences for permitting.

Brem displayed plans for the property and described the location and resource areas including Lake Boon, Boarding Vegetated Wetland, and bank. Brem noted that the site is mostly flat with the exception of lots 3, 4, 7 and Parcel X which Brem described as a long thin strip of land adjacent to Sudbury Road. Brem stated that no work is proposed within the 35' no disturb buffer. Brem described the proposed drainage for the subdivision including a series of catch basins which will drain to a proposed infiltration basin. Brem reviewed the comments provided by Sue Carter regarding the proposed drainage system and clarified that any changes made to the plans will keep work outside the 35' no disturb buffer. Brem noted that each lot will have a separate septic system and clarified that the grading shown on the plan is generic and changes may require amendment to the permit. Brem reviewed the proposed erosion control and the concrete washout staging area required by the National Pollutant Discharge Elimination System (NPDES) permit.

Brem explained that Parcel X is a stand alone lot that could be joined and sold together with lot 7 but the land is not required for that lot. Brem added that snow storage will be added to the plan and clarified that docks are not shown on the plan however he expects each landowner will want a dock including lots 2, 3, 4 and 7. Brem stated that lot 1 has no access to Lake Boon and lot 6 would have to cross a large wetland for water access. DEP had not issued a file number at the time of the hearing. Sferra noted that during the site walk changes were made to some of the wetland flags and a request was made to stake out the house on lot 3 which is closest to the 35' no disturb buffer. The Planning Board has also requested that the turnaround be staked in the field. Sferra noted that there is not a suitable location for a dock on lots 6 and 7 and a small dock is currently on lot 5. Sferra added that although the proposed plans do not include work within the 35' no disturb buffer the plans do not include docks, landscaping or hardscaping which homeowners will likely later request. Sferra clarified that each of the five lots within the Commission's jurisdiction will require either a separate Order or amendment to the Order for the subdivision. The Commission noted that the house on lot 3 is 36 feet from the lake and equipment access may need to occur in the 35' no disturb buffer. The Commission discussed the peninsula having some of the richest habitat on Lake Boon and future homeowners wanting decks, patios, docks and trees to be removed and the potential for having a single access point to the lake for the subdivision. Alphen noted the concerns about conflicts over shared access to the lake and a marina. Alphen and Brem suggested docks could be shared between a few lots to reduce the number of overall docks for the project. The Commission requested that the impact associated with potential docks be added to the plan for the next hearing. Sarah Bailin was present and noted the conflicts over shared lake access on Dawes Road.

The Commission reiterated their concerns about lot 3 and the proximity of the house to the 35' no disturb buffer. Brem stated that if the turnaround was moved so that the house on lot 3 could be moved farther from the lake the lot would not have sufficient frontage. The Commission expressed concerns over the use of the proposed infiltration basin for construction period stormwater management and the basins ability to infiltrate following construction. The Commission also noted the Lake Boon Stabilization guidance and the recommendation for meandering paths and expressed concerns about lake access with the steep slopes on some of the lots and encouraged the applicant to consider controlled access points to the lake. Brem noted that paths could be made by hand using spade shovels. Don Hawkes, Lake Boon Commission member and resident of 8 Dawes Road, stated that he encouraged the limited nature of meandering paths for lake access and collective docks. Brem also noted the encroachment of the boat launch onto Parcel X and inquired if the Commission would have interest in the parcel to avoid moving the boat launch. *Serena Furman moved to continue the hearing to 12/4/18 at or after 7:30 pm. Andy Snow seconded and the motion was approved unanimously.*

**Notice of Intent – 168 Barton Road – 168 Barton Road Realty Trust** – Present for the hearing were Ron Ham Jr., the owner/applicant, Ron Ham, Sr. and Dave Burke, his wetland specialist. The Notice of Intent was filed after the fact in response to an Enforcement Order issued to Ron Ham, Trustee of Barton Road Trust. Burke began by explaining that Ham filed a Notice of Intent for work at 168 Barton Road and received an Order of Conditions. He noted that most of the Commission members had been to the site at least once. He explained that the Hams were working on a camp built around 1920 that was purchased by the Hams in 2000. They have lived there on and off. He noted that the camp is located at the top of a bluff on one of the highest points on the lake. The slope behind is steep. Burke noted that he was not involved in the original permitting. In the filing, the Hams requested to stabilize the slope by adding trees, filling rivulets, and reinforcing the toe of the slope with rocks because of erosion that has

been occurring as a result of boat traffic. A handmade stone wall at the base of the slope was taking a beating and was not sufficient to dissipate the wave energy. Burke noted that the Hams received permission to embellish that wall. He noted that the Hams have respect for the resource area and buffer zone. He noted that at the bottom of the slope they outran the plan and beefed up the shoreline armoring using 2'x4'x2' concrete blocks that were brought in and placed using a crane with a crew at the base of the slope helping position them. He also used a piece of equipment called an earthslinger to spread loam on the slope and place rock behind the concrete blocks. He noted that there was no equipment on the slope. He noted that the blocks interlock like legos and have been placed two courses high. Burke said that resource areas are Land Under Water and Inland Bank; both have been impacted and his narrative addresses them. He does not know what was there before and so based his impact numbers on the size of the blocks. He noted that there is a sandy substrate below the blocks. The area behind the slope was filled with 3/4" – 1" broken stone creating a 6' wide flat spot.

Burke noted that he has provided options and alternatives in the narrative. He noted that the Hams are more than willing to keep the wall in place and mitigate for it or paint it. He said that this might be a good project to consider off-site mitigation somewhere on Lake Boon. He considered options like pile driven metal sheeting. He noted that Ron has photos of wave action and of other walls around the Lake that are failing. He said that they are just at the threshold for Inland Bank. He said that this could be considered a limited project under 10.56(4)(b) of the regulations that provides for maintenance of boat channels and requires only that adverse impacts be minimized but that performance standards can be waived. He noted that this could be considered a boat channel as it is a pass by area for boats. Staff and several members of the Commission disagreed with this approach. Sferra said that provision is intended to apply to dredging of boat channels. Burke stressed that it is not a destination but more of a channel. He agrees that it is not a perfect fit but thinks the Commission should try to be accommodating given the number of walls in need of repair.

Saunders said we are in this position because there was a plan that wasn't followed. Frecha said that we see wall repair projects all the time and typically there is a plan that is approved and executed. It hasn't been a problem for them to meet the performance standards.

Hegemann Clark asked staff to review the staff report. Kathy Sferra summarized the history of the project, noting that the Order that was issued allowed minor work along the shoreline, with no mortar to be used between the rocks. She read from the notes on the plan and in the conditions. The length of the work was limited and the work was required to be done during the annual seasonal drawdown of Lake Boon. She described the condition of the wall at the time of the application and showed the Commission photographs from the application. After a complaint was made to the Commission about work on the site, staff went out and viewed the work that had been completed by Ham. The Commission issued an Enforcement Order at its next meeting after a long discussion with Ham, which required the filing of a Notice of Intent for the work. The EO requested that the applicant present alternatives to the work that had begun without a permit. The Commission also did a site visit with Ham and Burke and reiterated the importance of presenting alternatives to the work that was done that would meet the performance standards.

Sferra said that she reviewed the current Notice of Intent and plan which contained Mr. Burke's estimates for resource area impacts. The applicant estimates 32 linear feet of bank impact, Sferra believes it is closer to 48 linear feet, and still below the threshold in the Wetlands Protection Act for a wildlife habitat analysis. She calculated approximately 540 cubic yards of alteration of Bordering Land Subject to Flooding, depending on the flood elevation which was not provided. This is 45'x6'x2'. She noted that Mr. Burke's calculation of impact to Land Under Water was 64 square feet, but her estimate is 270 square feet – that's the footprint of the area that was filled. Burke said that he had just used the footprint of the blocks. Sferra stated that the area behind the blocks was filled with stone and showed a photograph of the work in progress where this can be seen. Andy Snow said that it was clear that the blocks jutted out many feet into the lake. That's what her concern is. Sferra noted that this is obvious when you look at the shoreline on adjacent lots. Mr. Burke that he did not see that and can't speak to it. Sferra gave Burke a photo showing the toe of the bank during construction. She said it could be seen on the plan as well. Ron Ham said that the blocks were pushed as close to the bank as they could be, the larger stones prevented recessing the wall further. Mr. Burke said that he would go with staff's numbers. Sferra said that the application also stated that there

were no fish known to frequent the Lake and she provided information documenting the fact that there is high quality fish habitat. Mr. Burke said that he had not meant to say that and is very aware of fish in the Lake.

Sferra noted that there were no specific alternatives presented, just a discussion of options. She noted that one item not described that has been successfully used on several neighboring properties including 176-178 Barton (Smith, Siewierki) is a sloped rock retaining wall that is constructed flush with the base of the slope. The diagonal slope both protects the bank and often better dissipates wave energy. Goring noted that this approach is recommended in the Commission's Shoreline Stabilization Policy. Sferra reiterated the performance standards that apply to this project, including compensatory flood storage and noted that none has been provided. The Bylaw requires 110% compensatory flood storage.

Furman asked about the bullet in the Notice of Intent filing that says "if removal and abandon is on the table, then completion should be as well." She pointed Burke to the paragraph she had questions about. He stated that he meant that if everything was removed the bank would still be subject to erosion.

He said that means that if everything comes out, you just leave it as is.

Hegemann Clark asked if one alternative would be that the work could just be done as outlined in the approved Order of Conditions. Burke said that could be done. You could put boulders in place and then just leave the slope to wither away. Hegemann Clark stated that the previous plan was represented as feasible and viable and meeting the applicant's needs. If that is no longer the case, she would like to see an alternative plan that would be more appropriate given the wave energy that has been described. That is one alternative. If that plan is no longer viable, we would like to see an alternative plan. Staff have recommended something that might work, given the wave action out there. Hegemann Clark stated that they are not likely to be agreeable to leaving the blocks in the Lake which will result in fill in the Lake. She noted that need for changes arise all the time during construction, but to her knowledge there was no communication about this with the Commission or staff. In her personal opinion, she doesn't think this would have been approved by the Commission. She feels that there should have been a discussion of what was approved and why it wouldn't work. She asked if it is feasible to remove the blocks. Mr. Burke stated that he is not an engineer but he sees an awful lot of walls extending into the Lake. Hegemann Clark responded that it isn't about comparisons. There have been enforcement issues in the past. The Commission takes every case seriously and individually. She doesn't think that saying there are other damaged walls is an appropriate response. She asked again if it is feasible to take it out. Saunders stated that this is key question. The whole idea of alternatives is predicated on the ability to remove what was done without a permit. Burke then responded that he supposed that they could be removed, but it would be expensive to do so. He is concerned that there could be siltation during the removal, unless you do it when the water is low. He said that anything could be done. He thinks it is good approach to stemming the impact of the waves and the erosion of the sandy esker. He was not aware of the idea of a sloping revetment. Sferra again referred him to 176-178 Barton. Those were recently permitted by the Commission.

Sferra noted that based on extensive research going back to 2008, the Commission has consistently mandated that fill not be placed in the Lake when shoreline protection is considered. A number of projects have been modified to accomplish this. Saunders expressed concern about setting precedent if the current wall is allowed to remain. Sferra noted a recent repair case where the old wall needed to be removed instead of putting a new wall outside it. Burke said that maybe they should explore what has been permitted. Burke noted that Ham has video that shows that the current wall is working.

Hegemann Clark asked if mitigation has been explored. Sferra said that the notion of off-site mitigation was raised, with no details. Mr. Burke stated that he had not expected to close tonight. If there was something needing attention on the Lake the Commission might be aware of it. He said that he had not met with the Lake Boon Commission.

Burke suggested that they could put the rocks that are in the baskets on top of the blocks and slope it off. It would look like a sloped revetment. Sferra noted that this would not meet the performance standards and might result in

additional fill in the floodplain and alteration of bank. Burke said they would need to provide compensatory storage. Sferra asked where and Burke said he did not know.

Hegemann Clark said they have given the applicant a lot to think about. Burke said they can pull things out with a crane and go back to what was approved in the Order, but then what do we do? Hegemann Clark said that discussion should have happened at the time it was decided that the approach in the permit would not work. Burke said that he was not working for the applicant at the time. Hegemann Clark acknowledged that this is frustrating and upsetting and Ron Ham, Jr. agreed. He said that he has seen the wave action and was trying to protect the embankment to eliminate further loss of trees along the shoreline. He has lost five trees. They have watched the property for almost 20 years and there are terrible erosion problems. He thinks that a revetment would have extended out into the Lake as well. Sferra noted that the bank along Larry Smith's is similar. Ham said he has looked at the whole area.

Saunders stated that he doesn't disagree that what's been done is working. Ham said that this has caused him anxiety and he is concerned about being bankrupted by having to remove the structure. Ham stated he is wishing he had handled this differently. He knows he should have come to the Commission. He said he was apologetic and understands that the Commission would have worked with them. Sferra said that the challenge is that if what he had put in was something the Commission would likely have approved, they could have worked with him to permit it. But here we have a project that doesn't meet the requirements.

Hegemann Clark said that the alternatives analysis should be expanded. There are performance standards that need to be addressed. You can talk to the Lake Boon Commission about alternatives. She noted the need for an alternatives analysis and a cost analysis could be prepared. The Commission isn't likely to approve this as presented. What can you do to better provide mitigation for wildlife and fish habitat and to ensure that there is not additional wave action that affects the neighbors. Ham said that they have been dealing with wave energy reflection as well.

Furman asked what the length of structure is. It was noted that it is approximately 36-48' long including the block and stone. She said that she is skeptical that it would cost \$100k to remove as Burke implied. She thinks it could be jackhammered and taken out in small pieces by boat. She doesn't think that this is an accurate number. Burke said he doesn't know. Burke thought that would make a mess. She said the more they talk, the less she likes the wall and thinks it should be removed.

Frecha said that they need more information. Burke said that they tried to have their engineer present and he wouldn't come. Frecha asked that they compare impacts and look at what might be possible. She doesn't feel that this approach is palatable. Everyone who has spoken up tonight has said that this isn't something that we would have agreed to.

Snow reiterated the need for more information and said that everyone is saying the same thing. She noted that the Wetlands Protection Act has performance standards that need to be met and mitigation has to be provided. That part is out of our hands. The second thing is that Ham needs to present the cost of an alternative (like a revetment) and the cost associated with removing the blocks. It isn't our job to determine how to remove them, the key is that it didn't meet the Order of Conditions. Our choices are to ask you to remove them and in the absence of data on cost and how you will do it, that makes us uncomfortable. Our goal is to help you, but we need more information. If we were to say you can keep the wall, there would still be a requirement for mitigation. We don't understand what the choices are, because we haven't been provided sufficient data. We've met with you several times and explained what we need. And so either we are not communicating that well or you are not hearing it in a way that you can get your head around it, because we haven't gotten it. We need to know what you will incur for removal, what the issues would be, and how alternatives would work.

Furman noted that they altered a natural bank. There was a discussion about the amount of armoring of the old bank and agreement that it was more natural than structural. Photos were reviewed again. Furman noted that they had effectively created a concourse in front of the shoreline and that the top surface can't be allowed to stay and be

used for people. Burke said they could put in spikes, or use the field stone in the baskets face it. They could put in a rock garden. The intention is not to use it. Frecha also had this concern; a new owner could put lawn chairs and a barbecue down there. New owners may not even be aware of the Conservation Commission's jurisdiction.

Saunders summarized that the options are for the wall to come out or stay in at this point. If there is work needed to finish it, that should be included in the application and the impacts fully assessed.

Don Hawkes, spoke, stating he was chair of the Lake Boon Commission. He said that he appreciated the effort to cast about for creative options. He said that Commission had no jurisdiction here and that their focus was the safety of the Lake. Hegemann Clark asked if the Commission could help point them to off-site mitigation options. For example, is there a place on Lake Boon they could help improve in terms of habitat. Hawkes said it is all privately owned property. She asked that this be given thought.

Mimi DiMauro, Coldwell Banker, said she would be representing this property when this goes on the market. She has worked with the Hams for 35 years and is familiar with waterfront property issues. She noted that the encroachment of the Sudbury Road boat ramp could be mitigation option. She said she has been on the property the whole time the Hams have owned it. It was never the intent that the area of stone be used as a landing or recreational area. She makes buyers aware of any conditions in permits. She asked if there are town-owned properties around the Lake where mitigation can be proposed.

Cindy Curley said she lives next door the Hams, and formerly was on the Lake Boon Commission. She said that she cringes at all the development on the Lake. She described the problems with wake board boats in their basin. She said the boats go up and down the same side of the Lake and so all the impacts are in the same area. She described docks that are swamped or bowed by the wakes.

Dan James on 89 Barton said that he is friends with the Hams. He agreed with Cindy's comments. He noted that there is a concern about displacement of water and asked if it is possible to move the wall back further into the bank to reduce the impact to the floodplain. Saunders agreed; this was something that they discussed. He noted that this might still be expensive. He said the stones could still be put in front.

Burke said it would be challenging to do that work. They would need to get an excavator down there. Ron Ham, Jr. confirmed that there is about 3' of beach in front of the wall during drawdown. Furman said that perhaps that would be an option. A machine could be lowered by a crane or brought in by raft. Burke said they will explore it.

Burke noted that DEP had issued a file number.

It was agreed to continue the hearing to allow for the submittal of additional information. The timing of the end of drawdown was noted. The need for work on the dam was noted. Hegemann Clark wondered if there were any mitigation possibilities associated with the dam work. Hawkes said that the work is expected to be done by the Town. It was noted that the planting of the dam needs to be limited. After a discussion of possible continuation dates, *Cortni Frecha moved to continue the hearing to 12/4/18 on or after 7:30 PM. Serena Furman seconded the motion and it was approved unanimously.*

**Request for Certificate of Compliance – 40 Bradley Lane –** Andy Snow visited the site and confirmed that the proposed septic system and house remodel were completed as designed. Snow noted that rail road ties were left along the intermittent stream and brush piles and a tire rim were left next to the pond. Snow recommended the Commission issue the Certificate but require that the rail road ties, tire rim and brush be removed. *Cortni Frecha moved to issue the Certificate of Compliance for 40 Bradley Lane contingent on the removal of the rail road ties, tire rim and brush, Serena Furman seconded and the vote was unanimous.*

**Regency at Stow – Site Visit Review and Enforcement Follow Up –** Sferra updated the Commission on the Regency at Stow site visit. Sferra described the areas of erosion and sedimentation identified by Ducharme & Dillis which were confirmed during the site visit and noted four areas where further analysis on the depth and extent of

sediment is needed. Sferra also recommended that Ducharme & Dillis confirm that the areas have not expanded in the spring.

**Finn Road Enforcement Follow Up** – Sferra provided the Commission email correspondence regarding the Finn Road culvert and noted that she visited the site earlier in the week and confirmed the side slopes were well stabilized. Sferra also noted that the boat ramp area was stabilized with gravel and the lower area was mulched and seeded. Peastone was also spread across the lower area to stop erosion in an area where Sferra observed a few gullies. Sferra will continue to monitor the site.

**Review/Approve FY 20 Budget** – The Commission reviewed the budget for Fiscal Year 2020. Sferra noted that the budget has been lowered from last year due to the increased amount of Wetland Protection Act funds to be contributed to the Conservation Assistant position and the request for \$2,500 to be requested for the Conservation Fund. Sferra added that she believes both changes are reasonable to maintain. *Serena Furman moved to approve the draft Fiscal Year 2020 budget, Cortni Frecha seconded and the vote was unanimous.*

#### **Coordinator's Report**

- **Box Mill Bridge Site Visit:** Sferra participated in a site visit for the Box Mill Bridge project and informed the Commission that proposed easements and right-of-ways may impact the Carver Hill Conservation Restriction and require legislature approval. The Conservation Commission, Planning Board, Historical Commission and Highway Department will have the ability to comment on the 25% design plans.
- **Predator Presentation:** The predator presentation cosponsored with the Randall Library is scheduled for February 7, 2019 at the Pompo Community Center.
- **Mistletoe Farm Violation:** Sferra updated the Commission on a potential violation at Mistletoe Farm including removal of trees and grading within the Commission's jurisdiction. The owners will be filing for a permit. Ingeborg Hegemann Clark and Cortni Frecha agreed to do the site visit.
- **New Projects:** Nicki McGachey agreed to lead the proposed tree removal project at 30 Partridge Lane.
- **Conservation Land Permit Request:** Sferra informed the Commission that Alex Townsend has submitted a Conservation Land Permit seeking approval to dig at the Captain Sargent barn foundation. Sferra will schedule Townsend to meet with the Commission on a future agenda.

**2019 Meeting Schedule** – The Commission reviewed the 2019 meeting dates.

**Climate Resiliency Grant Programs** – The Commission discussed the Climate Resiliency grant opportunity and recommended staff provide the grant information to Commission member Sandra Grund.

**Adjournment** – *Cortni Frecha made a motion to adjourn the meeting at 10:27 PM. Andy Snow seconded the motion and it was passed unanimously.*

Respectfully submitted,

Jacquie Goring  
Conservation Assistant

#### **Materials Used during November 7, 2018 Conservation Commission Meeting:**

Draft Lake Boon Bylaws and Rules revisions  
Hallocks Point – site visit photos and application materials  
168 Barton Road – site visit photos and application materials  
242 Hudson Road – Request for Certificate of Compliance  
40 Bradley Lane – Request for Certificate of Compliance  
Draft FY 2020 Budget  
Draft 2019 Meeting Schedule  
Draft 10/16/18 Minutes